

**Contents**

Protected Classes ..... 1  
 Further Protections..... 2  
 Familial Status ..... 2  
 DEFINITION ..... 2  
 HANDICAPPED DEFINITION & OTHER ISSUES ..... 4  
 TENANT SCREENING OR SELECTION PROCESSES ..... 6

**\*Information contained in this section may be out of date with more current requirements**

Title VIII of the Civil Rights Act of 1968 and the amendments of September 13, 1988 states no person shall be subjected to discrimination because of **race, color, religion, sex, age, handicap, familial status, sexual orientation, gender identity, or national origin, as amended** in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

**Exemptions**

Fair Housing Act exempts certain types of housing from the coverage of the law.

The act does not:

1. Prohibit a religious organization 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 origin.
2. Prohibit a private club, not open to the public, which it owned or operated for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members.
3. Prohibit conduct against a person because such person has been convicted of the illegal manufacture or distribution of a controlled substance as defined in 102 of the Controlled Substances Act.
5. Apply to federal programs, which give preference to the elderly and handicapped and those listed with a federal preference category.
6. Housing which consists of four units or less.

**Protected Classes**

There are civil rights statutes on the state and federal level. There are also additional classifications under local ordinances. The civil rights statutes prohibit discrimination in housing on the basis of what is called "protected classes". These are groups of people who have the protections of the civil rights statutes:

**Protected classes when federal funds are used:**

1. **Race**
2. **Color**
3. **Religion**
4. **Sex**
5. **National origin**
6. **Handicapped, physical and mental including alcohol and drug**
7. **Familial Status Sexual Orientation**
8. **Sexual Preference**
9. **Gender Identify**

**Further Protections**

Not to be confused with Affirmatively Marketing requirements, the Affirmative Fair Housing Marketing Regulations (24 CFR 200.600) implement HUD's policy of assuring that persons of similar income levels in a housing market area have a like range of housing choices available to them, regardless of race, color, religion, sex, or national origin.

The act, pattern, or intent of discrimination also extends to classes or groups. Example, most single parents with children have a lesser income level and cannot have additional screening policies or rules and regulations applied to them. It has been stated that this is designed to prompt greater opportunities for persons to participate in housing programs.

**Familial Status****DEFINITION**

Familial status means one or more individuals who have not attained the age of 18 years being domiciled with:

1. A parent or another person having legal custody of such individual or individuals; or
2. The designee of such parent or other persons having such custody with the written permission of such parent or other person.
3. "Familial status" includes any individual, regardless of age or domicile who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

An adult is any person age 18 and over.

**FAMILY EXEMPTIONS - TO BE KNOWN AS "HOUSING FOR OLDER PERSONS"**

The act provides an exemption for housing for the elderly or near elderly. This election:

1. Intended for, and solely (100%) occupied by persons 62 years of age or older; or
2. Intended and operated for occupancy where at least 80% are occupied by at least one person 55 years of age or older where there is the existence of "significant facilities and services specially designed to meet the physical or social needs of older persons".

The Administrative Rules define eight items, which must be addressed. Although there are no regulations regarding how to meet these requirements, suggestions have been given to assist your thought process. The categories of services listed in the regulations are:

1. Social and recreational programs  
Suggestion: May be accomplished by coordinating or conducting a variety of activities.
2. Continuing education  
Suggestion: May be accomplished by making space available, coordinating and conducting classes in a variety of areas of interest geared to the senior market.
3. Information and counseling, recreational, homemaker, outside maintenance and referral services  
Suggestion: May be accomplished by providing a data bank or display of brochures of programs and services available.
4. An accessible physical environment  
Suggestion: May be accomplished by ramps to entranceways and railings in long

hallways of common areas and buildings. In a 75 page decision (HUD v. Murphy No. 02-89-0202-1) a judge ruled against a facility, in part, because there was "very limited provisions made for the handicapped or infirm". He noted that the mobile home park's clubhouse could not be reached by an unassisted handicapped or infirm person. An adjoining swimming pool had no physical characteristics demonstrating "any design or adaptation to the living situations of the senior population." The judge also noted that the residents were responsible for removing snow on their own premises and must provide for maintenance on their own dwellings and areas outside the common grounds.

5. Emergency and preventive health care or programs  
Suggestion: May be accomplished by scheduling on-site blood pressure screening clinics, cholesterol and other services available through local preventive health care programs. This service may also be met by utilizing visiting nursing programs.
6. Congregate dining facilities  
Suggestion: Could be provided by "Meals on Wheels". In the HUD v. Murphy decision, the judge ruled that the owner had to take an active part in the formation or service of the Meals on Wheels program and ruled that simply making tenants aware of the program without involvement was not compliance.
7. Transportation to facilitate access to social services  
Suggestion: Could be accomplished by publishing access to public transportation, rental of community van, or established car pool.
8. Services designed to encourage and assist residents to use the services and facilities available to them.  
Suggestion: Could be accomplished by holding get acquainted sessions, central area with published materials, newsletters.

The Housing facility need not have all of these features to qualify for the exemption if it can demonstrate through independent and objective evidence that the cost of providing significant facilities and services would result in depriving older persons in the relevant geographic area of needed and desired housing.

The following factors, among others, are relevant in determining whether a housing facility satisfies the requirements:

1. Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical and social needs of older persons. The owner or manager must demonstrate that reasonable efforts have been made to provide such services unless they can demonstrate that such efforts would clearly have failed had they been made.
2. The cost of providing such services, including the availability of such services at little or no cost to the owners or managers of the facility
3. The amount of rent charged, if the dwellings are rented. The price of the dwellings, if the dwellings are offered for sale.
4. The income range of the residents of the housing facility
5. The demand for housing for older persons in the relevant geographic area
6. The demand for housing for families with children in the relevant geographic area
7. The availability of other similarly priced housing for older persons in the relevant geographic area
8. The vacancy rate of the housing facility

The administrative rules indicate that the owner or manager of such a facility must publish the policies and procedures, which demonstrate intent to provide housing for persons 55 years of age or older.

The following factors, among others, are relevant in determining whether the owner or manager has complied:

1. The manner in which the housing facility is described to prospective residents.
2. The nature of the advertising designed to attract prospective residents.
3. Age verification procedures
4. Lease provisions.
5. Written rules and regulations.
6. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

### **HOUSING FOR OLDER PERSONS FOR NEW CONSTRUCTION**

New construction need not reach the requirement of 80% occupied by one member 55 years of age or older until 20% of the units in the facility are occupied.

### **HANDICAPPED DEFINITION & OTHER ISSUES**

"Handicapped" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities; and includes having a record of having such an impairment and being regarded as having such an impairment.

This does not include "current" illegal use of or addiction to a controlled substance. This provision does not exclude from protection individuals who have recovered from an addiction or are participating in a self-help group such as Narcotics Anonymous.

"Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

If a landlord can show that the individual is a direct threat to the health, safety, or property of others by current or previous actions, then the landlord is not obligated to rent or be retained as a renter.

In three separate lawsuits, the Department of Justice sued Sigal/Zuckerman Management, Inc., and two of the rental firms on January 18, 1990 in U.S. District Court. The lawsuits accused the firms of refusing to rent apartments because of the handicap of the proposed tenants - recovering alcoholics and drug addicts who have successfully completed a treatment program.

On August 6, 1990, a U.S. District Judge rules it discriminatory to have a screening policy requiring handicapped individuals to be able "to live independently or . . . with minimal aid." The same decision found it unlawful to make an inquiry to determine whether an applicant for a dwelling has a handicap or to make inquiry as to the nature or severity of a handicap of such a person.

### **AIDS RULED A HANDICAP**

Congress includes persons with the virus AIDS within the definition of handicapped.

### **CHEMICALLY SENSITIVE TENANT HANDICAPPED**

A ruling on an unusual claim of handicapped discrimination ruled that an apartment complex violated statute when it refused to make reasonable accommodations for a "chemically sensitive" tenant.

According to the report, the tenant suffered a critical illness in 1984 as a result of exposure to a pesticide. Her immune system was impaired and she became acutely sensitive to a wide variety of chemicals.

Before moving into the apartment, the tenant informed the property manager that she could not tolerate pesticides in her environment. She subsequently wrote two letters reiterating her sensitivity to chemicals and requesting "cooperation" with respect to any contemplated use of pesticides or herbicides. She also suggested that the property manager consider a "natural" method of lawn care, and she provided information on suppliers of non-toxic lawn care products.

In response, the property manager president stated that the apartment complex was not a "medically sensitive care facility" equipped to handle her condition. He stated that it was unreasonable to eliminate from the entire 12 building complex all generally accepted maintenance and landscape procedures. He informed her they would not renew her lease.

Following court actions, an injunction was issued which barred the management company from using any method of pest control not approved by the tenant on her building. The injunction also required the company to give her 48 hours notice of any pesticide spray of "bomb" application within 100 feet of her building. The order required the property manager to adopt an "integrated pest management" program and to bear all costs of that plan and organic lawn care program.

### **ENFORCEMENT**

The Department of Housing and Urban Development (HUD) will continue its role of investigating complaints and promoting conciliation between parties.

By regulations HUD has 100 days from the filing of a complaint of housing discrimination to conduct and complete an investigation. If conciliation fails, and if HUD determines there is "reasonable cause" that discrimination has or is about to occur, HUD must file a charge against the party accused of discrimination. Once a charge is filed, either party may choose, within 20 days, a trial by jury in federal district court. If neither party requests a jury trial, then HUD will pursue the case before an Administrative Law Judge (ALJ).

### **PENALTIES**

Administrative Law Judges (ALJ's) may award any appropriate relief, including compensatory damages, injunctive relief, and the assessment of civil penalties.

In the fiscal year 1989 HUD appropriations provided \$10 million to fair housing activities. They will have the increased staff necessary to carry out enforcement. They have currently provided and will continue to operate and advertise a national 800 number for registering complaints so that "no complaint will fall through the cracks".

Federal District Court Judges would be limited by current law -- compensatory damages, injunctive relief, and punitive damages. Federal judges cannot award civil penalties.

An order by an ALJ may be appealed directly to a federal court of appeals within 30 days to the appeals court for the circuit in which the discrimination is alleged to have occurred. Orders of federal district courts are subject to appeal in the federal court of appeals.

The owners of two Appleton, Wisconsin, apartment complexes have agreed to pay \$42,000 in damages to settle claims that they used an occupancy limit as a pretext for discrimination against families with children. The case found the defendants engaged in a pattern or practice of discrimination based on family status, in part by refusing to rent two-bedroom apartments to more than two persons.

A federal district judge awarded \$18,040 to a family denied the opportunity to rent the home of its choice because it had two children. It was noted on a fact sheet that the owners "prefer adults only" but "will consider other options on individual basis."

### **TENANT SCREENING OR SELECTION PROCESSES**

Selective in screening practices for applicants for rental units are still appropriate, however, you must use the same standards and requirements for **EVERY APPLICANT and APPLICATION.**

Discrimination, as per the regulations is not only the act, but the intent and the pattern, as well as the affect. If what you have as a standard or a policy has a negative effect on a "protected class", then the standard or policy is discriminatory.

Example - if the criteria for tenant screening causes the pattern of denial of housing, additional fees or rent structures for single adults with children (minorities or other protected groups) - the effect of the criteria is discriminatory.

It is recommended by HUD that a WRITTEN, POSTED, or available criteria be established that clearly defines the criteria by which each application will be judged.

By having the screening policy posted the applicant is responsible for reading it, instead of placing the responsibility on property managers to quote policy and running the risk of quoting policy to one applicant and not to another. This especially applies to telephone conversations. **DO NOT QUOTE POLICY** - offer the ability to come get an application.

There is a prohibition against "using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin".

Remember, if the affect is a pattern of rejection of families with children, etc., the policy is discriminatory.

**Note: Using an outside contractor for tenant screening will not relieve the liability from the owner or manager.**