



Fair Housing for Seniors in Kent County

A Guide for Seniors, Caretakers and Housing Providers



**Produced 2013 by the
Fair Housing Center of
West Michigan**

*Kent County
Senior Millage*



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INTRODUCTION

Housing remains one of the most important decisions an older adult makes. As a result, the ability to obtain fair, adequate, affordable housing is critical to continued well-being and quality of life for Kent County seniors. The diversity of the senior population and the strong community networks that support the freedom and opportunity of our seniors are among Kent County's greatest strengths. Unfortunately, despite over 100 years of fair housing laws, housing discrimination against seniors in Kent County remains prevalent and continues to be a significant barrier to housing choice. When illegal housing discrimination interferes with housing choice, it not only takes away housing opportunity, but also undermines the respect and unity that our seniors deserve. In order to uphold and honor the dignity and value of seniors within Kent County, our community must provide its aging members with fair and equal access to a wide variety of housing opportunities.

The Fair Housing Center of West Michigan issues this report to highlight fair housing issues pertaining specifically to seniors, outline documented instances of potential housing discrimination against seniors, offer practical guidance on compliance with fair housing laws, and ultimately promote fair housing opportunity for all seniors throughout Kent County. The Fair Housing Center hopes that this report will increase awareness of fair housing rights and responsibilities, as well as promote practices and choices that create open, diverse communities.

A demonstrated commitment to fair housing practices by senior housing providers within Kent County will increase housing opportunity and ultimately strengthen the fabric of our community by allowing open, equal access to housing choice. Such a commitment includes the following: understanding and properly applying federal, state, and local fair housing laws; reviewing policies and procedures to remove any unlawful rules or references and to ensure compliance with fair housing laws; providing consistent service, treatment, and information to current and prospective residents; advertising in a fair manner that indicates that the housing is available to all seniors; understanding and upholding the rights of seniors with disabilities; complying with the accessibility requirements of fair housing laws; and ultimately making fair housing and equal opportunity priorities within the housing option.

Committing to fair housing practices and removing unlawful barriers to housing choice expand the range of prospective residents and lead to a broad, open housing market. Any senior qualified for the housing should gain equal access to housing opportunity regardless of race, color, religion, disability status, etc. Ultimately, fair housing not only promotes the growth and stability of our community, but also makes practical business sense.

The Fair Housing Center of West Michigan is committed to ensuring that *all* housing for seniors in Kent County is fair housing.

ABOUT THE FAIR HOUSING CENTER OF WEST MICHIGAN

The Fair Housing Center of West Michigan is a private, non-profit organization established in 1980 to ensure equal housing opportunity as guaranteed under federal, state and local fair housing laws. That purpose is accomplished through the Fair Housing Center's continuing operation of programs directed at enforcement and education based on Title VIII of the 1968 Civil Rights Act (Amended 1988), commonly referred to as the Fair Housing Act, which prohibits discrimination based upon race, color, religion, sex, national origin, handicap, and/or familial status; the Elliott Larsen Civil Rights Act which further prohibits discrimination based upon marital status and age; and local ordinances prohibiting discrimination based upon gender preference and public assistance recipient status.

Among its enforcement-oriented activities, the Fair Housing Center's top priority is to assist homeseekers in the investigation and resolution of complaints of illegal housing discrimination through the use of comparison testing, research, investigation, and cooperation with enforcement agencies. In addition to individual complaints, the Fair Housing Center actively monitors the nature and extent of existing housing discrimination through periodic market surveys, utilizing comparison testing, and other market research. The Fair Housing Center often utilizes obtained information as evidence to support independent complaint actions with appropriate authorities. The Fair Housing Center has developed and participated in education programs designed to increase the housing industry's understanding of fair housing laws and responsibilities and has trained more than 2500 sales, rental, and lending agents in their obligations under existing fair housing laws. The Fair Housing Center also provides technical advice to housing consumers and educates homeseekers about recognizing discriminatory practices and the legal remedies available to correct such practices.



Fair Housing Center
of West Michigan

Fair Housing Overview



WHAT IS FAIR HOUSING?

Fair housing is the right to choose housing free from unlawful discrimination. Federal, state and local fair housing laws protect people from discrimination in housing transactions such as rentals, sales, lending, and insurance. These laws include the federal Fair Housing Act, the Michigan Elliott-Larsen Civil Rights Act and Persons with Disabilities Civil Rights Act, as well as local fair housing and anti-discrimination ordinances.

WHO IS PROTECTED BY FAIR HOUSING LAWS?

Fair housing laws protect all individuals seeking housing, including, but not limited to:

- Applicants,
- Renters and residents,
- Homebuyers,
- People obtaining a mortgage or homeowners insurance, and
- People entering into a land contract or other housing agreement.

The federal Fair Housing Act prohibits discrimination in housing because of the following "**protected classes**":

RACE: real or perceived background (e.g. Asian, African American, etc.) and unscientific distinctions (e.g. Middle Eastern)

Example of discrimination: An assisted living center provides African American applicants false information about availability and waiting lists, and does not record contact information of African American prospective applicants thereby eliminating the opportunity to call when a unit becomes available.

COLOR: skin color (e.g. light, dark, etc.)

Example of discrimination: An apartment community for seniors steers darker skinned residents to a building in the back of the complex, further from public transit and community amenities, and steers lighter skinned residents to the apartments in the front area of the complex.

RELIGION: real or perceived participation in, or association with, a set of beliefs or practices

Example of discrimination: A commercial independent living facility requires a pastor reference and Statement of Faith as part of the application process, and refuses to admit people who do not provide this information.

Fair Housing Protected Classes

Federal

- Race
- Color
- Religion
- National origin
- Gender
- Disability
- Familial status

Michigan additions

- Marital status
- Age

Local additions (varies by City)

- Source of income
- Sexual orientation
- Gender identity
- Height
- Weight
- Public assistance recipient status

NATIONAL ORIGIN: real or perceived country of origin and/or national heritage; inclusive of accents, surnames, and association with ethnic groups

Example of discrimination: A 55 and older condominium association reviews a purchase agreement between an existing owner and a potential buyer. The condominium association sees that the buyer has a Hispanic surname and refuses to approve the sale unless the buyer provides a copy of their Social Security card. The association does not require this information from non-Hispanic buyers.

GENDER: real or perceived genetic gender

The prohibitions against discrimination on the basis of gender include protections against sexual harassment by a housing provider, landlord, real estate agent, etc.

Example of discrimination: A maintenance employee of a senior housing community frequently approaches female residents with unwanted sexual advances and comments while making repairs in their apartment units. When the women refuse, the employee threatens that if they tell the manager he will make sure that they never get anything fixed in their apartment.

DISABILITY: (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such impairment, or (3) being regarded as having such impairment

Disability does **not** include current, illegal use of or addiction to a controlled substance.

Example of discrimination: An assisted living facility prohibits wheelchairs or other mobility aids in the dining rooms and common spaces and requires residents with motorized wheelchairs to obtain liability insurance and take a “safety course” to prove their ability to use their wheelchair.

FAMILIAL STATUS: one or more individuals under the age of 18 living with (1) a parent or another person having legal custody, or (2) the designee of such parent or other person having such custody with the written permission of such parent or other person

The protections against discrimination on the basis of familial status also apply to any person who is pregnant, foster families, and any person who is in the process of securing legal custody of a person under the age of 18. Note: some housing for seniors may have exemptions to the familial status provisions of the Fair Housing Act. For more information, see the section entitled, “Senior Housing Exemption and Housing for Older Persons Act”.

Example of discrimination: A landlord of a small apartment complex claims to operate senior housing and denies families with children from renting an apartment, but the landlord will rent to adults of any age and does not adhere to any of the requirements for “Housing for Older Persons”.

Also, the Michigan Elliott-Larsen Civil Rights Act extends the protections afforded by the Fair Housing Act, and further prohibits discrimination in housing because of **marital status** or **age**.

MARITAL STATUS: situation of being single, unmarried, married, separated or divorced

Example of discrimination: An independent living facility allows married couples to reside together in a one bedroom unit, but will not allow unmarried couples to live together in a one bedroom unit.

AGE: biological age

Example of discrimination: A continuing care retirement community (CCRC) requires all individuals over the age of 80 to reside in assisted living, regardless of their ability.

Finally, some cities and local governments have enacted fair housing ordinances which further expand upon fair housing protections, and may prohibit discrimination in housing because of **source of income, sexual orientation, gender identity, height, weight or public assistance recipient status**.

WHICH TYPES OF HOUSING ARE COVERED BY FAIR HOUSING LAWS?

Fair housing laws cover most housing, including, but not limited to:

- apartments
- single-family homes
- duplexes and other multi-family units
- condominiums
- manufactured homes
- subsidized and government sponsored housing
- university owned or sponsored housing
- senior housing communities
 - assisted living facilities (ALFs)
 - residential care facilities
 - continuing care retirement communities (CCRCs)
 - skilled nursing homes
 - independent living communities

Fair housing laws cover most, if not all, types of senior housing.

In some circumstances, the laws exempt owner-occupied buildings with no more than two/four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

WHICH HOUSING PROVIDERS ARE COVERED BY FAIR HOUSING LAWS?

Any person or entity engaging in prohibited conduct may be held liable under fair housing laws, unless they fall within an exception of the law. Fair housing laws apply to individuals, corporations, associations, and others involved in the provision of housing and residential lending, including, but not limited to:

- senior housing providers, including leasing agents and property managers
- homeowners selling their homes
- investment and rental property owners
- rental managers, landlords and leasing agents
- builders, contractors and developers
- homeowners associations and condominium associations
- lenders, mortgage brokers, appraisers and bankers
- real estate operators, brokers and agents
- maintenance personnel and other people involved in the provision of services
- media, advertising agencies and marketing companies
- insurance companies who sell homeowners or renters insurance

Fair housing laws can also apply to state and local governments, most often in the context of exclusionary zoning or other land-use decisions.

WHAT IS PROHIBITED UNDER FAIR HOUSING LAWS?

In the sale and rental of housing, no one may take any of the following actions based on a protected class:

- Refuse to rent or sell housing,
- Refuse to negotiate for housing,
- Refuse to make a reasonable accommodation for an individual with a disability,
- Make housing unavailable,
- Deny a dwelling,
- Set different terms, conditions or privileges for sale or rental of a dwelling,
- Provide different housing services or facilities,
- Falsely deny that housing is available for inspection, sale, or rental,
- For profit, persuade owners to sell or rent (blockbusting), or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In mortgage lending, no one may take any of the following actions based on a protected class:

- Refuse to make a mortgage loan,
- Refuse to provide information regarding loans,
- Impose different terms or conditions, such as different interest rates, points, or fees,
- Discriminate in appraising property,
- Refuse to purchase a loan, or
- Set different terms or conditions for purchasing a loan.

In addition, it is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right, or
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap.¹

Signs of possible housing discrimination against seniors:

- Requiring that a person be able to live independently
- Asking an applicant if he or she has a disability or details about it
- Refusing to rent to people with wheelchairs
- Asking for medical records or evaluations
- Refusing to rent to people with mental illness
- Refusing to allow a 24-hour live-in aide
- Separating residents by age or ability
- Requiring residents with wheelchairs to have special insurance or pay extra deposits
- Refusing to allow wheelchairs or scooters in dining areas or other common spaces
- Asking an applicant about their religious affiliation or for a pastor reference
- Asking about medications or hospitalization
- Evicting a person because they need more assistance or bring in part-time help

WHY IS FAIR HOUSING IMPORTANT FOR SENIORS?

Fair housing protects and ensures housing choice for seniors, increases access to the amenities and community features connected to a housing choice, and plays a vital role in protecting the independence and well-being of older adults. According to the National Association of the Area Agencies on Aging, one of the most important decisions older adults make is their choice of housing. Their future contentment, comfort and even safety may depend on careful consideration of all the housing options available to them.² When fair housing eliminates discriminatory barriers to housing choice, seniors benefit from the opportunity to choose from the full array of available housing options in order to select a home that will meet their needs and wants for years to come. Fair housing choice not only ensures access to a home, but also access to all the other community features, amenities and services connected to that home, including health care services, transportation, banks, schools, libraries, parks, and community centers. Fair housing improves quality of life, economic stability and sustainability, and ultimately is the key to communities of opportunity.

Also, as an individual's housing needs change, fair housing rights specifically support older adults in the pursuit and acquisition of reasonable accommodations or modifications that may be necessary to support continued residence in their home and maintain their independence. Allowing an individual to adapt their housing to meet their needs and age in place contributes to the stability and consistency that support continued independence. Further, fair housing laws

¹ Note: The prohibition against discriminatory advertising applies to single-family and owner-occupied housing that may otherwise be exempt from the Fair Housing Act.

² Robinson, Holly. *Housing Options for Older Adults: A Guide to Making Housing Decisions*. Washington, DC: National Association of Area Agencies on Aging, n.d. 1. Print.

serve to ensure that multi-family housing is designed and constructed in a manner that ensures standard levels of accessibility, thereby providing housing options that allow people to remain in their homes longer and foster independence as needs may change. Protecting an older adult's right to choose housing that meets their needs is of utmost importance to their ongoing independence and well-being, and fair housing helps ensure that seniors have equal access to fair, accessible housing that meets their needs.

The Impact of Fair Housing

It ensures access for everyone.

Fair housing is the key to all people having the roof they want and need over their heads. It guarantees that regardless of your age, race, religion, family situation, or level of ability, you have the right to choose the housing that's best for your needs—with no outside preferences or stereotypes being imposed.

It encourages neighborhoods to put out their welcome mat.

Fair housing practices help people understand what it means to be a welcoming and vibrant neighborhood. The ideas, connections, and sense of pride that are found in diverse and open neighborhoods make a real difference, especially in the midst of tough economic times.

It enhances our community's curb appeal.

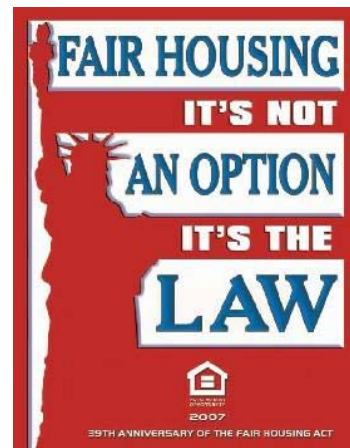
Equal access to housing goes hand in hand with quality of life. Fair housing plants seeds for economic development, talent retention, and more in our community. When people feel welcomed, they make themselves at home, invest their resources back into the community, and in turn make it an appealing place for diverse and talented people to come.

Fair Housing Laws



INTRODUCTION

Beginning with the Civil Rights Act of 1866, the United States of America has recognized and protected a person's right to choose a home free from unlawful housing discrimination for over 140 years. Currently, federal and/or Michigan fair housing laws prohibit discrimination throughout Kent County in the rental, sale, advertising, or financing of housing on the basis of race, color, religion, national origin, gender, familial status (presence of children under 18 or pregnancy), disability, age, or marital status. In addition, some local municipalities have enacted fair housing ordinances which expand these protected bases, or "protected classes" as they are called, to provide a wider array of protection, including bases such as source of income, height, weight, and sexual orientation. Both homeseekers and housing providers should become familiar with the applicable federal, state and local fair housing laws in order to understand both their rights and responsibilities under such laws. See the website of the Fair Housing Center of West Michigan at www.fhcwm.org/laws for links fair housing laws.



CIVIL RIGHTS ACTS OF 1866

Congress passed the Civil Rights Act of 1866 on April 9, 1866, which guaranteed rights of citizenship, including housing rights, regardless of race and color. In particular, the Civil Rights Act of 1866 states the following:

That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, **to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens...**³ (emphasis added)

Although enacted, the Civil Rights Act of 1866 did not provide a mechanism for enforcement of the law, and, as such, the rights afforded by the law were not widely actualized. The lack of enforcement gave way to the perpetuation of widespread housing discrimination on the bases of race and color. Such housing discrimination went widely unaddressed for over 100 years until the enactment of the Fair Housing Act of 1968. Nonetheless, the Civil Rights Act of 1866 remains on the books, and continues to prohibit housing discrimination on the bases of race and color.

³ "Thirty-Ninth Congress. Sess. 1. Ch. 31. 1866." *A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774 - 1875*. Library of Congress, n.d. Web. 5 Apr. 2011. <<http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=014/llsl014.db&recNum=58>>.

FEDERAL FAIR HOUSING ACT

President Lyndon B. Johnson signed the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) into law on April 11, 1968, exactly one week after the assassination of Dr. Martin Luther King, Jr.⁴ The Fair Housing Act of 1968 prohibits discrimination concerning the sale, rental, advertising, and financing of housing on the bases of race, color, religion, and national origin.⁵ In 1974, sex (or gender) was added as a protected class to the Fair Housing Act. In 1988, the Fair Housing Act



President Johnson signs the Fair Housing Act on April 11, 1968

underwent comprehensive amendments which expanded the prohibited practices and added familial status (presence of children under the age of 18 and pregnancy) and disability as additional protected classes, for a total of seven (7) federally protected classes.⁶

The Fair Housing Act as amended (hereinafter the “FHAct”) prohibits discrimination in a variety of transactions, including but not limited to sales, rental, advertising, and financing, pertaining to housing properties referred to as “dwellings”.⁷ Almost all types of senior housing have been found to meet the FHAct’s definition of dwelling, including independent living communities, assisted living facilities, residential care facilities, continuing care retirement communities, and skilled nursing homes.⁸ Therefore, most senior housing providers will be subject to the provisions of the FHAct, with many of the same responsibilities as those providing housing to the general public.

The FHAct prohibits discrimination in a wide array of policies and practices which span nearly all aspects of a housing transaction from initial inquiry to post-acquisition. The covered transactions include, among others, aspects of the following homeseeking processes: calls to inquire about rental rates up to and beyond lease executions, home appraisals up to and beyond home sales, and loan terms and applications up to and beyond loan acquisition. In particular, 42 U.S.C. §3604 of the FHAct prohibits the following practices, among others:

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, familial status, or national origin.

⁴ <http://www.loc.gov/exhibits/odyssey/archive/09/0912001r.jpg>

⁵ “History of Fair Housing.” *U.S. Department of Housing and Urban Development*, n.d. Web. 29 Mar. 2011. <http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/abouttheo/history>.

⁶ “History.” *Fair Housing Accessibility First*. n.d. Web. 29 Mar. 2011. <<http://www.fairhousingfirst.org/fairhousing/history.html>>

⁷ Schwemm, Robert G. “Properties Covered by the Fair Housing Act.” *Housing Discrimination Law and Litigation*. Eagan, MN: Thomas Reuters/West, 2001. 9-2. Print.

⁸ Tanna, Mira et al. “Selective Marketing: A Report on Senior Housing Providers’ Compliance with the Fair Housing Act Advertising Requirements.” St. Louis, MO: Metropolitan St. Louis Equal Housing Opportunity, 2009. 3. Print.

- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, disability, familial status, or national origin.
- (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any person because of race, color, religion, sex, disability, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.⁹

In addition, the FHAct, at 42 U.S.C. §3604(f) provides additional protections on the basis of disability. Not only does the FHAct prohibit discrimination against an individual because of their disability, but it also prohibits discrimination against any person because they are associated with and/or may live with a person



with a disability (legal guardian, parent or child of a person with a disability, etc.) Specifically, the FHAct makes the following unlawful:

- (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--
 - (A) that buyer or renter,
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--
 - (A) that buyer or renter,
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that buyer or renter.¹⁰

Furthermore, the FHAct affords additional rights to persons with disabilities, including the right to reasonable accommodations and modifications as well as design and construction requirements guaranteeing the right to accessible housing. Specifically, the FHAct at §3604(f)(3) prohibits the following:

- (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

⁹ 42 U.S.C. § 3604(a)-(f).

¹⁰ 42 U.S.C. § 3604(f)(1)-(2)

- (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
- (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988¹¹, a failure to design and construct those dwelling in such a manner that--
 - (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
 - (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
 - (iii) all premises within such dwellings contain the following features of adaptive design:
 - 1. an accessible route into and through the dwelling;
 - 2. light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - 3. reinforcements in bathroom walls to allow later installation of grab bars; and
 - 4. usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.¹²

For more information on these provisions of the law, see the section of this report entitled, “Fair Housing Rights of Persons with Disabilities”.

In addition to those provisions mentioned above, the FHAct prohibits others actions which may occur in a housing transaction as the result of a protected class, such as, harassment, intimidation or threats; retaliation; steering; predatory lending; and sexual harassment. The full text of the FHAct can be found on the website of the U.S. Department of Justice at <http://www.justice.gov/crt/about/hce/title8.php>.

¹¹ The Fair Housing Act requires all "covered multifamily dwellings" designed and constructed for first occupancy after March 13, 1991 to be accessible to and usable by people with disabilities. "Frequently Asked Questions". *Fair Housing Accessibility First*. n.d. Web. 5 May 2011. < <http://www.fairhousingfirst.org/faq/mfhousing.html>>

¹² 42 U.S.C. § 3604(f)(3)

MICHIGAN ELLIOTT-LARSEN CIVIL RIGHTS ACT

On March 31, 1977, State Act 453 of 1976, or the Elliott-Larsen Civil Rights Act (hereinafter the “ELCRA”), took effect in the State of Michigan. The ELCRA underwent a series of amendments from 1977-1992, with the most recent taking effect on December 7, 1992. The ELCRA, as amended, prohibits discrimination not only in housing, but also in employment, public accommodations, public service, and educational facilities. Specifically regarding housing, the ELCRA prohibits discrimination on the basis of religion, race, color, national origin, age, sex, familial status, or marital status. As such, ELCRA expands upon the federally protected classes, adding marital status and age, for a total of nine (9) protected classes throughout the State of Michigan.

Like the FHAct, the practices prohibited by ELCRA cover a wide variety of housing transactions, and, in many ways, mirror the protections offered by the FHAct at 42 U.S.C. § 3604(a)-(d). In particular, §37.2502(1) of the ELCRA prohibits that a person engaging in a real estate transaction do any of the following on the basis of religion, race, color, national origin, age, sex, familial status, or marital status:



- (a) Refuse to engage in a real estate transaction with a person.
- (b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.
- (c) Refuse to receive from a person or transmit to a person a bona fide offer to engage in a real estate transaction.
- (d) Refuse to negotiate for a real estate transaction with a person.
- (e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or knowingly fail to bring a property listing to a person's attention, or refuse to permit a person to inspect real property, or otherwise make unavailable or deny real property to a person.
- (f) Make, print, circulate, post, mail, or otherwise cause to be made or published a statement, advertisement, notice, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction.
- (g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.
- (h) Discriminate against a person in the brokering or appraising of real property.¹³

Although ELCRA does not prohibit housing discrimination on the basis of disability, those protections are offered by the Persons with Disabilities Civil Rights Act of 1976 of the State of Michigan which was enacted simultaneously with ELCRA and provides for almost identical prohibited practices.

¹³ Elliott-Larsen Civil Rights Act. § 37.2502(1)(a)-(h).

PERSONS WITH DISABILITIES CIVIL RIGHTS ACT OF 1976

On March 31, 1977, State Act 220 of 1976, or the Persons with Disabilities Civil Rights Act (hereinafter the “PWDCRA”), took effect in the State of Michigan in conjunction with ELCRA. Like ELCRA, the PWDCRA underwent a series of amendments from 1977-1998, with the most recent taking effect on March 12, 1998. Like ELCRA, the PWDCRA, as amended, prohibits discrimination on the basis of disability not only in housing, but also in employment, public accommodations, public service, and educational facilities.

The housing discrimination prohibited by PWDCRA mirrors those practices prohibited ELCRA and the FHAct, but, just as the FHAct, also protects protected beyond just the individual with a disability. In particular, § 37.1502 of the PWDCRA states the following:

- (1) An owner or any other person engaging in a real estate transaction, or a real estate broker or salesman shall not, on the basis of a disability of a buyer or renter, of a person residing in or intending to reside in a dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter, that is unrelated to the individual's ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids:
 - (a) Refuse to engage in a real estate transaction with a person.
 - (b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.
 - (c) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction from a person.
 - (d) Refuse to negotiate for a real estate transaction with a person.
 - (e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, fail to bring a property listing to a person's attention, refuse to permit a person to inspect real property, or otherwise deny or make real property unavailable to a person.
 - (f) Make, print, circulate, post, or mail or cause to be made or published a statement, advertisement, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect to a real estate transaction.
 - (g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.

Furthermore, PWDCRA at § 37.1506(a) provides additional protections and rights pertaining to reasonable modifications and accommodations and accessibility. The accessibility requirements of PWDCRA, although less specific, directly result from the FHAct. PWDCRA states:

An owner or any other person engaging in a real estate transaction, or a real estate broker or salesman shall not, on the basis of a disability of a buyer or renter, of a person residing in or intending to reside in a dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter, that is unrelated to the individual's ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids:

- (a) Refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if those modifications may be necessary to afford the person with a disability full enjoyment of the premises. In the case of a rental, the landlord may, if reasonable, make permission for a modification contingent on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
- (b) Refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person with a disability equal opportunity to use and enjoy residential real property.
- (c) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, fail to include all of the following features:
 - i. The dwellings have at least 1 building entrance on an accessible route, unless that is impractical because of the terrain or unusual characteristics of the site.
 - ii. The public and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.
 - iii. All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.
 - iv. All premises within covered multifamily dwellings contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and kitchens and bathrooms designed so that an individual in a wheelchair can maneuver about the space.

LOCAL FAIR HOUSING ORDINANCES

In addition to federal and Michigan fair housing laws, three cities within Kent County have adopted a fair housing policy to their code of ordinances to affirm a commitment to fair housing and also to broaden the number of protected classes within their respective jurisdictions. The three cities are as follows: City of Grand Rapids, City of Kentwood, and City of Wyoming. Each city adds three unique protected classes to their jurisdiction, thereby extending fair housing rights beyond those assured by federal and state fair housing laws. In addition to Michigan and federal protected classes under fair housing law, housing discrimination is prohibited in the City of Grand Rapids on the basis of source of lawful income, public assistance recipient status¹⁴ or gender orientation¹⁵, and in the Cities of Kentwood¹⁶ and Wyoming¹⁷ on the basis of height, weight, or source of income.

¹⁴ §9.362 “Policy”. Grand Rapids, Michigan, Code of Ordinances >> TITLE IX—POLICE REGULATIONS >> Chapter 160 - DISCRIMINATION IN REAL PROPERTY TRANSACTIONS.

<http://library.municode.com/index.aspx?clientId=12116&stateId=22&stateName=Michigan>

¹⁵ § 1.347 “Civil Rights Defined”. Grand Rapids, Michigan, Code of Ordinances >> - TITLE I—ADMINISTRATION >> Chapter 8 - BOARDS AND COMMISSIONS >> ARTICLE 3. - COMMUNITY RELATIONS COMMISSION >>

¹⁶ Sec. 74-201. “Definitions.” Kentwood, Michigan, Code of Ordinances >> PART 2 - CODE OF ORDINANCES >> Chapter 74 - BUILDINGS AND BUILDING REGULATIONS >> ARTICLE 6. - FAIR HOUSING >> <http://library.municode.com/index.aspx?clientId=13498&stateId=22&stateName=Michigan>

EXEMPTIONS

Senior housing, while decidedly distinct from the housing market as a whole, still remains under the purview of federal, state and local fair housing laws; however, the FHAct and ELCRA do allow for a limited number of narrow exemptions from certain provisions which directly impact senior housing options. Such exemptions include a narrow exemption for religious organizations and private clubs and a specific exemption to the familial status provisions for qualifying senior housing providers. These exemptions are discussed in further detail below.

In order to ensure proper compliance, housing providers should know which laws and exemptions apply to their property, including any corresponding regulations and requirements, in order to understand both their rights and responsibilities under fair housing law.

Religious Organization Exemption

A large sector of the senior housing available in the West Michigan area is provided by or in conjunction with a faith-based organization, which is distinct from the housing market as a whole. While West Michigan does have a statistically high number of faith-based senior housing providers, this trend is not unique to our community. In fact, religious organizations pioneered continuing care retirement communities (CCRCs) to provide lifetime care for seniors without families¹⁸ and remain major providers of senior housing throughout the nation. Directly impacting this unique aspect of senior housing, the FHAct contains a narrow exemption to allow a religious organization to exercise a preference on the basis of that religion in its noncommercial dwellings. For example, a non-profit, non-commercial housing facility established by the Catholic Church for the purpose of housing retired nuns or members of Catholic religious orders may meet the terms of the exemption. Specifically, the language of the FHAct regarding the religious organization exemption, at § 3607(a), reads as follows:

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.¹⁹

¹⁷ Sec. 42-53. “Unfair housing practices”. ARTICLE II. DISCRIMINATION. Division 2. Fair Housing. http://library1.municode.com/default-test/home.htm?infobase=10150&doc_action=whatsnew

¹⁸ Robert G. Schwemm & Michael Allen, For the Rest of Their Lives: Seniors and the Fair Housing Act, 90 IOWA L. REV. 121, n.93 (2004) (citing LAWRENCE FROLIK, RESIDENCE OPTIONS FOR OLDER OR DISABLED CLIENTS, § 8.01, at 8-2 (1997 & Supp.2002)).

¹⁹ 42 U.S.C. § 3607(a).

Furthermore, ELCRA provides a similarly narrowly construed exemption on the basis of religion, which reads as follows:

Sec. 505. (1) A condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of religion, race, color, national origin, age, sex, familial status, or marital status is void, except a limitation of use as provided in section 503(1)(c) or on the basis of religion relating to real property held by a religious institution or organization, or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.²⁰

As noted above, the exemption is quite limited and is only available with respect to religious discrimination in noncommercial dwellings operated by a religious organization or by a nonprofit institution operated in conjunction with a religious organization, and then only if membership in the religion is not restricted on account of race, color or national origin.²¹ It proves important to note that such religious organization exemption does not allow for discrimination on the basis of any other protected class. Furthermore, no reported federal fair housing case has yet excused discrimination on the basis of religion on the grounds that the housing provider was eligible for such exemption.²²

Senior Housing Exemption (Housing for Older Persons)

In the passage of the FHAct, Congress recognized and affirmed the unique need for senior housing communities and established a specific exemption from the familial status provisions of the FHAct for “housing for older persons”. The purpose of the “housing for older persons” exemption is to insure that the FHAct’s familial status prohibitions do not unfairly limit the housing choices of elderly persons.²³ Specifically,

Even if senior housing is exempt from familial status or age discrimination, the housing provider may not discriminate on any other protected basis.

Congress recognized “that some older Americans have chosen to live together with fellow senior citizens in retirement-type communities” and “appreciate the interests and expectation these individuals have in living in environments tailored to their specific needs.”²⁴ The exemption for “housing for older persons” under the FHAct applies only to the familial status provisions of the FHAct, and does not allow such housing to discriminate on the basis of any other federal, state, or local protected class.

²⁰Elliott-Larsen Civil Rights Act. Act 453 of 1976. 31 March 1977. § 37.2505(1). Print.

²¹ 42 U.S.C. § 3607(a).

²² Schwemm, Robert G. "Properties Covered by the Fair Housing Act." *Housing Discrimination Law and Litigation*. Eagan, MN: Thomas Reuters/West, 2001. 9-13. Print.

²³ Schwemm, Robert G. "Familial Status Discrimination." *Housing Discrimination Law and Litigation*. Eagan, MN: Thomas Reuters/West, 2002. 11E-31. Print. (citing HUD Preamble II, 24 CFR, ch. 1, subch. A, app.I, 54 Fed. Reg. 3252 (Jan. 23, 1989) (citing statement of Sen. Karnes at 134 Cong. Rec. S10465-66 (1988))

²⁴ Schwemm, Robert G. "Familial Status Discrimination." *Housing Discrimination Law and Litigation*. Eagan, MN: Thomas Reuters/West, 2002. 11E-31. Print. (citing U.S. House of Representatives, Committee on the Judiciary, Report 100-711: the Fair Housing Amendments Act of 1988 at 80-81, 86-88, 90, 100th Cong., 2nd Sess. (1988))

The “housing for older persons” exemption under the FHAct includes three specific and separate definitions of senior housing. In particular, housing that meets the FHAct’s definition of “housing for older persons” is exempt from the law’s familial status requirements provided that:

1. HUD has determined that the dwelling is specifically designed for and occupied by elderly persons under a Federal, State or local government program, or
2. It is occupied solely by persons who are 62 or older, or
3. It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.²⁵

Most senior housing throughout West Michigan, including condominium associations and public and private senior communities, falls under the third of the three (3) definitions: housing for persons “55 and older”. To further clarify this definition, HUD enacted the Housing for Older Persons Act (herein “HOPA”)²⁶ in 1995 to replace the original definition of “55 and older” set forth in the FHAct. HOPA applies to many different types of housing facilities and communities, including, but not limited to, condominium associations; cooperatives; property governed by a homeowners’ or resident association; municipally zoned areas; leased property under common private ownership; mobile home parks; and manufactured housing communities.²⁷

The HOPA regulations contain three (3) major requirements, found at 24 CFR § 100.305-100.307, all of which must be met in order to qualify for the applicable exemption. These requirements, in summary, are as follows:

1. In order for a housing facility or community to qualify as housing for older persons under Sec. 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.²⁸
2. In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older.²⁹
3. A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.³⁰

If a housing provider meets these three (3) requirements, then they may discriminate on the basis of familial status, but this does not mean that they HAVE TO discriminate on the basis of familial status. Further, even if senior housing meets the standards for housing for older persons exempt from familial status discrimination, the housing provider may not discriminate on any other protected basis.

²⁵ 42 USC § 3607(b)(2)(A)-(C) and “Senior Housing: What you should know...” U.S. Department of Housing and Urban Development. n.d. Web. 11 July 2011.

<http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/seniors>.

²⁶ 24 CFR Part 100. “Implementation of the Housing for Older Persons Act of 1995”.

²⁷ 24 CFR § 100.304(b)

²⁸ 24 CFR § 100.305(a)

²⁹ 24 CFR § 100.306(a)

³⁰ 24 CFR § 100.307(b)

Furthermore, ELCRA also contains an exemption for senior housing providers to the familial status and age provisions of the Michigan law; however, such exemption is not entirely congruent with the FHAct's exemptions on the basis of familial status and is thus preempted by federal law when any conflict arises. Specifically, ELCRA, at 37.2503, states that the prohibitions of discrimination, as stated in the law, do not apply to the following:

(c) With respect to the age provision and the familial status provision only, the sale, rental, or lease of housing accommodations meeting the requirements of federal, state, or local housing programs for senior citizens, or accommodations otherwise intended, advertised, designed or operated, bona fide, for the purpose of providing housing accommodations for persons 50 years of age or older.³¹

As evidenced above, ELCRA's definition of "housing for older persons" mirrors the first definition set forth by the FHAct regarding federal, state and local housing programs for senior citizens, but subsequently directly conflicts with the second and third definitions of the FHAct which include specific age guidelines. The FHAct provides exemptions for housing for persons "62 or older" and "55 or older", and ELCRA's exemption for housing for persons "50 years of age or older" places more restrictions on families with children than federal laws. As a result, in a situation where any such conflict arises between the definitions, ELCRA, enacted before the Fair Housing Amendments Act of 1988 and HOPA, is preempted by federal law. That is to say, a community that designates itself as housing for persons "50 years of age or older" exempt from the age and familial status provisions of ELCRA may still be found in violation of the familial status provisions of the FHAct. It proves important to be aware of all applicable laws and understand the relationship between federal, state and local fair housing laws and their exemptions in order to ensure proper compliance.

In order to ensure proper compliance, housing providers should know which laws and exemptions apply to their property based on its geographic location, including any corresponding regulations or requirements, in order to understand both their rights and responsibilities under fair housing law. Housing providers should provide fair housing training to anyone who interacts with potential and current residents, including property managers and maintenance staff. Fair housing training should focus on risk management related to housing discrimination based on the role or roles the housing provider plays, be it home sales, rental, lending, insurance, and/or advertising relating to the sale or rental of a dwelling. Training helps members of the housing industry meet their responsibilities under fair housing law and ensure that homeseekers consistently have equal access to housing choice.

Housing for People 55+ MUST:

1. Have at least 80% of the units occupied by at least one person 55 or older, AND
2. Publish and adhere to policies and procedures demonstrating intent to operate as housing for people 55 and older, AND
3. Establish routine age verification procedures.

Intent to operate as housing for people 55 and older should be written in advertising, applications, lease or purchase agreements, community rules, bylaws and other official documents.

³¹ Elliott-Larsen Civil Rights Act. § 37.2503(1)(c)

LGBT PROTECTIONS & HUD'S EQUAL ACCESS RULE

Currently, it is estimated that 1-3 million Americans over 65 are lesbian, gay, bisexual or transgender (LGBT). As the baby boomers age, this number will reach 3-7 million by 2030³². Therefore, it is important for senior housing providers to be aware of additional protections that may apply. In certain circumstances, an LGBT senior's experience with housing discrimination based on sexual orientation or gender identity may be protected by the FHAct's prohibition against discrimination on the basis of one or more of the protected classes. For instance, the FHAct protects against housing discrimination on the basis of sex, meaning that an individual has been treated differently based on the fact they are male or female. The U.S. Department of Housing and Urban Development (HUD) has interpreted the protections on the basis of sex to extend to individuals who are subjected to housing discrimination due to non-conformity with gender norms or stereotypes.

For example, if a female prospective tenant is denied by a senior housing provider because she wears masculine clothes and engages in other physical expressions that are stereotypically male, then she might be able to bring a claim under the FHAct alleging discrimination based on sex.

Additionally, the FHAct protects against housing discrimination on the basis of disability. This protection not only applies to individuals with disabilities, but also to people who are regarded by others to have a disability whether or not they in fact have a disability. For example, if a senior is being evicted because he is gay and his senior housing provider believes he will infect other residents with HIV/AIDS, then the allegation of discrimination may be brought under the FHAct based on disability because the man is regarded as having a disability, HIV/AIDS.

A number of states and the District of Columbia prohibit housing discrimination due to sexual orientation and/or gender identity, but Michigan currently does not have any such statewide protection. As noted previously in this report, housing discrimination on the basis of gender orientation is prohibited in the City of Grand Rapids. Nonetheless, some situations may still be covered by protected classes in Michigan laws.

HUD's Equal Access Rule

On February 3, 2012, HUD published a Final Rule entitled, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity", commonly referred to as the "Equal Access Rule". Through this final rule, HUD implements policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. In particular, the Equal Access Rule states that a determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made without regard to actual or perceived sexual orientation, gender identity, or marital status.

It is important to note that the Equal Access Rule is not a law, or an amendment to the FHAct, and the Rule does not create any additional federally protected classes. It is applicable to HUD programs and housing, including both HUD-assisted and HUD-insured projects. Such programs include: Section 8 (Housing Choice Vouchers), Community Development Block Grants.

³² <http://www.bouldercounty.org/family/seniors/pages/projvis.aspx>

(CDBG), Public Housing, Housing Opportunities for Persons with Aids (HOPWA), Supportive Housing for the Elderly and Persons with a Disability, McKinney-Vento, FHA insured loans, and many other HUD programs.

Examples of possible violations of the Equal Access Rule

- A property manager who oversees a senior community operated with HUD funding refuses to rent an apartment to a prospective senior tenant who is transgender. If the housing denial is because of the prospective tenant's gender identity, it may constitute an infraction under the Equal Access Rule.
- An underwriter for an FHA insured loan is reviewing an application where two male's incomes are being used as the basis for the applicants' credit worthiness. The underwriter assumes the applicants are a gay couple and, as a result, denies the application despite the applicants' credentials. This scenario may violate HUD regulations which prohibit FHA-insured lenders from taking actual or perceived sexual orientation into account when determining adequacy of an applicant's income.

Further information on the Equal Access Rule can be accessed at the U.S. Department of Housing and Urban Development's website: www.hud.gov/lgbthousingdiscrimination/

Fair Housing Policies and Practices



INTRODUCTION

The policies and practices implemented by senior housing providers outwardly demonstrate their commitment to fair housing practices within their community. Within Kent County, many older adults prefer communities that offer services, leisure activities, and opportunities designed specifically for seniors, and fair housing helps ensure that all seniors have access to those housing choices and amenities without regard to race, color, religion, gender, disability, etc. Regardless of intent or commitment to fair housing, sometimes senior housing providers implement written policies or institute policies that are discriminatory against a certain protected class. This may be a policy that specifically targets or limits a protected class, or a seemingly innocuous or neutral policy which, when applied, either imparts a disproportionately negative impact on a protected class or is selectively enforced in a discriminatory manner against members of a particular protected class. As such, senior housing providers must thoroughly review their written policies for compliance with fair housing laws, and ensure that such policies are fully understood by all staff and employees and practiced fairly and consistently.

Examples of policies and practices that might violate fair housing laws

- Prohibiting mobility aids in dining rooms or common areas
- Requiring seniors with motorized wheelchairs to obtain liability insurance
- Requiring senior applicants to demonstrate or prove that they can live independently
- Prohibiting chore workers, caretakers, or live-in aides
- Requiring that applications be submitted in person by the applicant
- Limiting housing to single persons or married couples
- Separating residents by age
- Refusing to allow reasonable modifications to unit interiors

Senior communities that may be exempt from discrimination on the bases of familial status and age status are still liable under the remaining provisions of the FHAct protecting against discrimination on the basis of race, color, religion, national origin, disability, or gender, and also must adhere to ELCRA's prohibition of discrimination on the basis of marital status. For example, senior housing may not limit housing opportunities to "single or married persons" or state an unlawful preference on the basis of religion. Many senior housing providers in the west Michigan area are faith-based and these communities should review their policies to ensure that they comply with federal, state and local fair housing laws, particularly if they wish to meet the religious organization exemption under the FHAct, as previously discussed.

Regarding housing practices, the adherence to fair housing laws is often measured by the consistency and quality of service and treatment provided to homeseekers. The Fair Housing Center recognizes that no two interactions with different homeseekers are exactly the same and that "fair" treatment and "same" treatment are not always synonymous. The Fair Housing Center also recognizes that differences in treatment do not always indicate discrimination on the basis of a protected class. However, significant differences in treatment linked to a protected class, or demonstrated patterns of less favorable treatment to a specific protected class over a period of time, may indicate real or potential fair housing issues.

Example of discrimination: A senior housing manager repeatedly tells White prospective applicants about a rental special but does not mention the special to Black prospective applicants.

Furthermore, fair housing laws do not raise the issue of overall quality of customer service. If all applicants are treated poorly, that may be bad for business, but it is not, by itself, a fair housing violation.

Tip: The Fair Housing Center encourages housing providers to implement written, objective policies and procedures to establish a standard protocol and promote consistency and equal treatment. The Fair Housing Center also recommends that all staff of senior housing communities, including property managers, leasing consultants, nursing staff, maintenance personnel, and any other employee coming in contact with applicants or residents, attend fair housing training. Providing fair housing training to senior housing provider staff and employees not only demonstrates a commitment to fair housing practices and but also affords the knowledge and awareness necessary to ensure fair housing and, ultimately, equal housing opportunity.

PRACTICES UNIQUE TO CONGREGATE SENIOR HOUSING

The unique aspects of congregate senior communities present an equally unique array of real and potential fair housing issues, as well as unique opportunities for fair and equal housing practices. In particular, the wide variety of housing options available at many senior communities, resulting from the continuum of care system, may contribute to a higher propensity for lack of consistency in information or treatment provided to prospective residents, but may also present an opportunity for an increased commitment to and focus on fair housing. Such variety of options often unique to senior communities includes the following:

- Fees
 - Reservation fees
 - Endowment fees
 - Higher application fees (\$150 or above)
- Services to transition out of homeownership
 - Realty or moving services
 - Home purchase programs
- Continuum of care services
 - Licensed nursing facilities within the housing complex
 - Transitional housing options with varying levels of care
 - Home inspections
- Costs
 - Rental v. buy-in options
 - Rental rates based on occupancy
 - All inclusive living
 - Significantly higher rental rates than non-senior housing due to available services
- Customer Service
 - Mini-stay programs
 - High valued incentives or specials

With so many different options available, senior housing providers face the unique challenge of providing an above average quantity of information as consistently as possible, while recognizing and serving the individual needs of each potential resident. In order to comply with fair housing laws, the Fair Housing Center advises consistency and truthfulness in all transactions. It is the most effective way to insure that all applicants are treated equally. One way to be consistent is to have the above information written down and available for home seekers help insure that each person receives the same information.

Areas where it is important for housing providers to be consistent include:

- Information about vacancies and waiting lists;
- Information about qualifications needed to apply or be accepted;
- Information about costs, such as rental rates, security deposits and other fees;
- How much information is actually required concerning credit, references, employment, past income or additional sources of income;
- Information about rental rebates, specials, and amenities of the housing;
- Information about rules, policies, regulations, or requirements of the housing.
- Information about free meals, visits and “stay-cations” for prospective senior residents.

The Fair Housing Center recommends that, unless required to do so by court order or a government agency, housing providers should refrain from recording in any way, the race, color, religion, or national origin of the applicant. Such information, if used to deny equal housing opportunity, could provide a basis for a housing discrimination complaint. In contrast, statements that support an affirmative action and/or equal opportunity policy are appropriate and in keeping with fair housing laws if such statements are made to all applicants and not to a select group of applicants. Any other statements concerning the racial, ethnic, or religious backgrounds of the applicant, the residents, the owners of the development, the neighborhood, or the senior community, while by themselves not necessarily unlawful, could provide a basis for a discrimination complaint. Senior housing staff members should understand that they may be asked coded questions regarding “who lives here”, safety or security, or the type of neighborhood, when the questioner may be covertly seeking information about the racial makeup of the community that an agent or employee should not provide.

Employees of the senior housing industry should know that federal and state laws protect them from retaliation by employer/owner if they refuse to follow the employer/owner’s instructions to unlawfully discriminate. In fact, they have standing to bring suit against employers/owners for any attempts to require an agent to violate fair housing laws.

For example: A senior housing manager tells a leasing consultant that the complex cannot accept any more applicants in wheelchairs because there has already been too much wear on the carpet in the hallways. The leasing consultant **should not** follow the manager’s instruction, and has the right to file a complaint against the manager.

Furthermore, incidents of harassment or intimidation (verbal, physical, emotional, etc.) based on race, sex, religion, national origin, age, familial, marital or handicap status by owners, agents, neighbors, or other residents are civil rights violations and should be reported to a fair housing agency. Equally important, other residents in the senior housing community may not interfere in a housing transaction because of a person’s protected class. Housing providers have a

responsibility to address any allegations of fair housing violations, including harassment, reported by employees, visitors, staff or residents. Failure to report incidents of unlawful activity may expose the senior housing provider to court actions arising from such activities.

For example: A Jewish resident reports to a senior housing manager that other residents are using ethnic slurs against her, and that she does not feel welcome at the community because of her race and religion. The manager should document the allegation and then either investigate the situation or refer the client to a fair housing agency.

Senior housing providers who display a warm and welcome reception to all applicants, and who believe that full compliance with fair housing laws will help produce better communities, will be less likely to become defendants in a housing discrimination complaint.

CONDOMINIUM ASSOCIATIONS AND BYLAWS

Throughout Kent County, the Fair Housing Center has consistently identified policy related fair housing issues pertaining to condominium associations. Condominium communities provide a private, independent housing option for seniors wishing to remain within their own home as opposed to a congregate senior housing community. These communities play an important role in meeting the demand for housing for seniors. Condominium associations are often private, independent entities where there is less standardization and regulation, often leading to misunderstanding and noncompliance with fair housing laws. This misunderstanding of fair housing law is frequently evidenced in the written bylaws of the association, particularly in the use and occupancy restrictions. Members of condominium association boards need to be aware that they are considered housing providers under fair housing law and are just as liable as realtors or landlords under those laws.

**Members of
condominium
association boards
need to be aware that
they are considered
housing providers
under fair housing law**

Many condominium associations attempt to qualify as senior housing exempt from the familial status and age provisions of federal and Michigan fair housing laws; however, not all are fully aware of the proper requirements or obligations under fair housing laws. A large majority of condominium associations in Kent County were incorporated prior to the passage of ELCRA, the Fair Housing Amendments Act of 1988, and/or HOPA, and, as such, may not have updated their bylaws to reflect the fair housing requirements set forth by those laws. For example, a condominium association incorporated in 1985, prior to the Fair Housing Amendments Act and HOPA, may have lawfully established themselves as a senior community intended for persons “50 and older” consistent with ELCRA. However, upon passage of the FHAct and HOPA, such age restriction presented an inconsistency with federal fair housing laws whose requirements trump Michigan fair housing laws. In order to comply with federal law and maintain an exemption, the community must establish their intent to house persons at least 55 year of age or older as well as

**Housing for older
persons must be age 55
and older, or 62 and
older. It CANNOT be
restricted to persons
age 50 or older.**

meet the other requirements of HOPA pertaining to appropriate residency of persons 55 or older, age verification, established intent, and record keeping. Please see the section on “Senior Housing Exemption and Housing for Older Persons Act” for more information.

Tip: Intent to operate as housing for people 55 and older should be written in advertising, applications, lease or purchase agreements, community rules, bylaws and other official documents so as to clearly identify the intent to operate as housing for older persons.

Condominium associations wishing to be designated as “senior housing” exempt from the familial status and age provisions of federal and Michigan fair housing laws should not only ensure that their policies and practices meet the requirements of HOPA (see previous section on “Exemptions”), but also that their policies do not contain any unlawful reference to one or more of the remaining protected classes, including marital status. For example, many condominium bylaws contain occupancy restrictions or definitions of family intended to preserve the residential nature and use of the community (often located in Article VII of the bylaws). However, these restrictions and definitions sometimes contain unlawful limitations, particularly on the basis of marital status.

For example, condominium bylaws **cannot** state:

- “A family shall mean one person or a group of two or more persons related by bonds of consanguinity, marriage, or legal adoption.”
- “No unit will be used or occupied by other than single persons or married couples”
- “Apartments shall be used exclusively for the residence of adult single persons and married couples”
- “No children under the age of 16”

Tip: All condominium associations should review their bylaws (particularly any use or occupancy restrictions) in light of fair housing laws, and make **and record** any necessary amendments to ensure compliance.

Finally, senior housing communities, including condominium associations, need to be aware of their responsibility to grant reasonable accommodation or reasonable modification requests made by or on behalf of individuals with disabilities. Condominium associations carry the same responsibility as landlords and property managers to appropriately handle and address reasonable accommodation and modification requests. Such reasonable accommodations and modifications could include a request to accommodate a “no animals” policy by allowing a service or companion animal, a request to modify one’s condominium exterior to add necessary handrails or other physical mobility supports, or a request to allow a live-in care giver who may not comply with the age restrictions set forth by the community’s bylaws. For more information on reasonable accommodations and modifications, please see the subsequent section of this report entitled, “Fair Housing Rights of Seniors with Disabilities”.

For example: A condominium association has a bylaw provision that prohibits dogs but allows cats. An owner submits a reasonable accommodation request asking for permission to have an assistance dog that alleviates symptoms related to a mental illness. The association must consider the request, and approve any substantiated reasonable accommodation.

APPLICATION PROCEDURES

Applications for senior housing should collect information relevant to objectively determine whether or not an individual qualifies for an available housing opportunity, and should not ask unlawful questions or be used to discriminate against seniors on the basis of a protected class. Senior housing providers should ensure that their applications for housing do not make unlawful inquiries into disability status, do not indicate an unlawful preference on the basis of religion, and only

ask that information necessary to determine eligibility for housing. Housing providers should take care to distinguish between information that is necessary to evaluate an individual's eligibility for residency and information that may be more appropriate to ask after an individual has been accepted into the housing (i.e. tenant intake form). If an applicant feels a question is unlawful, they may ignore it on a written application or decline to answer it in an interview.

Housing providers must distinguish between information necessary to evaluate an individual's eligibility for residency and information more appropriate to ask after an individual has been approved.

For example, housing providers **cannot** ask an applicant:

- If they have a disability
- Details about a disability
- About their health or their medications
- If they can live "independently"
- If they need help with daily activities
- If they can get in and out of bed by themselves
- If they can use the toilet by themselves
- If they are taking prescription medications
- If they are under the care of a medical professional
- If they have ever received treatment for mental illness

Furthermore, the application procedures **cannot** require an applicant to:

- Sign a medical release form or produce medical records
- Undergo a medical evaluation
- Demonstrate their mental acuity or physical mobility
- Meet with the housing provider's chaplain or minister or submit a pastor reference (see "Exemptions" for any exceptions)

However, housing providers **may** ask an applicant (as long as it is asked of all applicants):

- To substantiate sufficient income to qualify for the housing
- For references from a previous housing provider
- If they have been convicted of any crimes that would affect their ability to qualify
- If it is senior housing, for their age and verification of age

In certain circumstances, senior housing communities that provide both housing and supportive services may be able to ask limited information about disability status on an application. Please see the section of this report entitled "CCRCs and ALFs" for more information. However, at the application stage, these housing providers should obtain medical/disability information from an applicant only *after* determining preliminarily whether or not the person qualifies as a resident.

Similarly, if housing providers seek information about a resident's religious affiliation in order to be prepared to contact appropriate clergy regarding health related events, such information

should be requested only after the individual has already been accepted to the housing. This information should not appear on an application (unless the housing is acting under an exemption for religious institutions), and should not impact an individual's ability to qualify for housing.

Again, housing providers must distinguish between information necessary for application and eligibility, and information relevant to intake and services, and must be clear about the intent of any requested information.

Questions that might not be appropriate on an application but might be optional for a resident to provide **after** acceptance could include:

- Their wedding date, for purposes of celebrating or publishing anniversaries,
- Their religious affiliation, for information about available services or to obtain clergy contact information,
- Their daily needs, for the purposes of discussing available services, or
- Their hobbies and interests, for the purposes of connecting them with available opportunities and groups.

DIFFERENCES IN SERVICE OR TREATMENT

Differences in treatment are among the most important concepts to understand when considering fair housing laws. Even if a senior housing provider has no intent to discriminate on the basis of a protected class, significant or repeated instances of differences in treatment favoring one protected class over another could constitute a claim of unlawful housing discrimination.

All employees that have any interaction with current and potential residents should know and be able to implement the proper policies and practices at all times.

Therefore, housing providers need to be as consistent in policies and practices as possible. All employees, including leasing and maintenance personnel, managers and directors, and any others that have any interaction with current and potential residents, should know and be able to implement the proper policies and practices at all times. Striving to provide consistent quality of service and treatment, as well as consistent information, leads not only to increased compliance with fair housing law, but also better overall quality of service.

Further, fair housing laws require that each person be treated equally, which, in the context of persons with disabilities, sometimes differs from being treated exactly the same.

For example, a senior property management office has a policy of printing a list of available units and pricing every morning. The policy is to provide each applicant with a copy of the list, thereby providing each person with the same information. However, a person with a visual impairment may not be able to access the information on the printed sheet and the information on the list should be verbally reviewed with that person, or provided in an equally accessible format, in order for them to receive equal treatment. This would be considered making a reasonable accommodation for the person's disability in order to provide equal access.

For more information on reasonable accommodations, please see the subsequent section of this report entitled, "Fair Housing Rights of Persons with Disabilities".

One method by which the Fair Housing Center obtains information about fair housing service and treatment is a process called fair housing “testing”. The most commonly accepted definition of fair housing testing is that provided by George Schermer in Guide to Fair Housing Law Enforcement, published by the National Committee Against Discrimination in Housing:

“Testing may be described as a way of measuring differences in the quantity, content, and quality of information and service given to customers by real estate firms and rental property managers, attributable to a difference in race (or national origin, religion, or sex - whatever is being tested). Teams of persons as similar as possible in all characteristics except the variable being tested pose as homeseekers. The team members visit the same real estate agency or apartment complex at closely spaced intervals to apply for the same type of accommodations. Each tester records the responses and treatment received in accordance with a prescribed form. Those two reports are then compared.”

Therefore, fair housing testing is a scientific measure of difference based upon objective reports.

From 2007-2012, the Fair Housing Center conducted just under 300 fair housing tests pertaining to the service and treatment of senior testers posing as homeseekers by housing providers and agents, and documented significant differences on the bases of race, religion, marital status, and disability. In fact, the Fair Housing Center detected instances of potential housing discrimination against seniors in over one-third of its conclusive tests. This signifies that almost one out of every three (3) minority seniors seeking housing in Kent County may meet an unlawful barrier to housing choice solely because of their race, national origin, or disability status.

One-third of minority seniors in Kent County may experience housing discrimination based on their race, national origin or disability.

The Fair Housing Center identified significant differences in treatment, or patterns of differential treatment, which are grouped into one or more of the four following categories:

1. Quality of service

- Ex. 1. Black senior attended for significantly less time than White senior
- Ex. 2. Agent consistently only offering handshake and introduction to White senior and not to Black senior
- Ex. 3. Agent consistently sending a “Thank you” card only to the White senior

2. Information requested of the tester by the housing agent

- Ex. 1. Agent did not request or record contact information of Black senior while recording such for the White senior allowing for follow up contact
- Ex. 2. Agent did not ask Black senior about desired housing options or preferences while requesting such information from the White senior

3. Information provided by the housing agent to the tester

- Ex. 1. Black senior told by agent that no units were available or that availability was unknown while White senior was told by same agent that there were available units
- Ex. 2. Black senior quoted a significantly higher security deposit or application fee
- Ex. 3. Black senior’s requests for information about rental rates or application process ignored while such information was provided to the White senior
- Ex. 4. White senior offered significant rental specials which were not offered to the Black senior (ex. one month free, security deposit waived, etc.)

4. Treatment of tester by the housing agent

- Ex. 1. Black senior not offered a tour of the property while White senior received tour
- Ex. 2. Black senior not offered an application while agent offered application to White senior
- Ex. 3. Black senior steered to an alternate property
- Ex. 4. Black senior not shown available unit while White senior is shown available units

The examples above demonstrate some significant differences in service or treatment that, whether or not intentional, could result in a housing provider receiving an allegation of illegal housing discrimination. These examples also demonstrate other differences that initially may appear insignificant when isolated; however, when these differences occur repeatedly, or in conjunction with other differences, it may establish a pattern of substandard treatment based on a protected class which could subject the housing provider to possible liability. Therefore, consistency in the housing related information requested and provided by housing providers and their agents and in the quality of service and treatment remains a fair housing best practice, promotes equal housing opportunity, and reduces the potential for an allegation of illegal housing discrimination.

In addition to demonstrated differences in service or treatment, Fair Housing Center testing also revealed instances wherein housing providers made potentially unlawful or discouraging statements pertaining to a protected class.

Examples of inappropriate statements:

- An agent of a senior housing provider told a Fair Housing Center tester that, to live within the community, “You don’t have to be Christian, but it helps”.
- A housing provider asked a Black senior tester if they had noticed that there were not many Black people living in the complex, and went on to state that a person’s race or nationality did not make any difference, but it was important that anyone living there would be happy.

While such statements may not themselves rise to the level of a violation of fair housing law, they may be discouraging to certain individuals not belonging to the specific protected class and may result in a lost housing opportunity for the homeseeker and a lost income opportunity for the housing provider. In housing transactions, just as in other aspects of communication, a first impression is often the lasting impression, and, if unfavorable, may be the only impression. Therefore, under fair housing law, it is often best for agents or housing providers to not make any questions or statements which may unlawfully pertain to a protected class.

In some instances, a homeseeker may ask a housing provider questions pertaining to a protected class, such as asking if the agent knows the racial makeup of the community or if there are families living there. Under fair housing, it is best for housing agents to not answer questions from homeseekers which pertain to a protected class, but rather to direct such homeseeker to a neutral data source (such as U.S. Census data, school district data, etc.) where such information could be obtained.

Fair Housing and Advertising



INTRODUCTION

Under fair housing law, housing discrimination includes discriminatory advertising. Both federal and Michigan fair housing laws prohibit discriminatory advertising by making it illegal to make, print, or publish or cause to be made, printed, or published any notice, statement or advertisement which indicates any preference, limitation, or discrimination because of a protected class, or an intention to make any such limitation, preference or discrimination because of a protected class³³. It is important to note that this applies to written and oral notices or statements, including flyers, brochures, deeds, signs, banners, and any document used with respect to a home sale or rental. The law not only applies to the person, agency or company that uses the advertisement, but also any entity that makes, prints or publishes it, including advertising and communications firms, newspapers, multiple listing services, periodicals, and other real estate publications.

A general rule of thumb to follow in fair housing advertising is to describe the property, not the people.

For example, a housing developer hires an advertising company to design a marketing campaign for a new housing development of single family homes. The advertising company designs a campaign that is published in the local newspaper and on billboards. The newspaper advertisements and billboard posters depict a White adult male and female with two White children, and contain the language, “Custom made for people just like us”.

These advertisements, with the use of human models accompanied by exclusionary language, could indicate a preference and unlawful discrimination on the basis of any protected class not represented by the persons on the billboard, i.e. race, color, national origin, disability, etc. The developer, advertising company, newspaper company and billboard company might all be held liable for these advertisements.

Further, the prohibition of discriminatory advertisements includes the prohibition of selective use of human models, a fair housing issue that the Fair Housing Center has identified among senior housing providers throughout Kent County. Human models used in advertising are a direct indication of the people the advertiser is trying to attract. An example of potentially discriminatory use of human models includes using exclusively White models to represent residents or using only senior human models without visible disabilities. As a result, fair housing laws require that human models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area and should indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.³⁴ For more information, see the following section on “Use of Human Models”.

³³ 42 U.S.C. § 3604(c)

³⁴ 24 C.F.R. § 109.30(b).

ADVERTISING WORDS AND PHRASES

A general rule of thumb to follow in fair housing advertising is to describe the property, not the people. This helps lower the risk of publishing or uttering a discriminatory statement. Phrases that expressly state limitations or preferences based upon a protected class (i.e. “White family home”, “no Irish”, “adults only”, “no children”, etc.) are prohibited by fair housing laws. In addition, phrases that *imply* a preference or limitation are also prohibited (i.e. “restricted”, “exclusive”, “looking for a married couple”, “perfect fit for empty nesters”, etc.). In short, any time an advertisement singles out a particular group it runs the risk of violating the law. Note: Terms that describe a type of room or property can be used (i.e. barrier-free apartment, senior housing community, master bedroom, mother-in-law suite, single family home, etc.).

The following advertisements could indicate illegal housing discrimination against seniors:

- “no wheelchairs allowed”
- “housing available for single residents”
- “must be able to live independently”
- “active seniors only”

Before printing or publishing an advertisement, a person should consider these questions:

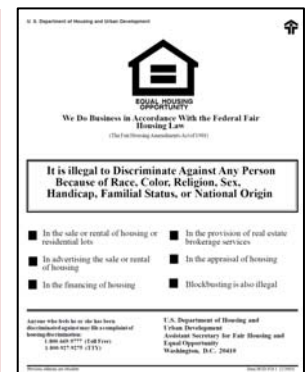
- “Is someone reading this likely to believe a certain protected class will be preferred or denied?”
- “Can I describe the same thing in a way that does not mention or target specific people?”

When in doubt about any advertising language, the words in question should not be used. You may also contact the Fair Housing Center to request review of any advertisement.

USE OF EQUAL HOUSING OPPORTUNITY LANGUAGE OR LOGO

Affirmatively, the federal law states that all advertising for the sale, rental, or financing of residential real estate should contain the Equal Housing Opportunity slogan, logo or statement. Further, all housing providers must display the HUD approved fair housing poster in their place of business. These indicate to the public that the property is available to everyone under the provisions of the Fair Housing Act.

All senior housing providers must display the HUD approved fair housing poster.



The use of the Equal Housing Opportunity slogan, logo or statement, can be as simple as:

- using the three (3) words “Equal Housing Opportunity”, or the Equal Housing Opportunity logo, in print and online advertisements,
- placing the Equal Housing Opportunity logo on brochures, business cards, websites, applications, leases, community rules and other publications, and
- printing the following language on applications, leases, purchase agreements and other housing applications and contracts:
 - “We are an Equal Housing Opportunity provider. We do not unlawfully discriminate on the basis of race, color, religion, national origin, gender, disability, familial status, marital status or age.”



USE OF HUMAN MODELS

Using human models in advertising is a marketing tactic often employed by senior housing providers more so than any other housing provider. According to the Metropolitan St. Louis Equal Housing Opportunity Council's 2009 report titled *Selective Marketing: A Report on Senior Housing Providers' Compliance with the Fair Housing Act Advertising Requirements*, "Senior housing also generally offers a more congregate lifestyle than the housing market as a whole, with many senior housing providers offering congregate meals, social activities and, in some cases, shared rooms. As a result, [senior] housing providers often market the sense of community among residents more heavily than among housing providers as a whole. Advertisements for senior housing are replete with models or pictures of residents, their family members, and staff / caregivers. The kinds of models and residents senior housing providers employ in their websites, brochures, and advertisements can suggest to the average reader that the housing provider is targeting its marketing towards a particular demographic group."³⁵ For that reason it is imperative that senior housing providers set an example of fair, equitable use of human models. Unfortunately, the Fair Housing Center has documented high incidences of selective, discriminatory use of human models throughout Kent County.

Human models should be *clearly* definable as reasonably representing majority and minority groups in the metropolitan area.

For example, a senior housing provider hires an advertising agency to develop a new marketing campaign for their 13 housing communities throughout the State of Michigan. The agency develops a website, brochures, folders, newsletters, bookmarks, and other printed materials, all featuring human models. Over 100 human models appear in these materials, and every single model is White. This represents exclusionary marketing and is prohibited by fair housing laws.

How the use of human models in advertising can convey a message of identification or welcome is also explained by United States District Judge Robert R. Merhige, Jr., Eastern District of Virginia, as follows:

It requires no expert to recognize that human models in advertising attempt to create an identification between the model, the consumer, and the product. In other words, advertisers choose models with whom the targeted consumers will positively identify, hoping to convey the message that people like the depicted models consume and enjoy the advertised product... Thus, it is natural that readers of the... brochure would look at the human models depicted as representing the kinds of individuals that live in and enjoy [the provider's] apartment complexes. If a prospective tenant positively identified with these models, the message conveyed would be that "I belong in these apartments. 'My kind of people' live there." Conversely, if the prospective tenant reading the brochure saw no models with whom he or she could identify, the reader would obtain a message that "these apartments are not for me or 'my kind.'"³⁶

³⁵ Tanna, Mira et al. "Selective Marketing: A Report on Senior Housing Providers' Compliance with the Fair Housing Act Advertising Requirements." St. Louis, MO: Metropolitan St. Louis Equal Housing Opportunity, 2009. 1. Print.

³⁶ Saunders v. General Services Corp., 659 F. Supp. 1042, 1058 (E.D. Va. 1985).

The federal Fair Housing Act requires that human models, if utilized in advertising, should be clearly definable as reasonably representing majority and minority groups in the metropolitan area (including the protected classes of race, color, national origin, gender, and disability).³⁷ This means that viewers should be able to easily and quickly discern the protected characteristics of the models, and that the diversity and demographics of the metropolitan area are fully and adequately represented in the marketing campaign. It is important to note that intent to discriminate is not required to prove a violation of fair housing law. To prove racial discrimination in advertising, it is sufficient that to an ordinary reader the natural interpretation of the advertisements is that they indicate a racial preference in the acceptance of tenants.

For example, a senior housing community operates in an area whose population is 90% White, 6% Black, 3% Asian and 1% other races. Further, there is a significant Hispanic population in the area. Any marketing with human models done by this community should reasonably represent each of these demographic groups, and should also adequately represent persons with disabilities.

Through a project funded by the Kent County Senior Millage, the Fair Housing Center reviewed senior housing marketing materials to survey the use of human models within advertising campaigns for 26 senior housing providers throughout Kent County and discovered startling indications of selective use of human models on the bases of race, national origin, and disability. The tests were designed to investigate whether the human models were clearly definable as reasonably representing majority and minority groups in the metropolitan area, and if the human models portrayed persons in an equal social setting, as required by fair housing laws. As a result, the Fair Housing Center detected a vast underrepresentation of seniors of minority races and national origins, and those with disabilities.

Specifically, the Fair Housing Center counted the number of human models represented in marketing materials by race (Black, White or other) and type (resident, employee or other), and also recorded the number of human models portrayed with a visible physical disability. The marketing materials included promotional brochures, websites, newsletters, DVDs, flyers, inserts, and booklets. The results of the fair marketing tests were determined by compiling the demographics of the human models depicted in the materials by site and then conducting in depth calculation and analysis.

Twenty-two (22) of the 26 tests, or 85%, were determined to reveal evidence of exclusionary marketing on the basis of disability. Explicitly, 12 of the 26 providers did not depict any residents with a physical disability. These 12 housing providers depicted on average 40 residents in the surveyed marketing campaigns, none of which represented persons with visible disabilities. Also, 15 of the 26 tests, or 65%, were determined to reveal evidence of exclusionary and/or discriminatory marketing on the basis of race. In fact, 11 of the 26 housing providers utilized exclusively White human models to represent residents within their advertising campaigns surveyed by the FHCWM. On average, these 11 housing providers depicted 59 residents in the surveyed marketing campaigns, with three (3) depicting over 100 residents, none of which represented seniors of a minority race or ethnic group.

³⁷ 24 C.F.R. § 109.30(b).

At the conclusion of the project, the marketing materials surveyed substantially underrepresented Black residents and residents with disabilities indicating, whether intentional or unintentional, an exclusion of minority seniors and those with disabilities from housing opportunities within Kent County. Of the 1,399 models identified as residents, 96% were identified as White and 4% as Black. In comparison, the senior population in Kent County is 5.6% Black and 90.9% White³⁸. Also, of the 1,399 models identified as residents, only 47, or 3.4%, were depicted with a physical disability. In contrast, 35% of the senior population in Kent County has a disability³⁹. These statistics represent a considerable underrepresentation of Black seniors and seniors with disabilities. As the use of human models in marketing usually represents the target or desired resident, such exclusionary marketing, whether intentional or unintentional, represents a significant barrier to housing choice on the bases of race and disability.

As a result, in terms of fair housing risk management and the use of human models in advertising, a housing provider might adopt a policy prohibiting the use of human models in advertising campaigns or, at a minimum, become familiar with the law in order to use models and model graphics legally. As a housing provider, it is best not to solely rely on the advertiser or communications firm because anyone who is party to making, printing, or publishing the advertisement is liable under the law. Senior housing providers have been held liable for violating fair housing laws even though the human models were current residents or the artwork was “camera ready” and not evaluated from a fair housing perspective.

Senior housing providers using human models should consider:

- Information on the breakdown of minority populations from U.S. Census data or other local sources in order to fairly represent both minority and majority groups in the community;
- All of the protected classes covered in the area where the housing is located;
- If depicting actual residents, the diversity of people displayed in light of the demographics of the metropolitan area and all of the protected classes;
- The social settings shown, including the depicted demographics of employees and residents;
- The size and reach of the campaign to ensure that there are enough photos used to reflect appropriate diversity; and
- The message of the text utilized with the photos in order to fully assess the message and the campaign.

Taking such considerations into account may promote fair advertising practices, expand the target market, and ultimately increase equal housing opportunity.

³⁸ S0102. Population 60 Years and Over in the United States, 2006-2008 American Community Survey 3-Year Estimates, Kent County, Michigan, factfinder.census.gov

³⁹ American FactFinder, 2008 American Community Survey 1-Year Estimates, Kent County, Michigan, factfinder.census.gov

Fair Housing Rights of Seniors with Disabilities



INTRODUCTION

Federal, state and local fair housing laws provide broad protections and rights for persons with disabilities, including the right to reasonable accommodation and modifications as well as ensuring the construction of accessible housing, in order to promote fair housing and equal access to housing choice. It is unlawful for a person to be discriminated against in a housing situation because of the fact that they have a disability. Discrimination includes being denied the opportunity to apply for or rent housing, charged higher rent, subjected to more strict rules or policies, insulted with derogatory remarks and dissuading comments, among others. However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs. Fair housing laws provide strong advocacy tools for persons with disabilities, particularly for those needing reasonable accommodations or modifications.

WHO IS CONSIDERED A PERSON WITH A DISABILITY UNDER FAIR HOUSING LAWS?

The Fair Housing Act defines disability as “a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment, even if having recovered; or being regarded by others as having such an impairment, even if untrue”⁴⁰.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term *substantially limits* suggests that the limitation is significant or to a large degree.

The term *major life activity* means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking.

This definition of disability is very inclusive in order to protect a wide range of persons, including those with physical ailments and emotional or mental illnesses as well as those who do not have a disability but are assumed by others to have a disability.

CAN A HOUSING PROVIDER ASK ANY QUESTIONS ABOUT DISABILITY?

Under the Fair Housing Act, it is generally unlawful for a housing provider to ask if an applicant or resident or anyone associated with an applicant or resident has a disability, or to ask about the nature or severity of a person’s disability. For this reason, senior housing providers should

⁴⁰ 42 U.S.C. § 3602(h)

carefully review their policies to ensure that there are no unlawful inquiries. In particular, some questions placed on applications or asked during the application processes may be illegal.

For example, a housing provider CANNOT ask an applicant or resident:

- About their health or medications
- If they can live “independently” or without help
- If they need help with their daily activities
- To undergo a medical evaluation
- To provide medical records or sign a medical record release form

The rules prohibiting disability related inquiries generally apply to all housing covered by the FHAct, including independent living facilities, assisted living facilities (ALFs) and continuing care retirement communities (CCRCs).

However, there are certain circumstances where limited inquiries into disability **may** be made to (1) determine whether or not a person qualifies for housing made available only to people with disabilities or a specific kind of disability or (2) determine whether or not a person qualifies for a preference for persons with disabilities.⁴¹ According to HUD and the U.S. Department of Justice in the joint statement on “Reasonable Accommodations under the Fair Housing Act”, housing providers may make the following inquiries, provided these inquiries are made of ALL applicants, including those with and without disabilities:

- An inquiry into an applicant’s ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to person with a particular disability.

Nonetheless, the person cannot be asked more questions than what is needed to show that they qualify.

For example, if a particular housing opportunity is only available to a resident with a mobility impairment, then the housing provider cannot ask about mental impairments or request extensive medical records, especially where the mobility impairment is known or obvious.

CCRCs and ALFs

The rules prohibiting disability related inquiries and discrimination on the basis of disability generally apply to all housing covered by the FHAct, including independent living facilities, assisted living facilities (ALFs) and continuing care retirement communities (CCRCs). Because many of these facilities provide both housing and health care, the key in deciding whether a health related inquiry is permitted lies in identifying which services offered dictate such an inquiry. For purposes of determining whether an applicant is to be admitted to housing, the HUD regulations strictly limit health-related inquiries, unless that information is necessary to

⁴¹ 24 CFR 100.202(c)

determine whether an applicant is eligible for that housing because it is available only to persons with a disability.⁴² Thus, for example, applicants seeking to live in independent living communities or ordinary sections of CCRCs should **not** be required to provide any disability related information. However, certain ALFs and CCRCs may maintain that they have a need to collect such information because they are providing care or supportive services in addition to housing. The information sought by such housing providers should not exceed what is needed to determine threshold eligibility and whether an applicant needs and can take advantage of the services offered.⁴³

For those reasons, housing providers should distinguish between whether or not the individual qualifies for the housing, and whether or not they qualify for the services for which they are applying. The housing qualifications should be considered first and the services portion second. Thus, ALFs and other providers of long-term residential care should take steps to clearly separate their health-related inquiries into two stages. The admissions stage would be limited to a narrow set of inquiries designed solely to determine an applicant's eligibility for living in the facility. The second stage could involve more detailed health-related inquiries by physicians, nurses, and other health care staff designed to insure that residents receive proper care.⁴⁴

A suggested practice for CCRCs and ALFs would be to:

- (1) Obtain medical and disability information from an applicant only *after* determining preliminarily whether or not the person qualifies as a resident for housing, and
- (2) The preliminary decision should only be overturned if the medical/disability information shows that the person is not permitted to live in the ALF or CCRCs assisted living section as outlined by applicable state law.

Transitioning through the Continuum of Care

CCRCs are designed to provide a spectrum of housing and care options to allow for a smooth, healthy transition as a person ages and their needs change. Many CCRC's provide independent living, assisted living, and even full nursing-care options. These housing communities provide both housing and health care, making them subject to all the laws and regulations in both areas. All stages of the continuum remain subject to the FHAct and its regulations, and persons with disabilities have the right to choose their housing situation in spite of their required level of care. Each resident's situation should be handled on a case by case basis, taking into account their individual needs and circumstances while respecting their rights.

If a resident lives in the independent living or non-service supported section of a CCRC and develops a disability or their condition worsens, a housing provider cannot necessarily force the resident to move.

If a resident lives in the independent living, or non-supported, section of a CCRC and develops a

⁴² 24 CFR 100.202(c)

⁴³ Robert G. Schwemm & Michael Allen, *For the Rest of Their Lives: Seniors and The Fair Housing Act*, 90 Iowa L. Rev. 121, 186-93 (2004)

⁴⁴ Robert G. Schwemm & Michael Allen, *For the Rest of Their Lives: Seniors and The Fair Housing Act*, 90 Iowa L. Rev. 121, 192-93 (2004)

disability or their condition worsens, a housing provider cannot necessarily force the resident to move to the assisted living section of the community. If the resident's disability does not require any extra support services from the CCRC, then the CCRC could not require the resident to move to the assisted living section. Furthermore, the FHAct prohibits the segregation of individuals on the basis of disability. This may outlaw providing support services only in certain areas of the housing community or separating the assisted living sections of the community.

For example, if a resident starts using a walker or a wheelchair but does not need additional assistance, that resident cannot be forced to move out of their current housing.

If the resident wants to move and qualifies to do so, then they can, but they may not have to move. The housing provider should consult with the resident, and/or the resident's representative, to determine if there are any reasonable accommodations that would allow the resident to remain in their current housing (see below "Reasonable Accommodations and Modifications" for more information). Such reasonable accommodations could include allowing the resident to bring in a chore worker or aide, or other outside supportive services, or bringing the CCRC provided services to the resident's current unit. Even ALFs, which do provide care for residents, need to consider reasonable accommodation requests from residents wishing to bring in outside help or services. If a resident requires the supportive services provided by the CCRC, and cannot be accommodated in their current unit, then they may be required to move.

REASONABLE ACCOMMODATIONS AND MODIFICATIONS

The U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice (DOJ) have issued two joint statements, one entitled, "Reasonable Accommodations under the Fair Housing Act", and the other entitled, "Reasonable Modifications under the Fair Housing Act", which have provided the basis for the information in this section.

See the resources on the Fair Housing Center's website at www.fhcm.org for more guidance and sample documents.

What is a reasonable accommodation?

A "reasonable accommodation", as defined by fair housing laws, 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. The Fair Housing Act makes it unlawful to refuse to make reasonable accommodations that are necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.

For example, if a housing community has a "no animals" policy, then this policy should not be enforced against a person whose disability requires the aid of an assistance animal (support animal, Seeing Eye dog, etc.) because its enforcement would result in the denial of housing opportunity on the basis of disability.

It is important to note that housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of a reasonable accommodation.

Some examples of common reasonable accommodations include:

- Waiving “no pet” rules, or pet fees/deposits for assistance animals
- Allowing an individual with a disability to transfer units or terminate their lease if their current housing situation no longer meets their disability related needs
- Allowing rental payments on the 3rd or 5th day of the month instead of the 1st due to the date that disability related benefits are received
- Allowing a live-in aide for an individual with a disability
- Assigning a specific parking space to an individual who needs accessible parking as a result of their disability

What is a reasonable modification?

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 request for a reasonable modification may be made at any time during the tenancy. The FHAct makes it unlawful for a housing provider or homeowners’ association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.



Example of a reasonable modification

How do you determine if a reasonable accommodation is “reasonable”?

To show that a requested accommodation may be necessary for a person with a disability, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability. A housing provider may deny a request for a reasonable accommodation or modification if there is no disability-related need for the accommodation or if the request was not made by or on behalf of a person with a disability. In addition, a request may be denied if providing the accommodation is not reasonable – if it would impose an undue financial **and** administrative burden on the housing provider or it would fundamentally alter the nature of the providers operations. This determination is best made on a case-by-case basis, due to a variety of factors that should be taken into account, including the cost of the accommodation, the financial resources of the provider, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester’s disability-related needs.

For example, a resident with a disability who is unable to drive asks a housing manager to take them to the post office each week so that they can mail their monthly bills, including their rental payment to the off site management company. The housing complex does not provide any transportation to residents, and does not have the capacity to have staff off-site with residents. The complex denies this request because it is an undue administrative burden and a fundamental alteration of their operations, but they offer to bring the resident’s outgoing mail to the post office each week when the manager routinely visits the P.O. Box.

When and how should a reasonable accommodation/modification request be made?

Applicants or residents may request reasonable accommodations or modifications at any time, and they may also request more than one reasonable accommodation or modification. Though not required, it is recommended the request for an accommodation is in writing. The requester should keep a copy of the request and any supporting attachments. Further, housing providers cannot require individuals to fill out specific forms or follow specific procedures for a reasonable accommodation request.

Whenever a resident or applicant makes clear to the housing provider that he or she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of a disability, he or she is making a reasonable accommodation request. This means the request may be made orally or in writing and housing providers must give appropriate consideration to the request even if the requester does not use any forms or procedures for making such a request.

For example, a resident calls the front office to report a leaky faucet. When the maintenance staff arrives, the resident also mentions that they have had a hard time getting in and out of their shower and would like to discuss installing grab bars. This resident has just made a reasonable modification request. The maintenance staff should acknowledge the resident's request and refer the matter to the appropriate personnel.

The applicant or resident requesting and accommodation should do the following: (1) establish that they are a person with a disability, (2) explain what type of accommodation or modification he or she is requesting, including the specific policy or rule which limits the individual and the specific change that he or she is requesting, and (3) if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and his or her disability. An individual is not required to disclose the disability to the housing provider, but may be asked to provide information to show a connection between the nature of the disability and the requested accommodation.

Tip: Housing providers should acknowledge and document receipt of any reasonable accommodation requests, keep record of any actions taken or information used to evaluate the request, maintain and document contact with the tenant, and keep record of any final determination on the request.

What kind of information can a housing provider request in response to a reasonable accommodation request?

If a person's disability is obvious or otherwise known to the housing provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information pertaining to the requested accommodation. If the need for the accommodation or modification is **not** known or readily apparent, then the provider may request only the information necessary to evaluate the disability-related need for the accommodation. If the disability is not obvious, the housing provider may request reliable disability-related information that:

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

The HUD/DOJ joint statement on “Reasonable Accommodations under the Fair Housing Act” affirms that an individual’s medical records or detailed information are not necessary in most cases and that the individual, a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual’s disability, may provide verification of disability. Once it is established that the individual’s condition meets the definition of disability in the Fair Housing Act, the provider should only seek information necessary to evaluate if the accommodation is needed because of the disability. Such information must be kept private and confidential and only shared with those that need the information to assess the reasonable accommodation or modification request.

What is the “interactive process” of a reasonable accommodation request?

When a request is refused because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs without a fundamental alteration to the provider’s operations and without imposing an undue financial and administrative burden. This is referred to as engaging in the “interactive process” of a reasonable accommodation, and may require several different levels of correspondence to provide an opportunity for both parties to find an acceptable solution. An interactive process in which the housing provider and the requester discuss the requester’s disability-related need is helpful to all concerned because it often results in the most effective accommodation for the requester that does not pose an undue burden or cause a fundamental alteration for the provider.

For example, a resident with a mobility disability asks to be assigned an accessible parking space near her apartment entrance. The management realizes that all of the accessible spaces have already been assigned to other residents. The management should discuss other options with the resident, which might include: whether there are any non-accessible parking spaces near the entrance that would meet her needs, if they could create or repaint a space to meet her needs, if there is any other building entrance she routinely uses that may have available accessible parking that could be assigned, etc.

A fundamental alteration is an accommodation or modification that alters the essential nature of a provider’s operations. If an alternative accommodation would effectively meet the requester’s disability-related needs, the provider must grant it. It is important to note that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation if he or she believes it will not meet his or her needs and the preferred accommodation is reasonable. A failure to reach an agreement or to engage in an interactive process is considered, in effect, a decision not to grant the requested accommodation.

ASSISTANCE ANIMALS

What are assistance animals?

Assistance animals include service and companion animals that perform tasks or provide support to assist people with physical or mental disabilities in daily living activities under fair housing laws. These animals are not considered to be pets, and are not subject to pet fees or “no pet” policies. They do not have to be certified or licensed by any government or training program.

What kinds of assistance animals are there?

The most recognizable assistance animals are those that assist people with obvious physical disabilities, such as guide or seeing-eye dogs. Other common assistance animals include hearing animals, mobility animals and seizure response animals. Under fair housing laws, it is not required that an assistance animal be certified or professionally trained. Companion or emotional support animals also qualify as assistance animals.

These kinds of assistance animals can help persons with emotional or psychological disabilities alleviate symptoms such as depression, anxiety, and stress thereby enhancing the person’s ability to live independently and enjoy their home.



Are dogs the only animals that can be assistance animals?

No. The Fair Housing Act does not place a limitation on the kinds of animals that can be considered assistance animals. Any animal prescribed or recommended by a doctor or other health professional can be an assistance animal. Each assistance animal is unique to an individual and their specific disability related needs. Fair housing assistance animal cases have involved dogs, cats, birds, snakes, monkeys, kangaroos and guinea pigs, among others. **Further, breed, size and weight restrictions do not apply to assistance animals.**

Can a housing provider put any fees or conditions on an assistance animal?

Housing providers **cannot** impose extra fees and conditions on persons with disabilities in exchange for allowing an assistance animal, such as requiring a monthly pet fee, additional insurance, or more frequent inspections. The tenant is still responsible for complying with all other terms of the lease, including the quiet enjoyment of other residents and maintaining the condition of the property. If the assistance animal causes damage to the property, the housing provider may deduct the cost of the damage from the standard security deposit if that is the provider’s common practice applicable to all tenants. Housing providers can also hold the tenant responsible for the assistance animal’s compliance with any applicable state or local regulations on animals, and are not required to accommodate individuals or animals that pose a direct threat.

INDEPENDENT LIVING REQUIREMENTS

“Independent living” is a term used to describe senior housing communities that do not provide medical or other support services; however, the term often leads housing providers to unlawfully require that residents live “independently” or without help or aid. Residents with disabilities who need help with personal care, chores, maintaining their unit, etc. should not be excluded from independent living communities and must be allowed to bring in outside resources to assist them in those daily tasks. Further, if a resident becomes disabled during their tenancy, or their conditions worsen, they cannot be asked or forced to leave due to an “independent living” requirement.

A housing provider cannot limit the amount of outside assistance that a senior with a disability provides for him/herself. Seniors with disabilities have the right to reasonable accommodations to allow for part-time, full-time or even live in care that may be necessary for them to remain in their home. Please note: If the housing provider does not normally provide any maintenance or other supportive services, it is usually the tenant’s responsibility to make suitable arrangements with outside resources to obtain any necessary assistance.

LIVE-IN AIDES AND OTHER IN-HOME SUPPORT

All seniors with disabilities have the right to obtain and bring in the care they need to support their independence and ongoing well-being in their home. Some residents may only need occasional support from social service agencies or health providers, while others may need around the clock care or live-in aides. The FHAct protects the right of seniors with disabilities to request reasonable accommodations to any policies or practices that might otherwise hinder their ability to receive the care or aid that they need. A housing provider may request appropriate documentation to establish the need for the aide or services, as outlined in the reasonable accommodation information above.

In fact, HUD’s regulations for public housing, project-based housing and the Housing Choice Voucher program specifically recognize the entitlement that residents have to a live-in aide.⁴⁵ As defined by HUD at 24 C.F.R. §5.403, a **live-in aide** means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities and who:

- (1) Is determined to be essential to the care and well-being of the person(s);
- (2) Is not obligated for the support of the person(s); and
- (3) Would not be living in the unit except to provide the necessary supportive services.

Examples of common reasonable accommodations relevant to aides or in home support include:

- Not subjecting helpers or aides to “guest” or “visitor” policies that limit the times and/or duration of stay
- Providing the tenant an additional key for their helper/aide
- Moving the tenant to a larger unit to accommodate the aide without a rental increase

⁴⁵ 42 U.S.C. §1437a(b)(3)(B); 24 C.F.R. §982.316

Other issues regarding live-in aides:

- The income of aides should not be counted in the calculation of the tenant's eligibility or rent obligation.
- Relatives may serve as live-in aides
- Live-in aides may be subject to standard criminal history policies or other standard policies where a housing provider can establish a legitimate business reason for doing so; however, live-in aides should not be subjected to more stringent or extra standards
- Live-in aides do not necessarily have to be professionally trained or licensed
- In a 55 or 62 and older community, an aide or helper does not affect the community's ability to qualify for the housing exemption and does not have to meet the age restrictions
- Allowing a live-in aide generally should not result in a rental increase or other additional cost to the resident

ACCESSIBILITY REQUIREMENTS IN NEWLY CONSTRUCTED HOUSING

The FHAct established minimum accessibility requirements in order to ensure that all new housing is open and accessible to persons with disabilities. These requirements, referred to as the “design and construction requirements”, are particularly important to understand and recognize because a vast majority of the newly constructed housing in Kent County is designed and intended for the growing senior population. These housing communities must be built in a way that will meet the long term needs of the aging population.

In particular, the FHAct established that all multi-family (four (4) or more units) housing designed and constructed for first occupancy after March 13, 1991 must meet the accessibility requirements. “Multi-family housing” includes condominiums, apartment buildings, senior housing complexes, assisted living facilities, and time-shares, among others.

Specifically, the FHAct established these seven (7) design and construction requirements:

1. **Must be an accessible building entrance on an accessible route**

- a. An accessible route means a continuous, unobstructed path connecting spaces within a site (i.e. path from parking areas to the leasing office or apartment building), that can be used and negotiated safely by persons in wheelchairs and those with other disabilities
- b. An accessible entrance is a building entrance connected by an accessible route to public transit stops, accessible parking, passenger loading zones, public streets, and sidewalks



Example of accessible route from parking area

- c. **Common violations**
 - i. Steps at the office or housing entrance without an alternative, accessible entrance
 - ii. Steep entrance walk
 - iii. No accessible connection between the building entrance and parking areas

2. **Public and common use areas must be accessible and usable**

- a. Public and common use areas cover all parts of the housing outside individual units, including rental and sales offices, parking lots, storage areas, indoor and outdoor recreation areas, lobbies, mailrooms, and laundry areas
- b. Such areas should be accessible and usable to persons in wheelchairs and those with other disabilities
- c. **Common violations**
 - i. No curb cut or ramp from parking area
 - ii. Accessible route from parking area blocked by parked cars
 - iii. Stairs to laundry areas or mailrooms
 - iv. Mailboxes placed at a height above 48”
 - v. Insufficient accessible parking
 - vi. High threshold at office door
 - vii. No accessible parking near office entrance

3. **Doors into and within all premises must be wide enough to allow passage by persons using wheelchairs**
 - a. **Common violations**
 - i. Doorways have less than a 32” nominal opening
 - ii. Some, but not all doors, within the housing unit are accessible
 - iii. Walk-in closet doors and pantry doors are too narrow
4. **Must be accessible routes into and through housing unit**
 - a. **Common violations**
 - i. Step at primary entry door
 - ii. Exterior door threshold is too high for a wheelchair to traverse
5. **Light switches, electrical outlets, thermostats, and other environmental controls must be in accessible locations**
 - a. **Common violations**
 - i. Switches or thermostat controls are placed higher than 48”
 - ii. Outlets are lower than 15” from the finished floor
6. **Reinforced walls in bathrooms for later installation of grab bars**
 - a. **Common violations**
 - i. Walls are not reinforced during construction
 - ii. Grab bar reinforcement is less than 24” in diameter
7. **Kitchens and bathrooms must be usable, that is, designed and constructed so an individual in a wheelchair can maneuver in the space provided**
 - a. **Common violations**
 - i. Kitchen lacks a 30” x 48” clear floor space in front of sink or stove
 - ii. Bathroom lacks a 30” x 48” clear floor space in front of sink
 - iii. Sink placed in a corner of the countertop

In order to ensure equal access for persons with disabilities to the growing variety of housing options available to seniors within Kent County, it is imperative that housing providers and their designers, architects, builders, contractors and subcontractors understand and adhere to the design and construction requirements of the FHAct. For more information on the design and construction requirements of the FHAct, visit the HUD supported Fair Housing Accessibility FIRST website at <http://www.fairhousingfirst.org/>.



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