

Fundamentals of Fair Housing Training



Agenda Overview

- ❑ Protected Classes– Federal, State and Local Laws, Rules, Regulations
- ❑ Focus on Disability
- ❑ Affirmatively Furthering Fair Housing: Obligations for Municipalities & Developers
- ❑ Property Management & Operations
- ❑ Discrimination in Housing Policies: Disparate Treatment v. Disparate Impact
- ❑ Marketing Obligations & Advertising Guidelines
- ❑ Home Ownership & Fair Housing
- ❑ Emerging & Cross-Cutting Issues
- ❑ Case Studies
- ❑ Survey/Evaluation & Wrap-up

What is a “Protected Class”?

Federal Law

Note: As a recipient of Federal funds additional laws may apply

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3619
(as amended in 1988)

The Fair Housing Act prohibits discrimination in real-estate related transactions because of:

- Race
- Color
- Religion
- Sex
- Familial Status (presence of children under 18)
- National Origin
- Disability (mental or physical)

Additional Classes Protected by New York State

With limited exceptions, the New York State Human Rights Law, NYS Executive Law, Article 15, Section 296 et seq., also makes it illegal to discriminate based upon:

- Creed - any statement or system of belief, principles, or opinions
- Age (18 and older)
- Sexual Orientation
- Gender Identity
- Disability (includes *medical* as well as mental or physical)
- Marital Status
- Military Status
- Lawful Source of Income Anti-Discrimination Act - passed - April 2019
- Statewide Housing Security and Tenant Protection Act – June 2019

Local Laws

Various local municipalities within New York State have extended these protections even further, making it illegal to discriminate based upon:

- ❑ Lawful Source of Income (City of Buffalo, Town of Hamburg, City of New York, Nassau County, Suffolk County, Westchester County and Town of West Seneca)
- ❑ Veteran Status (City of New York, Suffolk County – note several other jurisdictions interpret protection of Veteran Status as an extension of protection of Military Status)
- ❑ Citizenship Status (City of New York)
- ❑ Lawful Occupation (City of New York)
- ❑ Domestic Violence Victim Status (City of New York, Suffolk County, Westchester County)

With Respect to Housing

It is Unlawful to:

- Refuse to rent, sell, finance, insure or negotiate
- Set different terms or conditions or provide unequal services
- Make, print, publish or circulate discriminatory statements or advertisements (ex. focus on age or familial status)
- Make false representations about the availability of dwellings
- Interfere, coerce, or intimidate those seeking to exercise their rights
- Retaliate
- Refuse to make or provide information for a loan or impose different terms or conditions for a loan
- Harass, threaten, intimidate, or coerce anyone, (including sexual harassment)

Who is Protected?

Fair housing protections extend to:

- Anyone who has been harmed by a housing-related action
- Anyone who is harmed because of association with guests, relatives, friends, roommates, subtenants or others in any of the protected categories

Example:

A housing provider treats a resident badly because she frequently has black guests. The resident and the guests could each file fair housing complaints.

Who Must Obey the Law?

Everyone who provides housing or lending for housing, including:

- Landlords
- All staff (caretakers, janitors, etc.)
- Real estate operators, brokers and agents
- Savings & loan associations, mortgage lenders, banks or other financial institutions
- Apartment managers
- Rental agents
- Builders, contractors and developers
- Homeowners advertising and selling their own home
- Condo and townhome owners associations
- Government Agencies

Limited Exceptions

In New York State, fair housing laws cover most housing, with three main exceptions:

- One or two-family *owner-occupied* buildings
- Room rentals in housing for individuals of the same sex
- Room rentals in *owner-occupied* housing

Note: *Discriminatory advertising is still prohibited in these cases*

What Is Considered a Disability?

NYS Human Rights Law §292.21 defines “disability” as:

- (a) A physical, mental or **medical** impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrated by medically accepted clinical or laboratory diagnostic techniques or
- (b) A record of such impairment or
- (c) Condition regarded by others as having such an impairment

Under the Federal Fair Housing Act (as amended in 1988):

- ❑ A handicapped or disabled person is defined as “[a]ny person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.”
- ❑ *Major life activities* include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.

Protections

Under the fair housing laws, a landlord may not:

- Refuse to make reasonable modifications to a dwelling or common use area to accommodate a person's disability
- Refuse to make reasonable accommodations in policies or services if necessary for the disabled person to use the housing
- Discriminate against individuals that require service or emotional support animals

Note: It is unlawful for local governments to utilize land use and zoning policies to keep persons with disabilities from locating to their area

Protections (continued)

Under the Fair Housing Act, covered multifamily housing consisting of 4 or more units with an elevator built for first occupancy after March 13, 1991, all units must comply with the following seven design and construction requirements:

- Accessible Entrance on an Accessible Route
- Accessible Public and Common-Use Areas
- Usable Doors
- Accessible Route Into and Through the Dwelling Unit
- Accessible Light Switches, Electrical Outlets, Thermostats, and Environmental Controls
- Reinforced Walls in Bathrooms
- Usable Kitchens and Bathrooms

In covered multifamily housing without an elevator, all ground floor units must comply with these requirements

What is “Reasonable?”

- ❑ 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
- ❑ A “*reasonable accommodation*” - is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces

If a building has received Federal funds, the housing provider is required to cover the cost of the requested modification unless providing such modification would impose an undue financial and administrative burden

Self-Identification & Privacy Issues

A disable person must have a physical or mental impairment that limits one or more major life activities or be regarded as having such an impairment

- ❑ Most often an individual will identify themselves as having a disability on an application for housing-related services
- ❑ In housing with supportive services documented physical or mental disability is often a pre-requisite
- ❑ Housing providers are prohibited from asking about details of any disability
- ❑ Sharing any information about a resident's disability is strictly prohibited

What Does It Mean to *Affirmatively Further Fair Housing?*

- ❑ In 1968 Congress established the Fair Housing Act (FHA). The legislative history makes it clear that Congress intended the law to increase housing choices for members of protected classes and foster meaningful integration
- ❑ Subsequently, courts have found the purpose of the *affirmatively furthering fair housing mandate* is to ensure that Federal funding recipients also address segregation and related barriers for groups with characteristics protected by the Act, including barriers to integration in racially or ethnically concentrated areas of poverty
- ❑ In 2015 HUD clarified the obligations of funding recipients to take significant actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from discrimination

NOTE: These guidelines are currently under review and are subject to change

Affirmatively Furthering Fair Housing: Obligations for Municipalities

Affirmatively Furthering Fair Housing (AFFH) is a legal requirement that recipients of HUD funding further the purposes of the Fair Housing Act

HUD states that program participants must take *meaningful actions* that, taken together:

- Address significant disparities in housing needs and in access to opportunities
- Replaces segregated living patterns with truly integrated and balanced living patterns
- Transforms racially and ethnically concentrated areas of poverty into areas of opportunity
- Fosters and maintains compliance with civil rights and fair housing laws

See Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3608 and Executive Order 12892

Affirmatively Furthering Fair Housing: Obligations for Developers

- ❑ Under the Fair Housing Act, property owners and developers have an obligation to *proactively* integrate the values of fair housing in their approach to marketing, community outreach and resident selection. Such marketing and outreach efforts should encourage applications by households least likely to apply
- ❑ Program participants can take proactive steps overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities for all
- ❑ Using affirmative fair marketing techniques is one way to exhibit efforts to comply with New York State and Federal fair housing laws

Affirmatively Furthering Fair Housing: Obligations for Developers (continued)

Creating a Compliant Affirmative Fair Housing Marketing Plan

The following areas must be addressed by all applicants, to the greatest extent feasible, in the preparation of a marketing plan for submission and review:

- Project Identification
- Accessibility/Adaptability of units
- Accessibility/Adaptability – Policies of Management
- Smoking Policy
- Direction of Marketing Activities
- Marketing Program
- Tenant Selection Procedures
- Future Marketing Activities
- Fair Housing Experience/Training
- Record Keeping

See NYS HCR Affirmative Housing Marketing Plan Guideline

Affirmatively Furthering Fair Housing: Obligations for Developers (continued)

Tenant/Home Owner Selection (Condominiums & Scattered-Site Developments)

- Implement a Comprehensive Rental/Sales Outreach Strategy in compliance with your Approved Affirmative Fair Housing Marketing Plan and all applicable Fair Housing Laws

Note: *Where (NYS, Federal and/or local) subsidies have been layered **all** Fair Housing Laws, Rules and Regulations may apply*

- Execute the Application Process (Screening/Eligibility)
- Execute the Selection Process
- Financing for the Selected Applicants (ownership)
- Closing the Sale (ownership)

New York State Housing Stability and Tenant Protection Act of 2019

- ❑ Expands the “Emergency Tenant Protection Act of 1974” across New York State, allowing all localities that fit certain criteria for rent stabilization to opt-in.
- ❑ Repeals high-rent and high-income “decontrol” statutes that allowed units to be deregulated upon vacancy if the rent reaches a maximum threshold.
- ❑ Allows preferential rents to be permanent for the life of the tenancy. This means the property owner cannot discontinue preferential rents (rents below the legal regulated rent) for tenants upon lease renewals. Landlords can charge any rent up to the full legal regulated rent once the tenant vacates the home only if the tenant did not vacate because of the landlord’s failure to maintain the apartment.
- ❑ Repeals vacancy and longevity bonuses. The statutory vacancy bonus allowed landlords of rent-regulated units to collect an automatic increase in rent up to 20% upon vacancy. The vacancy longevity bonus allowed landlords of rent-regulated units that had not claimed a vacancy increase in over eight years to collect an additional increase.

NYS Housing Stability & Tenant Protection Act of 2019 (continued)

- ❑ Reforms the system of overcharge complaints that previously allowed landlords to get away with fraud if the tenant did not complain quickly enough, and it extends the four-year “look-back” rule to six years. This extends the statute of limitation for when tenants can claim their landlord has overcharged them for rent; they can file such a claim on rents up to six years prior to their current lease year.
- ❑ Reforms and caps Major Capital Improvement (MCI) and Individual Apartment Improvement (IAI) increases.
- ❑ Establishes stronger tenant protections statewide. Landlords cannot evict tenants for making good-faith complaints to them about violating the warranty of habitability. Security deposits are limited to one month’s rent and the eviction process was extended to give the tenant more time to pay rent and find a new home.
- ❑ Establishes protections for mobile- and manufactured-home tenants. It limits rent increases, establishes rent-to-own regulations to protect mobile- and manufactured-home tenants, and strengthens protections against evictions from parks for the purpose of changing land use.

NY Lawful Source of Income Anti-Discrimination Act of 2019

Source of income discrimination is most often directed at those whose income is derived from a lawful source other than a paycheck, including, but not limited to:

- Housing Choice Vouchers (Section 8)
- Housing Vouchers for People with AIDS (HASA)
- Social Security Disability (SSD or SSDI)
- Supplemental Security Income (SSI)
- Unemployment Insurance
- Veteran's Benefits
- Child Support

Property Management & Operations

Liability for Staff and Third-Party Vendors

During the project development and rent-up, property owners are responsible for ensuring staff, representatives and vendors are familiar with and comply with all fair housing laws, including, but not limited to:

- All Staff (ex. Caretakers and janitors)
- Apartment managers
- Rental agents
- Builders, contractors and developers

Property Management & Operations (continued)

Training for Staff and Briefing of Third-Party Vendors

Once a project is developed, property owners, developers and managers should:

- Have clear written policy to avoid claims for harassment and fair housing violations
- All employees should be trained regularly on fair housing laws and how to comply
- Vendors, builders and contractors should be briefed on fair housing policies
- Include copies of all memos regarding policies about how to comply with fair housing in training/briefing materials
- Describe what can happen to property owner in the event of a violation
- Include what will happen to the employee and/or vendor who violates fair housing laws

Property Management & Operations (continued)

Communication Protocols and Documentation for Handling Fair Housing Complaints

Property owners and management should have written policies, clear communication and documentation protocols in place for handling fair housing complaints. Upon receiving a complaint from an applicant, resident or guest:

- Capture relevant information
 - Name, address, contact number(s)
 - Person(s) involved
 - Specific dates and times of incident(s)
 - Location where incident(s) took place
 - Brief description of events in chronological order
 - Any corrective actions already taken
- Keep a written log of any complaints
- Document steps taken to address the problem
- Keep copies of any police reports and/or photographs
- Make referrals as needed – any formal *complaint must be filed within 1 year*


Complaints may be filed with: NYS Division of Human Rights, Office of the NYS Attorney General or US Department of Housing and Urban Development (Fair Housing Enforcement Center)

Fair Housing Laws Impact on Resident Selection

Property Owner/Developer is responsible for:

- Creating an Affirmative Fair Housing Marketing Plan in compliance with fair housing laws (AFHMP) which is subject to approval of funding agency
- Creating a resident selection plan
- Determining the qualification of potential buyers and/or tenants
- Where there is layering of funds, all fair housing compliance protocols must be adhered to
- Ensuring property management is aware of and follows terms and conditions set forth in the approved AFHMP
- Ensuring AFHMP is updated if conditions or marketing strategies change

Marketing Obligations & Advertising Guidelines

- ❑ Property owners receiving public funding must develop a marketing plan that will affirmatively further fair housing (AFHMP)
- ❑ Plan should include outreach efforts to those potential applicants least likely to apply
- ❑ When advertising, property owners or landlords should describe property attributes and/or amenities, not what they are or are not looking for in a resident
- ❑ Site signage, advertisements and promotional materials should include the fair housing logo and the accessibility logo 
- ❑ Include a disclaimer such as: “This community does not discriminate on the basis of race, color, religion, national origin, sex, disability, familial status, sexual orientation or gender identity”
- ❑ Fair housing signage should also be placed in rental office
- ❑ Photographs need to be carefully considered before use in advertising

Home Ownership & Fair Housing

Under the Fair Housing Act, based upon your membership in a protected class, it is against the law to:

- Refuse to sell you a home
- Tell you housing is unavailable when in fact it is available
- Show you homes only in certain neighborhoods (“Steering”)
- Set different terms, conditions, or privileges for purchase of a home
- Refuse to provide you with information regarding mortgage loans, deny you a mortgage loan, or impose different terms or conditions on a mortgage loan (“Redlining”-denying creditworthy applicant a loan for housing in a certain neighborhood even though the applicant may otherwise be eligible for the loan)
- Deny you property insurance

Emerging & Cross-Cutting Issues

The following issues have been the subject of recent HUD guidance, cases and/or studies with respect to barriers to accessing safe, stable and affordable housing for class members.

- Gender Identity
- Victims of Domestic Violence
- Criminal Backgrounds and Housing Re-Entry
- Shifting Federal Policies

Gender Identity

Gender identity or gender expression is the way in which a person publically presents their self-identified gender. A person's gender identity may be fluid, not the gender assigned at birth, and may not necessarily be tied to their sexual orientation.

- ❑ Individuals who consider themselves to be or who are perceived as transgender, transsexual, or non-gender conforming may face gender discrimination because of their gender identity. The NYS Division of Human Rights prohibits gender identity discrimination in housing, employment and public accommodations

See 9 New York Code of Rules and Regulations (NYCRR) § 466.13

- ❑ Although the Fair Housing Act does not specifically include sexual orientation and gender identity as a protected class, 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

- ❑ HUD's Equal Access to Housing Rule, also provides that HUD's core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status

See 24 CFR Parts 5, 200, 203, 236, 400, 570, 574, 882, 891, and 982

Victims of Domestic Violence

Violence Against Women's Act (VAWA) of 2013 (42 U.S.C.A. §§ 14043e-11, 1437d) expands protections for victims of domestic violence from discriminatory treatment in public and assisted housing at admission and eviction.

- ❑ Protections for survivors applying for HUD subsidized housing
- ❑ Protections against evictions and subsidy terminations
- ❑ Facilitates safety moves for survivors with Section 8 vouchers
- ❑ Permits lease bifurcation to remove the perpetrator from the unit
- ❑ Rules for proving domestic violence, dating violence, or stalking.
- ❑ Obligates Public Housing Authorities (PHAs) to have plans & goals and describe PHA programs to assist survivors
- ❑ Requires development of model plans for emergency transfers
- ❑ Requires notification concerning VAWA housing rights at 3 critical junctures in multiple languages: 1)if a survivor is denied housing, 2)at the time of admission, and 3)when a survivor is notified of eviction or termination of assistance

Victims of Domestic Violence (continued)

The City of New York, Suffolk County and Westchester County have also passed legislation establishing victims of domestic violence as a protected class:

- ❑ NYC law protects a victim fleeing from a primary residence due to violence. If the tenant expresses intent to return, the landlord must give 30 days notice before attempting to evict the tenant
- ❑ Suffolk County extends housing protections to an individual who is a victim of an act which would constitute a family offense pursuant to Subdivision 1 of § 812 of the Family Court Act
- ❑ In Westchester County landlords are prohibited from denying housing to victims under certain circumstances. Victims seeking protection may be asked to present documentation of their abuse, which landlords are required to keep strictly confidential

Criminal Backgrounds & Barriers to Housing Re-Entry

In new guidance, issued in April of 2016, HUD tells landlords and home sellers that turning down tenants or buyers based on their criminal records may violate the Fair Housing Act

- ❑ Blanket policies of refusing to rent to anybody with a criminal record are *de facto discrimination*, because of the systemic disparities of the American criminal justice system
- ❑ NYS HCR has developed a “Guide for Applying New York State’s Anti-Discrimination Policies When Assessing Applicants for State-Funded Housing Who Have Criminal Convictions” and a worksheet to assist housing providers in assessing applicants

Questions?

