



FAIR HOUSING TRAINING

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SEPTEMBER 27, 2018



PAINE | BICKERS LLP
ATTORNEYS AT LAW

The Basics - Goals of The Fair Housing Act

- **To end discrimination** against the **protected classes** including:
 - Refusing to rent housing.
 - Making housing unavailable or lying about the availability of housing.
 - Denying housing.
 - Establishing different terms or conditions in home selling or renting.
 - Providing different housing accommodations or amenities.

The Basics – Protected Classes

Protected Classes

Race

Color

Religion

Sex

Handicap

National Origin

Familial Status

The Basics – Real Examples

Landlord told his Leasing Manager that he had "met his black quota," and that he wanted "no more niggers" at River Bend.

HUD v. Lewis, Case No. HUDALJ 04-94-0227-8, April 19, 1996

The Basics – Real Examples

Landlord showed Prospective Tenant a unit that had been advertised for rent. Prospective Tenant told Landlord he anticipated that his four-year-old son would be occupying the apartment with him on alternate weekends. Landlord closed her rental applications book and stated that she could not rent to him and that the interview could not go on any further. Landlord refused to give him an application and stated she could not rent an apartment to him because of his four-year-old son.

HUD v. Gruen, Case No. HUDALJ 05-99-1375-8, February 27, 2003

The Basics – Real Examples

In late February 1993, Respondent, initiated a conversation with her about television. During the course of this conversation, Respondent stated that he had the "Playboy Channel" and other sex channels on his television, and he asked Ms. Torres if she would like to "play patty cake on the living room floor." As he said this, Respondent clenched his fists and thrust his pelvic area backwards and forwards three or four times.

HUD v. DiCosomo, Case No. HUDALJ 02-93-0356-8, February 1, 1995

But . . . It's Not Always That Simple

INTENTIONAL DISCRIMINATION

VS.

DISPARATE IMPACT

Disparate Impact

In 2015 the Supreme Court upheld and established that the Fair Housing Act allows lawsuits based on disparate impact, meaning a law or practice can be determined to have a discriminatory effect even if it wasn't based on a discriminatory purpose.

Disparate Impact

Bottom Line

A landlord can be deemed as discriminatory even if the landlord didn't purposefully discriminate.

Disparate Impact

HUD'S THREE PART TEST

Disparate Impact

PART ONE

***TENANT MUST SHOW THE POLICY/PRACTICE HAS
A DISCRIMINATORY EFFECT ON A PROTECTED
CLASS***

Disparate Impact

PART TWO

IF TENANT PROVES THE POLICY PRACTICE HAS A DISCRMINATORY EFFECT, LANDLORD MUST SHOW PRACTICE IS NECESSARY TO ACHIEVE A NONDISCRIMINATORY INTEREST.

Disparate Impact

PART THREE

EVEN IF LANDLORD SHOWS A LEGITIMATE INTEREST, TENANT CAN TRY TO ESTABLISH LIABILITY BY SHOWING A REASONABLE ALTERNATIVE TO THE LANDLORD'S PRACTICE OR POLICY .



U.S. DEPARTMENT OF HOUSING AND
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

Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.

Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.

While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability).

DISPARATE IMPACT

A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when there is no intent to discriminate.

How does HUD determine
that use of criminal history
to deny housing violates
Fair Housing?

1. Does the criminal history policy result in a “disparate impact” on a group of persons because of their race and national origin?
 - Does the policy actually result in a disparate impact?
 - Does the policy predictably result in a disparate impact?

2. If the policy had a disparate impact, provider must prove the policy is justified.

- Is the policy necessary to achieve a substantial, legitimate, nondiscriminatory interest of the provider?
- A housing provider must, however, be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property.

Bare assertions based on generalizations or stereotypes that any individual with an arrest or conviction record poses a greater risk than any individual without such a record are not sufficient to satisfy this burden.

Arrests

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.

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.

3. If the Provider establishes the policy is necessary to achieve a nondiscriminatory interest, can prospective tenant or HUD establish that the interest can be served by another practice with a less discriminatory effect?

- Specifics of prior crimes
- Age at time of crime
- Good tenant history since the crime

Certain Drug Convictions Exempt from Fair
Housing Liability

Disparate Impact Does NOT Apply To Drug
Manufacturing or Distribution Convictions

BUT

Certain Drug Convictions Exempt from Fair Housing Liability

The exemption does not provide a defense to disparate impact claims based on other drug-related convictions, such as the denial of housing due to a person's conviction for drug possession.

Summary

- Mere arrests no longer basis for denial.
- Need specifics on types of criminal conduct.
- Provider must distinguish between criminal conduct that presents a threat to health, safety and welfare and conduct that does not.
- Need to take into account the nature and severity of the conviction.

MODIFICATIONS

&

ACCOMMODATIONS



**U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION**



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**

*Washington, D.C.
March 5, 2008*

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

***REASONABLE MODIFICATIONS UNDER THE
FAIR HOUSING ACT***



**U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION**



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**

*Washington, D.C.
May 17, 2004*

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

***REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT***

MODIFICATIONS

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas.

Joint Stmt. of HUD and DOJ on Reasonable Modifications - 2008

ACCOMMODATIONS

An accommodation is a change to rules, policies, practices or services that are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.

Joint Stmt. of HUD and DOJ on Reasonable Accommodations - 2004

What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?

Under the Fair Housing Act, a *reasonable modification* is a structural change made to the premises whereas a *reasonable accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service.

When is a reasonable modification/accommodation necessary under the Fair Housing Act?

(1) The person must have a disability defined as:

(i) individuals with a physical or mental impairment that substantially limits one or more major life activities;

(ii) individuals who are regarded as having such an impairment;
and

(iii) individuals with a record of such an impairment.

When is a reasonable modification/accommodation necessary under the Fair Housing Act?

- (2) There must be an identifiable relationship, or nexus, between the requested modification/accommodation and the individual's disability.
- (3) Further, the modification/accommodation must be "reasonable."

Request Must Be Made

A housing provider is only obligated to provide a reasonable accommodation or modification to a resident or applicant if a request for the accommodation has been made.

Proof of Disability?

DISABILITY OBVIOUS - NO PROOF

NOT OBVIOUS - ASK FOR PROOF

Proof of Disability?

DISABILITY OBVIOUS

If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification/accommodation.

Proof of Disability?

DISABILITY NOT OBVIOUS

- (1) Information necessary to verify that the person meets the Act's definition of disability,
- (2) Information that describes the needed modification/ accommodation, and
- (3) Information that shows the relationship between the person's disability and the need for the requested modification/accommodation.

Who Pays For A Modification?

The Fair Housing Act provides that while the housing provider must permit the modification, **the tenant** is responsible for paying the cost of the modification.

Who Pays For A Modification?

BUT...

If any of the structural changes needed by the tenant should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes.

Denial of Modification Request?

A person with a disability must have the housing provider's approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

Reasonable Accommodation

Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification

Parking

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider.

Parking

For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Parking

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

Denial of a reasonable accommodation request?

Yes – If:

- The request was not made by or on behalf of a person with a disability
- If there is no disability-related need for the accommodation.
- If providing the accommodation is not reasonable – i.e., if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations.

Reasonable Accommodation?

The determination of undue financial and administrative burden must be made on a case-by-case basis

Reasonable Accommodation?

Non-Exclusive Factors

The cost of the requested accommodation;

The financial resources of the provider;

The benefits that the accommodation would provide to the requester;

The availability of alternative accommodations that would effectively meet the requester's disability-related needs.

Reasonable Accommodation?

When a housing provider refuses a requested accommodation because it is not reasonable

Discuss with requester whether an alternative accommodation would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden.

Reasonable Accommodation?

When a housing provider refuses a requested accommodation because it is not reasonable

If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it.

Proof of Disability??

Disability Not Obvious

- (1) Information necessary to verify that the person meets the Act's definition of disability
- (2) Information that describes the needed accommodation, and
- (3) Information that shows the relationship between the person's disability and the need for the requested accommodation.

Proof of Disability??

Disability Obvious

- If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation.

Proof of Disability??

Disability Obvious

- If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

ASSISTIVE ANIMALS

SERVICE/SUPPORT ANIMALS

Reasonable Accommodation

Emotional Support, Therapy, Comfort and Companion Animals

Breed irrelevant

SERVICE/SUPPORT ANIMALS

Types of Animals

May NOT restrict based on breed, size or weight

Lions, Tigers & Bears

Cats, Birds, Fish, Snakes

SERVICE/SUPPORT ANIMALS

Denials Based on Type of Animal

Specific Animal Poses Threat To Health or Safety

Specific Animal Would Cause Substantial Physical Damage to Property
of Others

Question To Be Answered – What is this animal's history?

SERVICE/SUPPORT ANIMALS

NOT OBVIOUS – Verify!

FORMS AVAILABLE:

NAA

Paine Bickers

NOT OBVIOUS

-

ASK FOR PROOF

*****These Instructions are for instructional purposes only, and should not be given to a resident as part of the Assistance Animal request packet.**

Assistance Animal Forms Instructions

Please read and review before use of these forms.

1. Remember that neither HUD nor any state has "approved" the forms. Usage always has some risk. Also, every case is independent and should be reviewed on its merits and facts.
2. These forms are for any Assistance Animal wherein the need for the animal is not readily apparent. Service animals where the need is apparent need not use this form but should still provide the information on the Animal Identification Form.
3. You can require the information on the animal and ask that the Resident affirm their request for the Assistance Animal.
4. Give them the Verification for Assistance Animal form as a guide for the health care professional. If the professional does not want to sign it and provides substantially the same information in another format, it must be accepted. Remember to review your policy on who can provide this information.
5. If the Resident provides any documentation from a professional or other qualified person, it should be reviewed to make sure it provides sufficient information to confirm the status and nexus. If not, an attempt to get verification of the information needed directly from the person who signed the form should be first attempted.
6. A HIPAA FORM IS NOT REQUIRED. Many health care professionals will not discuss the patient without the HIPAA form. **Verification does not require the HIPAA form.** Explain to the health care professional that you are merely verifying the information that has already been provided. If you are unable to verify, you should inform the Resident of the problem to see if they can get the health care professional to provide the verification. Seek assistance from legal counsel and/or your regional manager in this circumstance.
7. It is the intent of these forms to gather sufficient information and verify that information to determine if a reasonable accommodation should be granted or not.
8. Failure to provide sufficient information may be grounds for denial. Sufficient information would include: a description of the animal, verification from someone that the Resident meets the definition of disabled and that there is a nexus between the disability and the need for the animal, and the other information contained on the Animal Identification Form.
9. All communities should have animal rules. Persons who obtain an animal by reasonable accommodation generally must abide by those rules (excepting breed restrictions and size & weight restrictions). Those rules should be given to residents with animals.
10. These forms should not be given out unless someone has filled out an application and is actually attempting to rent.
11. Questions on Assistance Animals from prospective residents should be answered:
This Community fully complies with the Fair Housing laws as it applies to disabilities. Persons who desire an accommodation must convey that request to management, who will then attempt to obtain sufficient verified information to determine if the request can be granted and how it can be accommodated. Since every situation is different, each request is treated separately. It is impossible to give a blanket answer on questions of accommodation. If a prospective tenant desires to apply, we will then accept any request and make a full review to see if it can be accommodated.
12. If you have any questions on a request, contact legal counsel.
13. If you think someone is testing your community on reasonable accommodation, contact your regional manager/owner and contact legal counsel.



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12. If you have any questions on a request, contact legal counsel.

13. If you think someone is testing your community on reasonable accommodation, contact your regional manager/owner and contact legal counsel.

Resident's Request for Assistance Animal

The undersigned does hereby request an assistance animal and does hereby attest and state as follows:

- 1. Handicap Definition** I am aware of the requirements of the Fair Housing Act and its definitions which include:
"Handicap" means, with respect to a person –
(1) having a physical or mental impairment which substantially limits one or more of such person's major life activities,
(2) having a record of having such an impairment, or
(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.
- 2. Qualification** Pursuant to the definition above, I do qualify as an individual with a disability.
- 3. Impairment** I represent that the requested assistance animal is necessary to provide assistance with my disability.

The anticipated length of this disability is _____.

My primary care physician is Dr. _____ whose telephone number is _____.

- 4. Request** I do hereby request that I be able to reside with an assistance animal at the premises below. I certify that the statements herein are true as provided on the Animal Identification Form and the Medical Request for an Assistance Animal. I agree that the only animal I will keep for this purpose is listed therein and that I will abide by the rules and regulations of the community regarding animals. I understand that I will not have to pay additional costs or fees for the assistance animal but will be responsible for any damage caused. I request that my professional provide verification of the required information to my housing provider to assist in making this determination.

Applicant's Name _____

Premises Address _____

Dated _____

Signature of Applicant



Resident's Request for Assistance Animal

The undersigned does hereby request as assistance animal and does hereby attest and state as follows:

1. Handicap Definition

I am aware of the requirements of the Fair Housing Act and its definitions which include:

"Handicap" means, with respect to a person –

(1) having a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) having a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.

2. Qualification

Pursuant to the definition above, I do qualify as an individual with a disability.

3. Impairment

I represent that the requested assistance animal is necessary to provide assistance with my disability.

The anticipated length of this disability is _____.

My primary care physician is Dr. _____ whose telephone number is _____.

4. Request

I do hereby request that I be able to reside with an assistance animal at the premises below. I certify that the statements herein are true as provided on the Animal Identification Form and the Medical Request for an Assistance Animal. I agree that the only animal I will keep for this purpose is listed therein and that I will abide by the rules and regulations of the community regarding animals. I understand that I will not have to pay additional costs or fees for the assistance animal but will be responsible for any damage caused. I request that my professional provide verification of the required information to my housing provider to assist in making this determination.

Applicant's Name _____

Premises Address _____

Dated _____

Signature of Applicant

Animal Identification Form

Type of animal _____ Breed _____

Age _____ Approximate Weight _____ Color _____

Describe any special training or certifications _____

Has the animal ever been reported to authorities (police, animal control) for any incident or for any reason? _____. If yes, please provide details.

Animals may not be in the common areas of the community unless on a leash or an approved device based upon the animal's certification.

Animals may be restricted from specific areas.

The animal's owners are responsible for cleaning up after the animal and for any damage done by the animal.

Animals may not disturb the peaceful and quiet enjoyment of the other tenants.

The Community may have other regulations and rules relating to animals.

I affirm that the animal is in compliance with all state and local laws concerning animals.

I have read the rules and regulations concerning animals (both above and those policies of the community), and agree to their terms.

Resident's signature

Dated

Please provide a photo of the animal.



© The Law Offices of Kirk A. Callimore 4/2015 This form may not be reproduced without express written permission.

Animal Identification Form

Type of animal _____ Breed _____

Age _____ Approximate Weight _____ Color _____

Describe any special training or certifications _____

Has the animal ever been reported to authorities (police, animal control) for any incident or for any reason? _____. If yes, please provide details.

Animals may not be in the common areas of the community unless on a leash or an approved device based upon the animal's certification.

Animals may be restricted from specific areas.

The animal's owners are responsible for cleaning up after the animal and for any damage done by the animal.

Animals may not disturb the peaceful and quiet enjoyment of the other tenants.

The Community may have other regulations and rules relating to animals.

I affirm that the animal is in compliance with all state and local laws concerning animals.

I have read the rules and regulations concerning animals (both above and those policies of the community), and agree to their terms.

Resident's signature

Dated

Please provide a photo of the animal.

Verification for Assistance Animal

Name of Person making Request _____

A request has been made to allow an assistance animal to reside with the above named individual. Such request has been made pursuant to The Fair Housing Act. In order to qualify for an assistance animal exemption to the normal rules of the community, the person making the request must qualify as handicapped as defined, which is:

"Handicap" means, with respect to a person –

- (1) having a physical or mental impairment which substantially limits one or more of such person's major life activities,*
- (2) having a record of having such an impairment, or*
- (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.*

Additionally, the assistance animal must assist the person in ameliorating the disability and/or the major life activities affected.

Much like a prescription, this request is made because of the professional's opinion that the assistance animal may be necessary to afford the disabled person an equal opportunity to use and enjoy the leased premises. With this request and upon approval, the management of the premises must allow the animal on the premises and is prohibited from charging pet rent or other fees normally charged to persons with pets. Assistance animals are not pets but animals that are determined by competent professionals to be an important and necessary part of treatment or assistance of a disability/handicap.

Professional's Name: _____ Telephone number: _____

I certify that I have sufficient information and have consulted with the person making this request in order to make this determination. I certify that the above named person is handicapped as defined above and that the animal described below is, in my professional opinion, necessary to afford an equal opportunity to use and enjoy the leased premises.

Prescribed Animal's Description _____

Expiration Date of this Certification _____

Date

Signature of Medical Provider,
Health or Social Service Professional





NAA TOOLKIT

EMOTIONAL SUPPORT ANIMALS

**A Practical Guide to Reasonable
Accommodation Requests**





**The United States
Service Dog Registry**

usservicedogregistry.com

Our main focus is providing a free, voluntary, community-defined open training and behavior standards agreement.

No one is required to order anything from us — or anyone for that matter. ***Simply registering a dog does not make a dog a Service Dog.*** Registering allows someone to voluntarily accept a specific set of [training and behavior standards](#) which were developed by experienced trainers and disabled Service Dog owners within the Service Dog community. These training and behavior standards go above and beyond the ADA and the basic foundations of a Public Access Test.

We want to encourage education and compliance with the ADA, the importance of training and the behavior of you and your animal. Remember, you and your Service Dog may be the first team that someone ever meets. It is up to you to make sure that you leave them with an excellent impression.

Registering and signing this [agreement](#) is a small but important promise someone can make to themselves and other disabled individuals who rely on their Service Dogs.

Registration numbers and documentation materials are ONLY available to those who have voluntarily and willfully signed this training and behavior standards agreement. This website is the only place these materials are offered.

SERVICE ANIMAL

Handler in possession of this Service Dog ID card meets
one of the following: Americans with Disabilities Act, the
Fair Housing Act or the Rehabilitation Act of 1973.

Handler: Mary Smith

Dog Name: Fido

Breed: Spaniel

State: NV

ID Number: 1234567890

To verify registration visit below web address and input ID number

www.USAServiceDogRegistration.com



FULL ACCESS REQUIRED BY LAW



The United States Service Dog Registry

This certificate confirms that

Johnathan Doe

has properly registered

Fido

As a Service Dog as of January XX, 20XX

Registration ID: 123456789

Under the Americans with Disabilities Act (ADA), businesses and organizations that serve the public must allow people with disabilities to bring their service animals into all areas of the facility where customers and normally allowed to go. This federal law applies to all businesses open to the public, including restaurants, hotels, retail stores, banks, grocery stores and government services, theaters and movie offices, theaters, health clubs, parks and recreation areas.



Powered by the  **Service Dog Census Project**
Count on your Service Dog.

www.servicedogcensusproject.com

United States Dog Registry



United States
Dog Registry

usdogregistry.com

Will I need a doctor's note?

Yes, you will need a doctor's note in order to have an emotional support dog, **but you do not need to submit that to us in order to register and get your identification kit.**

SERVICE/SUPPORT ANIMALS – NOT PROOF!!!



Recommendations

Develop a Process for Handling Requests for Modifications/Accommodations

Develop and Use Written Forms

Use Interactive Process With Requester

Apply Process Consistently and Uniformly

Some Final Thoughts

Start with YES

Be Leaders in the Housing Industry

Good For Tenant – Good for Business

FAMILIAL STATUS

Occupancy Issues

1991 – Keating Memo

FAMILIAL STATUS

KEATING MEMO

”[A]n occupancy policy of two persons per bedroom, as a general rule, is reasonable under the Fair Housing Act.”

FAMILIAL STATUS

KEATING MEMO

However, the memo goes on to say that "the reasonableness of any occupancy policy is rebuttable"

FAMILIAL STATUS

KEATING MEMO

HUD clarifies that the memos it issued in the past do not state or imply that HUD will determine compliance with the Fair Housing Act based *solely* on the number of people permitted in each bedroom.

FAMILIAL STATUS

KEATING MEMO

THINGS HUD LOOKS AT:

1. Size of the bedroom and unit
2. Age of the children
3. Configuration of the unit

.

FAMILIAL STATUS

KEATING MEMO

THINGS HUD LOOKS AT:

4. Other physical limitations of housing (i.e. capacity of the septic, sewer, or other building systems)
5. State and local law

.

***Zoning Ordinance
for Knox County, Tennessee***

As Amended through

June 22, 2015

Knoxville • Knox County
METROPOLITAN PLANNING COMMISSION
Suite 403, City County Building
400 Main Street • Knoxville, Tennessee 37902
(865) 215-2500 • (FAX) 215-2068
MPC Website www.knoxmpc.org

4.100 RESIDENTIAL OCCUPANCY STANDARDS**4.100.01 General Standards**

- A. Residential dwelling units may be occupied by a family, a "functional family" consistent with the criteria established by this ordinance, or any one of the following groups or persons, where one or more of whom is not related by blood, marriage, adoption, or guardianship, including foster children:
1. Two (2) unrelated persons and any of their children by blood, marriage, guardianship, including foster children, or adoption;
 2. Up to three (3) persons in the A, Agricultural, E, Estates, RA, Low Density Residential, RAE, Exclusive Residential, zone districts and in houses, attached houses, and duplexes within any RB, General Residential, TC, Town Center, or PR, Planned Residential, zone districts;
 3. Up to four (4) persons in condominium multi-dwelling structures within any RB, General Residential, TC, Town Center, or PR, Planned Residential, zone districts and any other zone district that allows residential uses, according to the following schedule
 - a. ~~Up to two (2) people in one (1) or two (2) bedroom dwelling units.~~
 - b. Up to three (3) people in a three (3) bedroom dwelling unit, and
 - c. Up to four (4) people in a four (4) or more bedroom dwelling unit; or
 4. Up to five (5) persons in multi-dwelling structures or developments except condominium multi-dwelling structures) within the RB, TC or PR zone districts and any other zone district that allows residential uses.
- B. Any nonconforming use created by the adoption of these standards which was a legal use at the time of adoption shall be permitted to continue through July 31, 2007. After which date, the use of such dwelling shall be in compliance herewith. Any use established prior to or subsequent to the adoption of these standards, which use did

FAMILIAL STATUS

KEATING MEMO

THINGS THAT DO NOT PLAY WELL WITH HUD!

- Landlord has made discriminatory statements
- Landlord has taken steps to discourage families with children from living in its housing
- Landlord has enforced its occupancy policies only against families with children

•

FAMILIAL STATUS

LOCALLY – INVESTIGATORS WRESTLING WITH THE ISSUE

NATIONALLY – LAWSUITS QUESTIONING THE CONTINUED USE OF TWO
PERSONS PER BEDROOM “RULE”

SEX DISCRIMINATION

FROM THE DEPARTMENT OF JUSTICE

“The Fair Housing Act makes it unlawful to discriminate in housing on the basis of sex. In recent years, the Department's focus in this area has been to challenge sexual harassment in housing.”

SEX DISCRIMINATION

RECENT CASES

St. Louis - \$600,000

Owner made comments about a tenant's body, asked her sexual questions, attempted to touch her breasts, and offered to reduce her rent in exchange for sex. Additional victims came forward to HUD and DOJ and reported that Webb made similar unwelcome sexual comments to them, touched their bodies, exposed himself, offered to excuse late rent or reduce rent in exchange for sex, and evicted tenants who rejected his sexual advances.

SEX DISCRIMINATION

RECENT CASES

West Virginia- \$500,000

Owner grabbed female tenants' bodies or tried to force them to touch him. He made unwelcome sexual comments and advances. He told them they didn't have to pay rent if they had sex with him or one of his employees. He evicted tenants for saying no or reporting his behavior. The State of West Virginia prosecuted him for sexual abuse. He pleaded guilty in May 2015.

SEX DISCRIMINATION

RECENT CASES

Tennessee- \$15,000

Owner sexually harassed a tenant. He sent text messages to a female tenant repeatedly that demanded she send photos of herself to him. He then demanded that she pose for him in revealing clothes. Finally, he demanded that she pose nude for him. He said he would lower or waive her rent if she posed for him. When the tenant said she wouldn't pose nude for photos, he evicted her. As part of settlement, owner required to leave the rental business.

SEX DISCRIMINATION

Sexual Orientation

**SHOULD GENDER
STEREOTYPES
INFLUENCE WHERE
YOU LIVE?**

LEARN MORE ABOUT

**THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING & EQUAL OPPORTUNITY'S**

LGBT INITIATIVES

@

WWW.HUD.GOV/FAIRHOUSING



**EQUAL HOUSING
OPPORTUNITY**

LIVE FREE



SHOULD
GENDER
STEREOTYPES
INFLUENCE
WHERE YOU
LIVE?



LIVE
FREE



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@

WWW.HUD.GOV/FAIRHOUSING

SEX DISCRIMINATION

The Fair Housing Act does not specifically include sexual orientation and gender identity as prohibited bases.

SEX DISCRIMINATION

However, discrimination against a lesbian, gay, bisexual, or transgender (LGBT) person may be covered by the Fair Housing Act if it is based on non-conformity with gender stereotypes.

SEX DISCRIMINATION

For example, if a housing provider refuses to rent to an LGBT person because he believes the person acts in a manner that does not conform to his notion of how a person of a particular sex should act, the person may pursue the matter as a violation of the Fair Housing Act's prohibition of sex.

SEX DISCRIMINATION

Examples of Discrimination Based on Sexual Orientation

A transgender woman is asked by the owner of her apartment building not to dress in women's clothing in the common areas of the property. This is a violation of the Fair Housing Act's prohibition of sex discrimination.

SEX DISCRIMINATION

Examples of Discrimination Based on Sexual Orientation

A property manager refuses to rent an apartment to a prospective tenant who is transgender. If the housing denial is because of the prospective tenant's non-conformity with gender stereotypes, it constitutes illegal discrimination on the basis of sex under the Fair Housing Act.

SEX DISCRIMINATION

Examples of Discrimination Based on Sexual Orientation

A female prospective tenant alleges that a landlord refused to rent to her because she wears masculine clothes and engages in other physical expressions that are stereotypically male. If true, this may violate the Fair Housing Act's prohibition of discrimination based on sex.

SEX DISCRIMINATION

Examples of Discrimination Based on Sexual Orientation AND Disability

A gay man is evicted because his landlord believes he will infect other tenants with HIV/AIDS. This situation constitutes illegal disability discrimination under the Fair Housing Act because the man is perceived to have a disability, HIV/AIDS.

SEX DISCRIMINATION

Additional Rules for Housing Providers Receiving HUD Funds

It is prohibited for any landlord who receives HUD or FHA funds to discriminate against a tenant on the basis of real or perceived sexual orientation, gender identity or marital status.

SEX DISCRIMINATION

24 CFR 5.105

A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by HUD shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

SEX DISCRIMINATION

Types HUD/FHA Funds

Rental Assistance – Section 8
FHA Mortgage Insurance Programs
Community Development Programs
Public and Assisted Housing Programs
HUD Loans

FAIR HOUSING & MAINTENANCE

Maintenance often has the most direct contact with tenants

Many times the interactions occur in the tenant's home

Can lead to difficult and awkward situations

Even innocent encounters can be perceived as discriminatory

FAIR HOUSING & MAINTENANCE

Over 60 per cent of fair housing complaints to HUD come from some sort of a maintenance issue.

Maintenance person tells resident that she is happy to assist the Resident install their flat screen and that in fact, she has installed flat screens for other residents in the community. When the resident calls the office requesting the installation of the flat screen, resident is told that flat screens are not routine maintenance and that it will cost the resident to have the flat screen installed. The resident wants to know why he is being treated differently from other residents who had their work done by maintenance.

In reality, the other residents were charged for the installation of flat screens; however, the maintenance person failed to disclose this information. The fact the resident feels discriminated against can lead to a fair housing investigation.

The best response would have been: “Please place a work order with the office.”

A maintenance employee does not like a resident and tries to avoid doing work orders for this person. The resident files a complaint against the community because she alleges that her requests for maintenance are being ignored because of her ethnicity.

A maintenance employee who is “too friendly” offends a female resident. He appears to go out of his way to be around her building in the afternoons. He also makes comments about her appearance and suggests that they go out for a drink sometime. Although the maintenance employee’s actions may not be illegal, they are not good business. The resident could add these allegations of sexual harassment to complicate a fair housing complaint about other issues.

Tips For Avoiding Maintenance Claims

Tips – Courtesy of Fair Housing Coach

www.fairhousingcoach.com

Tips For Avoiding Maintenance Claims

Adopt uniform policies for handling maintenance and repair requests. In general, it's a good idea to handle maintenance and repair requests on a first-come, first-served basis—unless the request involves an emergency. Develop a written policy that defines what is—and is not—considered an emergency that would justify an immediate response.

Tips For Avoiding Maintenance Claims

Take reasonable accommodation requests seriously. Emergencies are not the only times that justify making an exception to the first-come, first-served policy for handling maintenance and repair requests. In some cases, a maintenance or repair request may require immediate attention if it qualifies as a reasonable accommodation for an individual with a disability.

Tips For Avoiding Maintenance Claims

Take steps to prevent sexual harassment. Community owners have a duty to ensure that their employees, agents, or contractors do not engage in sexual harassment, according to HUD. A property owner or manager may be held liable if he knew or should have known that an employee, agent, or contractor is sexually harassing applicants or residents, but failed in his duty to stop it.

Tips For Avoiding Maintenance Claims

Carefully select and monitor outside contractors. Since owners and managers may be held responsible for fair housing violations committed by vendors or contractors, it's important to exercise due diligence in selecting outside contractors to perform services at your community.

Tips For Avoiding Maintenance Claims

Keep good records to fend off fair housing claims. Good record keeping is essential to help prevent—and defend against—any fair housing complaints with respect to how your community handles maintenance and repair requests.

RECENT ISSUES IN FAIR HOUSING

FACEBOOK

**HUD FILES HOUSING DISCRIMINATION COMPLAINT
AGAINST FACEBOOK**

Secretary-initiated complaint alleges platform allows advertisers to discriminate

HUD No. 18-085
HUD Public Affairs
(202) 708-0685

FOR RELEASE
Friday
August 17, 2018

WASHINGTON – The U.S. Department of Housing and Urban Development (HUD) announced today a formal complaint against Facebook for violating the Fair Housing Act by allowing landlords and home sellers to use its advertising platform to engage in housing discrimination.

HUD claims Facebook enables advertisers to control which users receive housing-related ads based upon the recipient's race, color, religion, sex, familial status, national origin, disability, and/or zip code. Facebook then invites advertisers to express unlawful preferences by offering discriminatory options, allowing them to effectively limit housing options for these protected classes under the guise of 'targeted advertising.'

Housing Secretary Ben Carson accused Facebook on Friday of enabling illegal housing discrimination by giving landlords and developers advertising tools that made it easy to exclude people based on race, gender, Zip code or religion — or whether a potential renter has young children at home or a personal disability.

For example, advertisers can choose to show ads only to one gender, filter out disabled users who show an interest in “assistance dog” or “deaf culture,” and discriminate by national origin by not advertising to people interested in, say, “Latin America” or “Somalia.”

DOMESTIC VIOLENCE EVICTIONS

VIOLENCE AGAINST WOMEN ACT (VAWA)

TENNESSEE LAW

DOMESTIC VIOLENCE EVICTIONS

VAWA

- APPLIES TO SUBSIDIZED HOUSING
- LANDLORD PROHIBITED FROM EVICTING VICTIM OF DOMESTIC VIOLENCE

DOMESTIC VIOLENCE EVICTIONS

VAWA

- DOMESTIC VIOLENCE INCLUDES DATING VIOLENCE, SEXUAL ASSAULT, STALKING
- LANDLORD MAY EVICT THE PERPETRATOR

DOMESTIC VIOLENCE EVICTIONS

VAWA

- BIFURCATE THE LEASE
- MAY NOT PENALIZE THE VICTIM

DOMESTIC VIOLENCE EVICTIONS

VAWA

- IF PERPETRATOR IS THE SOLE TENANT ELIGIBLE FOR ASSISTANCE, LANDLORD MUST
 - PROVIDE VICTIM OPPORTUNITY TO QUALIFY
 - IF VICTIM CANNOT QUALIFY, PERMIT VICTIM “REASONABLE” TIME TO MOVE AS DETERMINED BY THE APPROPRIATE AGENCY

DOMESTIC VIOLENCE EVICTIONS

TENNESSEE LAW

IF DOMESTIC VIOLENCE IS THE UNDERLYING OFFENSE FOR
WHICH A TENANCY IS BEING TERMINATED:

SHALL NOT EVICT:

THE VICTIMS

MINORS UNDER 18

INNOCENT OCCUPANTS

DOMESTIC VIOLENCE EVICTIONS

TENNESSEE LAW

IF:

THE EVICTION IS BASED SOLELY
ON
DOMESTIC ABUSE

DOMESTIC VIOLENCE EVICTIONS

TENNESSEE LAW

PERPETRATOR REMAINS
FINANCIALLY LIABLE
UNDER THE
LEASE

DOMESTIC VIOLENCE EVICTIONS

TENNESSEE LAW

MAY REQUIRE REMAINING TENANTS TO QUALIFY FOR AND ENTER INTO NEW LEASE

MAY REQUIRE REMAINING TENANTS TO AGREE IN WRITING TO NOT ALLOW PERPETRATOR TO COME BACK ON PROPERTY

MAY REQUIRE REMAINING TENANTS TO AGREE IN WRITING TO IMMEDIATELY REPORT THE PERPETRATOR'S RETURN TO APPROPRIATE AUTHORITIES

DOMESTIC VIOLENCE EVICTIONS

TENNESSEE LAW

SECTION ONLY APPLIES WHERE:

VICTIM GRANTED AN ORDER OF PROTECTION FOR SPECIFIC INCIDENT FOR WHICH
TENANCY IS BEING TERMINATED

DOMESTIC VIOLENCE EVICTIONS

TENNESSEE LAW

ORDER MUST INCLUDE ONE OF THE FOLLOWING:

- PERPETRATOR VACATE
- PERPETRATOR PROHIBITED FROM COMING AROUND VICTIM
- PERPETRATOR PROHIBITED FROM INHABITING THE RESIDENCE
- FINDING THAT PERPETRATOR'S HABITATION OF UNIT THREAT TO LIFE, HEALTH SAFETY OF VICTIM OR VICTIM'S MINOR CHILDREN

DOMESTIC VIOLENCE EVICTIONS

TENNESSEE LAW

ISSUES

- TEMPORARY ORDERS
- MAKING VICTIM “REQUALIFY”
- VICTIM CANNOT AFFORD THE RENT
- CHANGING THE LOCKS

FAIR HOUSING INVESTIGATIONS

CALL THE BOSS!!

CALL THE CARRIER!!!

CALL THE LAWYER!!!!

FAIR HOUSING INVESTIGATIONS

PERSON MAY INITIATE A COMPLAINT BY FILING WITH

HUD

OR

TENNESSEE HUMAN RIGHTS COMMISSION

THE LETTER

THE COMPLAINT

THE REQUEST

Do I Have To Answer Their Questions?

YES!!!

- SUBPOENA RECORDS
- CONDUCT INVESTIGATION WITHOUT YOU
- MAKE ADVERSE FINDINGS – OBTAIN COURT JUDGMENT

CONCILIATION



TENNESSEE HUMAN RIGHTS COMMISSION
NASHVILLE OFFICE
WILLIAM R. SNODGRASS TOWER
312 ROSA L. PARKS AVENUE, 23RD FLOOR
NASHVILLE, TENNESSEE 37243-1102
(615) 741-5825 FAX (615) 253-1886
www.tn.gov/humanrights

CONCILIATION FACT SHEET

Pursuant to Tennessee Code Annotated §4-21-601, and pursuant to the Fair Housing Act, As Amended, the Tennessee Human Rights Commission must offer conciliation to the parties at every reasonable opportunity during the investigation in an attempt to settle the issues raised by the complaint.

Conciliation is an informal negotiation process whereby the aggrieved person(s), the Respondent(s) and the Tennessee Human Rights Commission attempt to resolve issues raised in a complaint. Each conciliation is moderated by a Commission Conciliator. This fact sheet sets forth some key points with regard to conciliation. Should you have any further questions, please feel free to contact the Commission at the address or phone number above.

Role of THRC Conciliator. The THRC conciliator:

- is a *neutral* participant seeking to facilitate a mutually agreeable settlement;
- will inform the parties of their rights during conciliation;
- will inform the parties about the conciliation process, and help formulate negotiation procedures that will further dialogue;
- will, if necessary, provide interpretations of the Tennessee Code Annotated 4-21-601, in order to enable the parties to negotiate from informed positions;
- may describe the evidence gathered during the investigation in order to enable the parties to negotiate from informed positions;
- must convey offers and counter-offers between the parties;
- is responsible for drafting a Conciliation Agreement incorporating both individual relief and relief intended to further the public interest in preventing future discrimination;
- may describe the potential relief which could be sought or awarded for violating T.C.A. §4-21-601, but will not comment on the likelihood that those penalties would be imposed upon a particular respondent;

How Conciliation Works

You may request to conciliate your case at any time during the investigation. Your investigator will also inquire throughout the investigation if you are interested in conciliation. If both parties are interested in conciliation, then the investigator will take the appropriate steps to settle the matter. If the

parties would like to have a sit-down conciliation at our offices, then one can be arranged, however it will be at the discretion of the Commission and in part based on available resources at the time. At these sit-down conciliations, the parties come to the table in a good faith attempt to resolve the complaint. This is not a time to try the complaint in front of the conciliator.

In most cases, your investigator will be the go-between in an attempt for the parties to resolve the complaint. During these conciliations, the Commission represents the interests of the State of Tennessee, not the Complainant nor the Respondent.

Nature of the Conciliation Agreement.

The essential terms of a Conciliation Agreement are those that have been negotiated and mutually agreed to by the parties including the THRC. The agreement must also include provisions for relief to protect the public interest.

In cases that are dual-filed with the Department of Housing and Urban Development (HUD), HUD will also have to agree to the terms of the agreement. In addition, the Secretary of HUD may develop appropriate public relief provisions based upon an assessment of the total factual record then available in each individual case.

Effect of Conciliation Agreement on the Complaint Investigation.

In the case of dual-filed fair housing discrimination complaints, a Conciliation Agreement that is approved by the THRC and HUD, will terminate the investigation of the complaint with our agencies. However, the Commission has the authority to monitor the agreement to make sure that it is being complied with. Any breach of the conciliation agreement can lead to another charge with the Tennessee Human Rights Commission or HUD. Upon a breach with a HUD-approved conciliation agreement, the Secretary will refer the matter to the U.S. Attorney General for enforcement proceedings.

We encourage the parties to keep the Commission informed as to whether the conciliation agreement is being followed.

THE INVESTIGATION

Witness Interviews

File Review

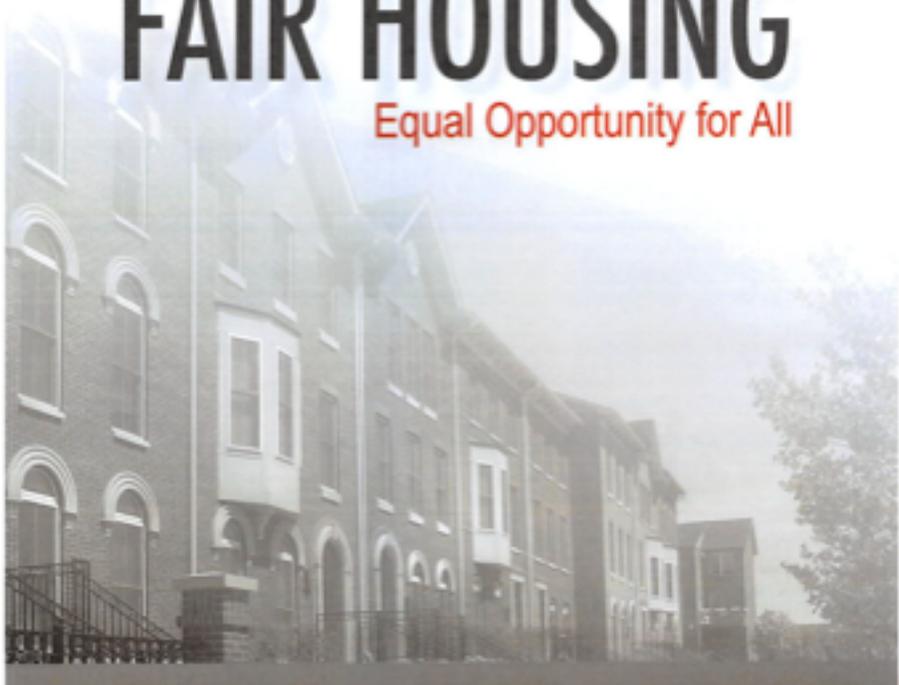
Other Tenants' Files

Other Tenant Interviews



FAIR HOUSING

Equal Opportunity for All



U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity



Please visit our website: www.hud.gov/fairhousing



WHAT HAPPENS WHEN YOU FILE A COMPLAINT?

HUD will notify you in writing when your complaint is accepted for filing under the Fair Housing Act. HUD also will:

- Notify the alleged violator (respondent) of the filing of your complaint, and allow the respondent time to submit a written answer to the complaint.
- Investigate your complaint, and determine whether or not there is reasonable cause to believe that the respondent violated the Fair Housing Act.
- Notify you and the respondent if HUD cannot complete its investigation within 100 days of filing your complaint, and provide reason for the delay.

WHAT HAPPENS AFTER A COMPLAINT INVESTIGATION?

Determination of Reasonable Cause, Charge of Discrimination, and

Election: When your complaint investigation is complete, HUD will prepare a Final Investigative Report summarizing the evidence gathered during the investigation. If HUD determines that there is reasonable cause to believe that the respondent(s) discriminated against you, HUD will issue a Determination of Reasonable Cause and a Charge of Discrimination against the respondent(s). You and the respondent(s) have twenty (20) days after receiving notice of the Charge to decide whether to have your case heard by a HUD Administrative Law Judge (ALJ) or to have a civil trial in Federal District Court.

WHAT HAPPENS AFTER A COMPLAINT INVESTIGATION?

HUD Administrative Law Judge Hearing: If neither you nor the respondent elects to have a Federal civil trial before the 20-day Election Period expires, HUD will promptly schedule a Hearing for your case before a HUD ALJ. The ALJ Hearing will be conducted in the locality where the discrimination allegedly occurred. During the ALJ Hearing, you and the respondent(s) have the right to appear in person, to be represented by legal counsel, to present evidence, to cross-examine witnesses and to request subpoenas in aid of discovery of evidence. HUD attorneys will represent you during the ALJ Hearing at no cost to you; however, you may also choose to intervene in the case and retain your own attorney. At the conclusion of the Hearing, the HUD ALJ will issue a Decision based on findings of fact and conclusions of law.

- Compensate you for actual damages, including out-of-pocket expenses and emotional distress damages
- Provide permanent injunctive relief.
- Provide appropriate equitable relief (for example, make the housing available to you).
- Pay your reasonable attorney's fees.
- Pay a civil penalty to HUD to vindicate the public interest. The maximum civil penalties are: \$16,000, for a first violation of the Act; \$37,500 if a previous violation has occurred within the preceding five-year period; and \$65,000 if two or more previous violations have occurred within the preceding seven-year period.

Civil Trial in Federal District Court: If either you or the respondent elects to have a Federal civil trial for your complaint, HUD must refer your case to the U.S. Department of Justice for enforcement. The U.S. Department of Justice will file a civil lawsuit on your behalf in the U.S. District Court in the district in which the discrimination allegedly occurred. You also may choose to intervene in the case and retain your own attorney. Either you or the respondent may request a jury trial, and you each have the right to appear in person, to be represented by legal counsel, to present evidence, to cross-examine witnesses, and to request subpoenas in aid of discovery of evidence. If the Federal Court decides in your favor, a Judge or jury may order the respondent(s) to:

- Compensate you for actual damages, including out-of-pocket expenses and emotional distress damages
- Provide permanent injunctive relief.
- Provide appropriate equitable relief (for example, make the housing available to you).
- Pay your reasonable attorney's fees.
- Pay punitive damages to you.

Determination of No Reasonable Cause and Dismissal: If HUD finds that there is no reasonable cause to believe that the respondent(s) violated the Act, HUD will dismiss your complaint with a Determination of No Reasonable Cause. HUD will notify you and the respondent(s) of the dismissal by mail, and you may request a copy of the Final Investigative Report.

You May File a Private Lawsuit: You may file a private civil lawsuit without first filing a complaint with HUD. You must file your lawsuit within two (2) years of the most recent date of alleged discriminatory action.

If you do file a complaint with HUD and even if HUD dismisses your complaint, the Fair Housing Act gives you the right to file a private civil lawsuit against the respondent(s) in Federal District Court. The time during which HUD was processing your complaint is not counted in the 2-year filing period. You must file your lawsuit at your own expense; however, if you cannot afford an attorney, the Court may appoint one for you.

Even if HUD is still processing your complaint, you may file a private civil lawsuit against the respondent, unless (1) you have already signed a HUD Conciliation Agreement to resolve your HUD complaint; or (2) a HUD Administrative Law Judge has commenced an Administrative Hearing for your complaint.

YOUR TURN!!!

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