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# Fair Housing: A Guide for Senior Communities

Civil Rights Law in Retirement Communities, Assisted Living Facilities, Adult Foster Care Homes, Continuing Care Communities, Room and Board Facilities and Residential Care Facilities



Prepared by the Fair Housing Council of Oregon  
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This guide gives a general introduction to fair housing law. Some aspects of these laws are obvious and some may be more complicated. In some situations, there may be a case-by-case analysis on the applicability of the laws. If, after reading this guide, you have additional questions about fair housing laws and their application, you can contact the Fair Housing Council of Oregon (FHCO) at (503) 223-8197, or (800) 424-3247, extension 2. The FHCO web site is also a resource, [www.fhco.org](http://www.fhco.org).

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## Quick Start: Fair Housing Basics

- Federal and state fair housing laws make it illegal to discriminate based on protected class: race, color, religion, national origin, gender, familial status, disability, marital status, sexual orientation and gender identity. In some cities and counties it is also illegal to discriminate based on age (over 18) and occupation. These are known as the “protected classes.”
- More than one third of all fair housing complaints involve discrimination based on disability. It is illegal to discriminate against people with disabilities or certain types of disabilities. This includes violating confidentiality about a disability and denying a reasonable physical modification or a reasonable accommodation.
- All dwellings fall under fair housing law, including retirement communities, assisted living facilities, adult foster care homes and skilled nursing facilities.
- In general, all staff should treat all residents and all applicants consistently.
- It is illegal to steer an applicant to another community based on protected class or to segregate a resident in a particular area because of protected class.
- Housing providers need to base their behavior toward residents and applicants on the facts, not on assumptions.

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- Communities that require applicants or residents to be “capable of independent living” as a condition of residency may be in violation of fair housing law. Such requirements discriminate against people with disabilities. A resident has the right to hire live-in caregivers to live independently.
- Residents have the right to use motorized wheelchairs and scooters as long as they are following reasonable traffic and safety rules.
- Providers must consider any request by a resident or applicant with a disability for a reasonable accommodation (a waiver of, or a change to standard rules, policies, procedures, and eligibility criteria).
- An assistance animal, including a companion, therapy or comfort animal, is an example of a reasonable accommodation request.
- It is illegal for anyone who works for a provider to harass, threaten or intimidate a resident because he/she has exercised his/her rights to be free from discrimination based on protected class. If a resident is harassed by another resident on this basis, the provider has a legal obligation to investigate and remedy the problem.

***The Fair Housing Council of Oregon is a resource. For more information on fair housing law, call 800-424-3296, extension 2.***

## Overview of Fair Housing Laws and Other Relevant Civil Rights Laws

The United States has a growing senior population. These projections from AARP illustrate the increasing number of Americans over the age of 65:

- 35.0 million (12.4%) in 2000 (1 in 10 people)
- 39.7 million (13.2%) in 2010
- 53.7 million (16.5%) in 2020
- 70.0 million (20.0%) in 2030 (1 in 5 people)

By the year 2050 the number of people:

- over 65 will more than double
- over 75 will triple
- over 85 will quintuple
- over 100 will septuple (approaching 1 million)



Seniors live in many types of housing. The majority own their own homes. Many live in condos or rentals. As seniors age, an increasing number are living in retirement communities and continuing care communities.

At some point some seniors will move into housing with services attached, such as continuing

care communities, assisted living facilities, adult foster care homes, board and care facilities and residential or skilled care facilities. All of these types of housing fall under federal, state and local fair housing laws, which prohibit discrimination based on many protected classes including race, national origin and disability. For those providing housing in any of these settings, including housing plus services, fair housing laws need

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to be taken into account in tandem with other laws and licensing requirements for specific types of facilities.

These are the federal, state and local laws and ordinances that protect seniors and all Americans from illegal housing discrimination as well as discrimination in lending and homeowner's insurance:

- Fair Housing Act of 1968 and 1988 Amendments: Federal law prohibiting discrimination in the sale, rental and financing of dwellings on the basis of race, color, religion, national origin, sex/gender, familial status (presence of children under 18) and disability.
- Americans with Disabilities Act of 1990: Federal law prohibiting discrimination against individuals with disabilities in all services, programs and activities. This Act specifies that all public use areas in a housing community, such as the rental office, adjacent parking lot and sidewalks, and any features made available to the general public (including a restaurant, community center, pool or meeting space) needs to be physically accessible.
- Section 504 of the Rehabilitation Act of 1972: This federal law





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prohibits recipients of federal funds (for example, HUD or Rural Development funds) from discriminating against individuals with disabilities. The law specifies that housing providers that receive federal funds must take additional steps to ensure a high level of accessibility in designated units, and accommodate individuals with disabilities, such as paying for reasonable physical modifications to individual housing units and common areas in communities.



- Federal Nursing Home Reform Act of 1987: This federal law established a Resident's Bill of Rights, including the right to be treated with dignity; to be free of abuse, mistreatment, and neglect; the right to privacy; the right to accommodation of physical, psychological and social needs; the right to participate in the development/ review of one's care plan and the right to voice grievances without discrimination or reprisal.
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)-Federal law that protects the privacy of individual medical information and imposes privacy requirements on healthcare providers.
- Chapter 659A of the Oregon Revised Statutes: State law that prohibits discrimination in housing based on race, color, religion, national origin, sex/gender, disability, marital status, source of income and sexual orientation.
- Oregon Family Fairness Act-2007: State law that prohibits discrimination based on sexual preference or gender identity.
- Local fair housing ordinances in many Oregon cities and counties extend coverage to other protected classes, such as age and occupation (see attachment 1).

It is important to remember that while some aspects of fair housing law are clear, others require careful analysis of regulations and court decisions that amplify the meaning of these laws in the context of individual cases.

### Definition of “Dwelling” Under Fair Housing Laws

As the size of our senior population is increasing, so are the types of specialized housing that combine housing and services. All types of housing are considered “dwellings” under fair housing law. In addition to houses, apartments, mobile home parks and condominiums, state and federal courts have determined that the term “dwelling” includes:

- All senior housing communities and retirement communities, meaning housing designated for senior adults; this includes “62 and older” and “55 and older” communities. These may be apartment complexes, condominiums, mobile home parks or housing developments. Fair housing law permits designated senior communities that meet relevant legal requirements to exclude children. It is extremely difficult for a non-senior community to convert into senior housing because it is illegal to evict families with children, to discriminate against applicants with children or to market in a way that discriminates against families with children.
- Continuing care communities. These include apartments, cottages and care settings, which may include assisted living and/or skilled care facilities.
- Board and care facilities, also called room and board facilities, which may or may not be licensed
- Assisted living facilities
- Adult foster care homes
- Skilled care or residential care facilities (aka nursing homes)

**All types of housing are considered  
“dwellings” under fair housing law.**

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In determining whether a particular housing is defined as a dwelling under fair housing law, courts consider a number of factors. For example, is the individual in question staying at the entity for only a short time, such as a hotel or convalescent facility to recover from a hospital stay, or is that entity his/her primary dwelling where mail is received and belongings are stored? While there are many federal and state court decisions that resolve this question, a case-by-case analysis may be required for novel housing situations.

While short-term stays may not be covered by fair housing laws, they may be covered by public accommodations laws or the ADA.



Housing that is federally funded, for example HUD Section 202 properties, has requirements that go beyond not discriminating. For example, Section 504 of the Rehabilitation Act of 1973 requires federally-funded providers to build and maintain certain units with a high level of accessibility and, in most cases, pay for physical modifications of units for residents with disabilities (see page 30). Federal Executive Order 13166 requires federally funded housing to provide written translation and oral interpretation in areas where at least five percent of the eligible senior population speaks a language other than English. In Oregon that language is usually Spanish.

In this guide the term “provider” will be used for owners, operators and managers in any of these dwellings. The terms “dwelling” and “community” will be used for all types of housing and facilities.

## Protected Classes

Fair Housing law identifies certain “classes” that are legally protected from discrimination. These laws protect all of us from illegal discrimination because we are all members of several protected classes. The law only prohibits discrimination based on a protected class, but not different treatment based on other factors. For example, a provider may deny an applicant because of insufficient income, regardless of the applicant’s race, religion, etc. In this case the reason for the denial is not the protected class.

**Under federal law, it is illegal to discriminate based on:**

### **Race, Color, National Origin (includes ethnicity, ancestry, etc.):**

- A case in Ohio found a religiously-affiliated assisted living center catering to Hungarian immigrants refused to admit African Americans (for citation, see Attachment 2).
- In Oregon an adult foster care home operator, after polling residents on their views, refused to admit an African-American applicant.



### **Religion:**

- It is illegal to deny housing, or to treat residents differently, based on an individual’s religion or lack of religious faith.
- Some communities inquire about an applicant’s religion or religious beliefs during the application process. The purpose may be to prepare if the resident passes away and there is a need to contact appropriate clergy. But there is no reason to inquire about this until after the resident has moved in. If the applicant is rejected, he/she could challenge the rejection as being based on religious discrimination. If this inquiry occurs after the resident has moved in, we recommend the



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reason for the inquiry be clearly explained and the resident be notified that he/she is not required to answer the question.

- Proselytizing or pressuring residents to attend religious services is prohibited. It is also illegal to deny residents rights or privileges, such as use of community facilities, based on religion. (For example, a community could not permit a Christian Bible study group to meet in the community room and deny a Jewish group.)



## Sex/Gender:

- Discriminating on the basis of sex or gender (whether against men or women) is illegal. The only time it is permissible for a provider to segregate housing on the basis of sex is when the housing has shared living space, such as shared bathrooms (for example, a shared home or a dormitory).

## Familial status:

- In most cases, it is illegal to discriminate against families with children under age 18 in housing. However, there is an exemption for senior housing if 100% of the residents are over the age of 62 or at least 80% of the units have at least one resident over the age of 55.)
- An apartment management company in California was found liable and had to pay damages of \$51,000 for refusing to rent to families with children by claiming the complex was for seniors only. The court found that, while the property was limited to adults, it was not, in fact, limited to seniors (for citation, see Attachment 2).
- There are federally funded senior housing programs, such as Section 202 housing, that permit residents to have their grandchildren live in the community.



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## Disability:

- A provider cannot refuse to provide housing because of a disability or discourage an applicant with a disability or treat a resident or an applicant with a disability in a discriminatory manner.
- Under fair housing law there is a broad definition of disability: “ a physical or mental impairment which substantially limits one or more of such person’s major life activities”, such as walking, seeing, hearing, thinking, breathing, performing manual tasks, learning, working, caring for oneself, etc. This includes instances in which an individual does not currently have a disability but has a “record of having such an impairment” or is “regarded as having such an impairment.”

*Disability: physical or mental impairment which substantially limits one or more of such person’s major life activities”, such as walking, seeing, hearing, thinking, breathing, performing manual tasks, learning, working, caring for oneself, etc.*

The State of Oregon has added these protected classes:

**Marital Status (single, married, widowed, divorced)**

**Sexual Orientation (including gender identity/transgender individuals):**

- It is only permissible for a housing provider to discriminate or segregate on the basis of sexual orientation when the dwelling is a single family home, occupied by the owner, with living space is shared by all occupants.
- Oregon legalized domestic partners with the Oregon Family Fairness Act in 2007. Under this law domestic partners are granted the same rights as married persons and cannot be discriminated against.





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## Source of income:

- This protection is intended to cover income from public benefits programs such as Social Security, Social Security Disability, Supplemental Security Income (SSI), TANF, etc. It also covers rent payments to providers from social service agencies, with the exception of Housing Choice/ Section 8 vouchers, which are issued by housing authorities. Providers may still discriminate based on level of income, but need to be consistent with their eligibility criteria.
- **It is not clear if Medicaid is included under the Source of Income protection. We strongly recommend that providers not discriminate against Medicaid recipients within a community.**



There are local ordinances prohibiting age discrimination in Multnomah County, Benton County and the cities of Beaverton, Bend, Corvallis, Eugene, Hillsboro, Lincoln City, Portland, Salem and Springfield. There are also local protections in some areas for occupation. (For a complete list of fair housing ordinances in Oregon jurisdictions, see attachment 1).

### Federally Protected Classes:

- Race/Color
- National Origin
- Religion
- Sex/Gender
- Familial Status
- Disability

### State Protected Classes:

- Marital Status
- Sexual Orientation
- Source of Income

### Local Ordinances:

- Type of Occupation
- Age over 18

## Illegal Transactions

Fair housing law covers the entire relationship between a provider and applicant/resident from the time of the initial inquiry, through application, residency, and move-out. During this time, any transaction or interaction can give rise to a claim of discrimination.

### Discriminatory advertising:

- Providers should describe the property and, if relevant, the services offered, not the type of residents desired. It's fine to say "Kosher meals provided" or "chapel on grounds", but not to say "Jewish home" or "Catholic community."
- If the housing provider's name has religious identifier in the title, such as "St. Mary's Catholic home", a statement should be added stating: "This home does not discriminate on the basis of race, religion, etc."
- All advertising should include the equal opportunity logo:
- Requiring residents to be able to "live independently" is illegal (for case examples, see page 25). Therefore, an ad stating "We want active independent seniors" has been seen to show a preference for individuals who do not have disabilities and could discourage individuals with disabilities from applying. This is a violation of fair housing law.



Any ads using pictures of people should show a diverse range of individuals. For example a picture of a retirement community only showing people playing golf and tennis, or swimming could present the same message as "We want active independent seniors."

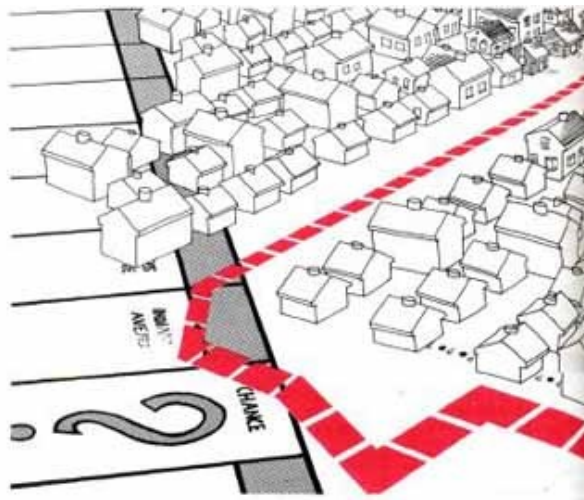




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## Discrimination Against Individuals Interested in Moving Into a Community

- It is obviously illegal to directly refuse to house someone because of protected class status.
- It is illegal to deny housing that is available when it actually is.
- In general, it is illegal to treat individuals interested in the housing differently; for example, not offering application materials to all who inquire; not showing units to all who inquire, etc.
  - ⇒ The exception to the policy of consistency is making a change to a policy or rule in order to provide a reasonable accommodation for an applicant with a disability (see pages 32-39).
- It is illegal to steer applicants away from a community because of their protected class status; for example, discouraging a Mexican couple from moving into a community because there is no one else from Mexico living there, or telling a Gay couple they would be happier in another community that is more welcoming.
- It is usually illegal to steer or segregate within a complex based on a protected class. However, it is acceptable to locate male and female residents in separate areas if there are shared bathrooms. It is illegal to steer or to segregate individuals with disabilities or certain types of disabilities. There are two additional points here:
  - ⇒ It is acceptable to segregate individuals with a specific disability only when it can be demonstrated that such segregation is necessary to provide disabled persons with housing that is as effective as housing provided to others. For example, if an individual with Alzheimer's requires a special living environment



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based on this condition, that person may choose to live in a special Alzheimer's area of a community, but a provider should not automatically steer every individual with this diagnosis to such a facility.

*If an individual with Alzheimer's requires a special living environment based on this condition, that person may choose to live in a special Alzheimer's area of a community, but a provider should not automatically steer every individual with this diagnosis to such a facility.*

- ⇒ It is not acceptable to routinely steer residents with mobility impairments to certain floors or areas in a complex/facility. It is up to the resident to select the unit of his/her choice.
- When screening an applicant, consistent screening criteria must be followed- the same criteria for all applicants unless they request a reasonable accommodation to the application criteria based on a disability (see pages 32-39) .
  - ⇒ The provider may screen applicants based on income, lease violating behavior in previous dwellings, and criminal history. Under the Fair Housing Act, inquiries into an individual's disability and what she/he needs to address that disability are generally considered illegal. State licensing requirements may require providers to make such inquiries to determine eligibility. This presents a potential conflict between fair housing law and state requirements that the courts have not yet addressed.



1.2.3

- It is recommended that when a provider has a vacancy, applications should be reviewed in chronological order, admitting the first individual who meets the requirements as opposed to selecting the optimum candidate from a pool. This minimizes the risk of a fair housing lawsuit. It is in the interest of

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providers to keep clear records of their application process for two years as an applicant who believes he/she has been discriminated against has up to two years to file a fair housing complaint.

- We recommend providers be extremely cautious about ruling out certain disabilities, such as mental disabilities, Diabetes or Alzheimer's. National fair housing advocacy groups and attorneys are paying close attention to states with level of care criteria that routinely exclude certain disabilities; if a fair housing complaint is filed on this basis, federal Fair Housing law could overrule such criteria. There has not yet been clear direction on this question from the courts.
- Housing providers are prohibited from inquiring about the nature and/or severity of a disability during the application process. This includes asking the applicant to disclose medications taken. Once the applicant moves into the community, they may agree to share information necessary to fulfill a care plan and/or provide services (see pages 26 & 27 for more details.)

## Discrimination Against Residents in Conditions, Privileges, Rules and Services

Providers must treat all residents in a community in a consistent manner (for example, who can have a pet or have plants out on their balconies; who receives assistance with decorating a unit, etc.) Even if differential treatment among residents is not motivated by discrimination, any resident could perceive he/she is being treated differently because of protected class and could elect to file a discrimination complaint. Treating all residents in an equal manner helps protect a provider from discrimination complaints.

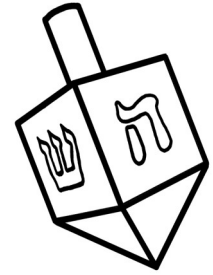


- Be aware that all residents have the right to access a community's facilities and services. For example, a provider can't deny a resident the right to eat in the community dining room because his/her disability makes other residents uncomfortable.

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- Community rules should be in writing; should address specific behaviors and should be enforced consistently among all residents. Providers should review all rules, procedures and eligibility criteria to insure there are no policies and practices, however unintentional, that could result in members of a protected class being treated differently.



For example, a community in Portland had a requirement that all residents fly the American flag on US holidays and decorate their homes with lights for Christmas. This had a discriminatory impact on a family of Jehovah's Witnesses who wanted to move into the community because flying national flags and decorating for Christmas violates their religious beliefs. Even though the intention of the management was not religious discrimination, these requirements had a discriminatory impact based on religion.

*A community in Portland had a requirement that all residents fly the American flag on US holidays and decorate their homes with lights for Christmas. This had a discriminatory impact on a family of Jehovah's Witnesses who wanted to move into the community, because flying national flags and decorating for Christmas is counter to their religion.*

- The only exception to this consistency policy is when a resident with a disability requests a reasonable accommodation (see pages 33-40).
- It appears to be acceptable for providers to organize activities that target only certain residents such as a women's exercise group or a Bible study class, but the provider cannot exclude participation; for example, excluding a Muslim, Jew or atheist from attending a Christian Bible Study, or turning a man away from the exercise group. All residents need to know they also have the right to organize additional activities and use the community facilities for those activities.
- Providers should respond to violations of the rental agreement or service contract consistently. Residents need to pay the rent, not damage the community, not disturb the neighbors, etc. Providers should not make assumptions that such behaviors will occur based on knowing a resident is a member of a protected class; for example,

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assuming a resident with a particular disability will be disruptive.

- All staff must be instructed to never make discriminatory statements in the community. This includes, but is not limited to, disparaging comments about a disability; jokes targeting a religion, national origin, or sexual orientation, and sexual comments. This applies to all staff, including housekeeping, maintenance, groundskeepers, nurse's aides and volunteers.

*Providers should not make assumptions that certain behaviors will occur based on knowing a resident is a member of a protected class; for example, assuming a resident with a particular disability will be disruptive.*

- Harassment based on a protected class is illegal:
  - ⇒ This includes religious proselytizing which could fall under the illegal act of “coercion.”
  - ⇒ It also includes sexual harassment, intimidation and coercion.
  - ⇒ Providers have a legal responsibility to take action when a resident is harassed by another resident based on a protected class. For example, we have seen situations where residents have been harassed based on their religion, sexual orientation and presence of an assistance animal. This includes roommates in residential care facilities. (There may be situations when the resident doing the harassing has a mental disability; the provider may need to help move that resident to another location.)





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### Terminations (evictions, involuntary move-outs, involuntary transfers, etc.)

A resident's housing should be terminated only in accordance with their lease agreement or contract. This includes, but is not limited to nonpayment of rent; destruction of property; harassment other residents; violations of rules related to noise, weapons, or pets, and behavior that presents a direct threat to others. It is illegal to terminate residents because of protected class: because they are Gay, Muslim, HIV positive, etc. Even if protected class is not the stated reason for the termination, the resident may be able to prove that it is, in fact, the real reason.

Residents cannot be terminated from their housing because they don't follow a care plan such as taking prescribed medications. A room and board facility in Portland was fined \$10,000 for doing this.

A resident with a disability may be able to correct lease/contract-violating behavior with a reasonable accommodation. For example, a resident may have a memory disorder leading to them forgetting to make rent payments. He/she may request a reminder call as a reasonable accommodation. Or a resident may have a disability that causes him/her to make a lot of noise, disturbing their neighbors. A reasonable accommodation in this case could involve installation of padding to the walls of the unit to muffle the sounds. The provider should agree to such requests unless they are unreasonable. For the legal criteria in determining reasonableness, see pages 32-41.) We recommend providers notify all residents of their right to reasonable accommodation (see pages 32-41 for more details on reasonable accommodation requests and a detailed protocol on responding to such requests.)

### Who is Liable if Fair Housing Law is Violated?

All staff must follow fair housing law. If a complaint is filed, it could be against the individual who committed the discriminatory act and the owner/operator. If there is a management company, it may also be named as a defendant.

**Note:** Municipalities are required to follow fair housing law as well. For example, if a city or county refuses to permit housing for people with disabilities, there could be a fair housing complaint lodged against it by a provider.

## General Fair Housing Guidelines:

In general, housing providers must treat all applicants and all residents consistently:



- When screening applicants, maintain consistent screening criteria and procedures. Insure all staff have been instructed to treat residents equally in terms, conditions and privileges. The only exception is when there is a change made in response to a reasonable accommodation request (see page 32).
- Respond to actual behavior, not assumptions:
  - ⇒ Do not refuse to house individuals with disabilities whom you perceive would increase your liability.
  - ⇒ Do not refuse to house individuals with certain types of disabilities because you perceive they might be difficult to deal with.

*Watch out for any policies or rules that would have a discriminatory impact on a protected class. For example:*

- ☞ Prohibiting individuals over the age of 80 from moving into a retirement community. Since a higher percentage of individuals over 80 have disabilities, such an age limit would have a discriminatory impact on individuals with disabilities;
- ☞ Requiring medical clearance for applicants over a certain age. Again, older individuals are more likely to have one or more disabilities so this policy would have a discriminatory impact on individuals with disabilities;
- ☞ Requiring all residents to attend Bible study sessions. This has a discriminatory impact on non-believers and falls under discrimination based on religion.

### Additional Requirements for Federally Subsidized Housing

Housing that receives federal funding (from an agency like HUD or Rural Development) has additional fair housing obligations to residents. For example, if a resident with a disability requires a physical modification to her/his unit, such as a roll in shower or lowered counters, the provider is responsible for paying for it.

**Under Section 504 of the Rehabilitation Act of 1973, federally funded providers are required to:**

- ☞ **Have at least 5% of their units (or at least one unit, whichever is greater) meet the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter for persons with mobility impairments.**

An additional 2% of the units (or at least one unit-whichever is greater) must be accessible for persons with hearing or visual disabilities.



- ☞ When a unit that meets the UFAS standards becomes vacant, the provider must first offer it to a qualified individual with a disability who needs the accessible features and is currently living in a non-accessible unit in the same or comparable complex. If there isn't anyone in that category, the next step is offering the unit to the next available qualified individual with a disability who needs the features on the waiting list, skipping over other applicants if necessary. If there is no one in that category either, the unit can be rented to someone without a disability who needs the features, but then there must be language in the lease/contract requiring this individual to move to a non-accessible unit as soon as one becomes available.

- ☞ Distribute accessible units throughout the property in a range of sizes and amenities so the choice of living arrangements for people with disabilities is, as a whole, comparable to that of others eligible for the housing.





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- ☞ Provide auxiliary aids when necessary such as visual fire alarms/ visual doorbells and applications/leases in Braille.
- ☞ Designate an employee to coordinate efforts to comply with these Section 504 requirements if there are 15 or more employees.

- ☞ **Under Executive Order 13166**, federally-funded providers are responsible for providing written translation of critical documents and oral interpretation in locales where at least 5% of the eligible population speaks a language other

- ☞ **An Affirmative Fair Housing Marketing Plan** showing how the provider will market available units is also required. The plan needs to include efforts to attract people less likely to apply because of the racial and ethnic make up of the area where the community is located. This may include targeting specific newspapers, radio stations, television channels, agencies, churches, or social service agencies. It may also involve the use of direct mail, providing information at



community events, and other targeted outreach efforts. Providers are required to monitor the results of their plans and adjust their marketing techniques as necessary.



## The Disability Protection in Depth

The definition of disability under the Fair Housing Act is quite broad, broader than the definition used by the Social Security Administration. While approximately 10.5 million Americans receive benefits through the Social Security Administration, there are as many as 54 million who are protected from housing discrimination based on disability. The Fair Housing Act defines disability as “any physical or mental condition that substantially impairs a major life activity”. A major life activity is any activity of central importance to daily life such as walking, seeing, hearing, performing manual tasks, thinking, learning, communicating, breathing and caring for oneself. The protection includes mental and emotional disabilities, developmental disabilities, cognitive impairments and chronic conditions such as cancer, seizure disorders, HIV/AIDS, autism, cerebral palsy, multiple sclerosis, diabetes, alcoholism, Alzheimer's, heart, arthritis, and drug addiction (provided there is no current use of illegal drugs).

An individual is also legally protected from discrimination if he/she has a history of having a disability, or is regarded as disabled even if he/she does not, in fact, have a disability.

The disability protection is broad, but there are some exceptions. The following individuals are not considered disabled under fair housing law:

- Individuals with a temporary disability (such as a broken ankle);
- Individuals who are current users of illegal drugs (unlike individuals with alcoholism and those who are in recovery from addiction to illegal drugs);
- Individuals with a criminal history related to the manufacturing or distribution of illegal drugs;
- Individuals where fact-based evidence shows current or recent behavior poses a direct threat to the health, safety or property of others.

Providers may set aside units for people with disabilities, or otherwise, favor them in the application and tenancy process, but generally may not favor or benefit one kind of disability over another. There are exceptions for federal programs that fund housing for individuals with specific disabilities such as the Housing for People with AIDS (HOPWA) program.



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A provider cannot maintain a blanket rule excluding individuals with certain disabilities out of hand; instead, providers need to review the specific circumstances and, if applicable, the level of care needs, recognizing that the individual could potentially supplement the provider's services with a private caregiver.

Providers should ask all applicants the same series of questions and not ask questions about the nature or extent of disabilities during the application process. If the housing is federally funded or is a housing plus services community, staff may ask just enough questions to determine eligibility or level of care. Even in these situations, the inquiry should not go beyond that determination to more in-depth questions on the nature of the disability, or medications taken.

To some degree, this "no inquiry rule" applies to current residents as well. Providers should not inquire about a resident's disabilities.



***Any information a resident shares is to be kept confidential and not shared with other residents.***

In Ohio, a property manager disseminated a resident's medical information concerning Obsessive Compulsive Disorder to employees who released it to other residents. The medical information was used by other residents to harass the resident concerning the disability. The Court held that this disability harassment was illegal, and that the management company was liable for disclosing this private information (see Attachment 2 for citation).

## Fair Housing Guide: A Guide for Senior Communities

Never reject an applicant based on a perceived liability. Providers have tort liability for their negligent behavior as it relates to all of their residents; for example, not repairing rickety banisters or addressing a large open ditch the property. There is no higher duty of care unless the provider is participating in certain government programs.



The same general guideline of not making assumptions applies. Deal with lease/contract violating behavior if it occurs. For example, while a resident may have crippling arthritis, do not assume he/she won't be able to write rent checks. An adult child may write and send the checks. While a mobility impaired

senior may not be able to take the trash to the dumpster, perhaps his/her caregiver will do it.



Retirement communities and other housing providers cannot require residents to be able to “live independently.” Residents who need assistance can, of course, utilize a care giver or other services to enable them to continue to live independently. This does *not* mean the community would have any responsibility to provide services that they do not already provide. There have been many cases in this area. Here are two examples:

☞ *A Texas provider required all residents to be ambulatory without assistance in case of an emergency. Health exams were used to aid in the eviction of residents deemed physically or mentally disabled. Illegal inquiries were made into the amount and nature of health care received by residents. The provider probed the mental acuity of residents by asking them to count backwards from 100, identify the US president who used a wheelchair and state the meaning of the phrase “a stitch in time saves nine.” The damages were \$420,000 (see Attachment 2 for citation).*



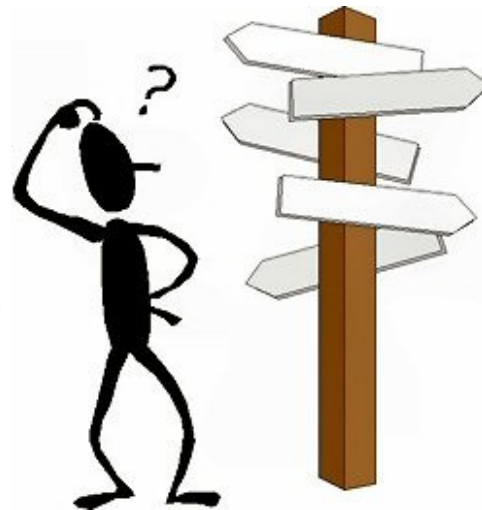
☞ *Similarly, a retirement community in Illinois with an “independent living” requirement and medical exam requirement paid \$220,000 in monetary damages and penalties (see Attachment 2 for citation).*

# Fair Housing Guide: A Guide for Senior Communities

**In housing plus care communities be careful to separate health-related inquiries into TWO distinct steps:**

**1. In admissions screening, the level of inquiry with applicants should be limited to determining eligibility.**

- Screening/admission procedures and criteria need to be consistent. It is illegal, for example, to require additional background checks for applicants with mental disabilities.
- An applicant cannot be rejected because of his/her disability; he/she can be rejected if there are needs the community cannot meet. But again, the resident may be able to meet these additional needs with a private caregiver. While it is permissible to gather just enough information to determine if the applicant's needs exceed the provider's capacity, it is not permissible to inquire in more depth about the nature or extent of the disability during the application process.
- It is not acceptable to reject an applicant whose care needs are within a facility's level of care, but are relatively complicated or expensive. Providers should not "cherry pick," rejecting individuals with more complicated conditions in favor of others who are easier to care for.
- There are three exceptions to this no inquiry rule:
  - ⇒ A provider may lawfully restrict housing to persons with disabilities. This is ordinarily the case with certain federally funded housing programs, such as HUD Section 811, that can only house people with disabilities. In these cases it is appropriate to gather just enough data to determine eligibility-but not to go beyond to inquire on the nature or extent of the disability.
  - ⇒ Some federally funded programs, such as Housing for People with AIDS (HOPWA), house only individuals with certain types of disabilities. In these



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cases, it is appropriate to gather just enough data to determine eligibility, but, again, not to inquire beyond this to the nature or extent of the disability. Furthermore, these programs cannot reject applicants because they have an additional disability.

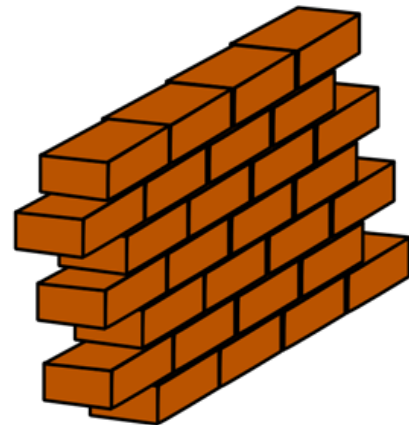
⇒ There may be skilled care facilities sited specifically for residents with certain disabilities, such as Alzheimer's; they may also need to accept residents with different conditions, but similar service needs, such as individuals with developmental disabilities or traumatic brain injuries; the criteria are based less on the specific diagnosis than on the type of care or support needed.



- Skilled care facilities also need to be careful about what information they require from applicants. Some facilities require applicants to disclose more information than is necessary to determine if the facility can meet the applicant's care needs. The information is then reviewed not by doctors or nurses but by administrators, and not for care planning, but for calculating the applicant's potential profitability to the facility. Such a review process could lead to a fair housing complaint.
- Violations in inquiring about disabilities among applicants during application screening are unfortunately still common. While there have not been many complaints filed on this basis to date, there is increasing attention being given to the issue by fair housing attorneys and, no doubt, there will be more cases soon.

**2. After a resident has moved into the community, there can be a more detailed inquiry to insure proper care by health related staff to conduct assessments and plan care. Still, disclosing information related to a disability remains voluntary.**

In general, we advise providers to institute a "firewall" between administrative staff involved in screening applicants and health/services staff who will be involved in providing assistance after applicants have moved in.



# Fair Housing Guide: A Guide for Senior Communities

## Mobility Aids

Mobility aids, such as wheelchairs and scooters, are essential for individuals with mobility impairments and they have the right to them under fair housing law.



A provider cannot charge a deposit or require insurance from a resident who needs a wheelchair or scooter. This individual is legally entitled to have equal access to housing. Requiring a resident to pay extra to be able to live in the community because of a disability is a violation of fair housing law. Of course, the provider can charge for damages if the wheelchair or scooter damages the property.

*The case of HUD v. Country Manor in Minnesota was an important precedent. Residents using motorized wheelchairs and scooters were required to carry liability insurance, supposedly to assure resources would be available to pay for medical treatment for injuries. The defendant paid damages plus attorney fees. This case was cited by HUD Secretary Martinez as an “important precedent for other facilities nationwide” (see Attachment 2 for citation).*



*In another important case, a California provider required all residents with scooters to present a medical order of necessity, obtain liability insurance and demonstrate competence at operating. These residents were required to live in assisted living units instead of independent settings. The scooters were prohibited from dining rooms and other common areas. The case was settled and the provider paid \$560,000 in damages (see Attachment 2 for citation).*





## Fair Housing Guide: A Guide for Senior Communities

Restrictions on mobility assistance devices (e.g. scooters, wheelchairs, walkers) are potentially “discriminatory terms and conditions,” which are illegal. Such restrictions include:



- Requiring a permit for the mobility aid;
- Requiring transfers into dining chairs during meals or otherwise restricting mobility aides from common areas;
- Limiting areas where wheelchairs and scooters can go; for example it is not acceptable to have a rule prohibiting wheelchairs from the dining room because of the “atmosphere” it creates;
- Taking away a resident’s wheelchair because of behavior problems even though the resident proposed a reasonable plan to eliminate the problem.
  - ⇒ In a Pennsylvania case, a community reserved the right to restrict use of motorized devices if they determined the use would constitute a “direct threat to the health or safety of others and would result in substantial property damage to the property of others.” Damages in this case were \$92,500 (see Attachment 2 for citation).

**NOTE:** A provider can have a policy for scooter usage including reasonable traffic and safety rules if there are based on well-founded concerns for safety of residents.





# Fair Housing Guide: A Guide for Senior Communities

## The Right to Reasonable Modifications

Under fair housing law, individuals with disabilities have the right to make reasonable physical modifications to their living units, such as lowering cabinets, installing roll in showers, adding grab bars and installing visual doorbells.

If the community is federally funded, the provider is legally required to pay the reasonable costs for such modifications. In the case of an expensive modification that the provider cannot reasonably afford to finance, it should offer an alternative if at all possible. For example, if it is too expensive to provide an elevator to a resident's upstairs unit, the provider could offer the resident a cost-free move into a downstairs unit.



For providers that do not have federal subsidies, paying for modifications is not legally required, but they may not withhold permission to residents willing to make the modifications at their own expense. Providers can require modifications be completed in a workmanlike fashion with any required permits. If the modification would make it difficult to rent the unit again, the resident can be required to pay to restore the unit to its prior physical condition. The provider can require the resident to pay into an interest bearing account to restore the unit; the account interest must accrue to the benefit of the resident. There should be some flexibility in when the payback occurs; if the provider re-rents the unit to someone requiring the same modification, the funds should remain in escrow. Providers have asked how long the money would need to remain in escrow; there are no federal regulations on this at this time. It makes sense that that if a new resident moves in who wants to retain the modification, he/she would buy out the escrow from the previous resident. Given the shortage of units with accessible features, a best practice for providers is to retain the modification.



A resident may need a modification in a common area of the community. In this case, the resident would be responsible for paying for the initial modification, but the provider would pay for any ongoing maintenance (for example, a wheelchair lift for a swimming pool). A provider may not require a resident to remove a modification made in a common area.

# Fair Housing Guide: A Guide for Senior Communities

## All New Construction of Multifamily Units Must Meet Fair Housing Accessibility Requirements

All multifamily housing built after **March, 13, 1991**, with four or more units, is required to meet these accessibility requirements:

- Doors must be wide enough for wheelchairs.
- There must be an accessible route into and through each unit.
- Light switches, outlets, thermostats, etc. must be placed in accessible locations.
- Bathroom walls must be reinforced to allow for installation of grab bars.
- Kitchen and bathrooms must have sufficient space to allow wheelchairs to maneuver.
- In buildings with elevators, all units served by the elevator must meet these requirements. In multistory buildings without elevators, all ground floor units and common areas must meet the requirements.
- All public and common use areas must be accessible and compliance is at the expense of the provider.



# Fair Housing Guide: A Guide for Senior Communities

## The Right to Reasonable Accommodations

Under fair housing law, a resident or applicant with a disability has the right to request a reasonable accommodation, which is an exception to a provider's standard rules, policies or procedures if that exception is necessary to accommodate the individual's disability.

**All requests must be considered by providers and reviewed on a case by case basis.** The provider may request verification from a qualified individual that the resident or applicant has a disability and that the accommodation being requested is necessary for him/her to live in the community and have equal enjoyment of their housing with the other residents. In most cases an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

A qualified individual can be a doctor or other medical professional, a peer support group, a non medical service agency, a caseworker, a vocational/rehab specialist, counselor, or a reliable third party who is in a position to know about the individual's disability.

Please see Attachment 4 for sample verification form, but verification letters should also be accepted.

If the disability is obvious, a provider should not request a verification. The spirit of the disability protection in the Fair Housing Act is that barriers be removed for individuals with disabilities, not that more barriers be created by excessive demands to meet verification standards.

One common form of reasonable accommodation is parking spot location. For example, a senior apartment complex may have a policy of unassigned parking, but if a resident with a mobility impairment requests a parking spot close to his/her unit as an accommodation, the provider should accommodate that request. The provider is responsible for paying for marking the spot as reserved.



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Residents may need accommodations to read notices in the community; for example, a resident with failing eyesight may request to have notices sent in large print or on audiotape.

Another common reasonable accommodation request is for an assistance animal.

Both service animals and companion or emotional support animals (aka comfort, support, therapy animals) are legitimate reasonable accommodations under fair housing law. These can include, but are not limited to, seeing eye animals, hearing ear animals, animals that assist with balance, animals that warn humans about seizures, migraines and low blood sugar levels, and animals that can help humans deal with clinical anxiety and depression.

While a provider may certainly have a no pets policy, a resident with a disability may request a reasonable accommodation to that policy to have an assistance animal. In this case, the provider cannot charge a pet deposit, just as a deposit cannot be charged for a wheelchair or scooter. The assistance animal is necessary for the individual to live in the housing and a deposit would present a barrier to equal housing access with other residents. Of course, if the animal causes damage, the resident would be responsible for paying for it and if the animal violates the lease agreement or contract (disturbing other residents, etc.), the resident is responsible and may risk termination if the problem is not corrected (see Attachment 6 for a sample assistance animal agreement).

***Both service animals and companion or emotional support animals are legitimate reasonable accommodations under fair housing law.***



***While a provider may certainly have a no pet policy, a resident with a disability may request a reasonable accommodation to that policy to have an assistance animal. In this case, the provider cannot charge a pet deposit, just as a deposit cannot be charged for a wheelchair or scooter.***



## Fair Housing Guide: A Guide for Senior Communities

While providers can certainly require verification from a resident that he/she has a disability and the animal is necessary, they cannot require the animal be “certified.” Most assistance animals are not. (Please see Attachment 4 for a sample reasonable accommodation verification form.)

A resident may also ask for an accommodation to an animal weight and/or breed restriction if the assistance animal is a large animal or restricted breed. Assuming the resident’s medical or therapeutic provider verifies that there is a disability and the animal is necessary, the provider should make the accommodation. Of course, if past rental history shows evidence the animal was a problem at a previous location, this would mean the provider could deny the request-unless the individual can prove the behavior has been corrected (for example, a graduation certificate from obedience school).



Providers can require that assistance animals meet all local governmental requirements; for example, licensing and immunizations.

A resident could also request an accommodation from a policy that prohibits animals in common areas if the individual needs to have the animal with him/her due to the disability. It is acceptable for providers to have reasonable rules such as requiring animals be restrained.

Another common request is for a provider to permit a private caregiver. Even in assisted living and continuing care communities, a resident has the right to employ a part time or live in caregiver.



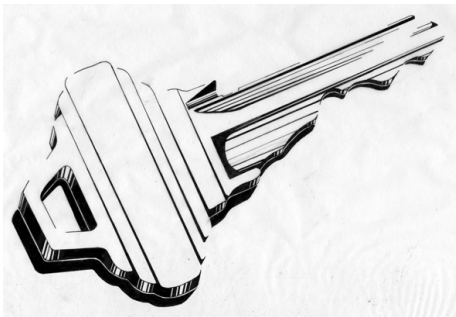
## Fair Housing Guide: A Guide for Senior Communities

The resident has the right to choose to pay a caregiver to provide specific services instead, of or in addition to using caregivers in a facility. In general, it is the right of a resident to have the caregiver of his/her choice. A community does have the right to check the caregiver's criminal history and, given legitimate liability concerns, can require worker's comp coverage and can require the caregiver be bonded.



If the community is limited to residents 62 and older, a younger caregiver should be permitted. If asked, we recommend the community permit the caregiver to park on site and provide an extra key if needed. It is acceptable to require

the caregiver to sign in and out of a secure building.



If the caregiver causes any problems in the community-noise, harassment, etc., the resident is responsible for his/her behavior.



*These are only a few examples of the many types of reasonable accommodations that could be requested. Here are a few more examples:*

- ☞ Requesting rent payment be mailed or picked up instead of dropping it off at an office if there is a mobility impairment.
- ☞ Requesting to pay rent later than the first of the month if the resident's disability check arrives mid-month.
- ☞ Requesting a reminder call for paying the rent if there is a memory-related disability.

## Fair Housing Guide : A Guide for Senior Communities

**All providers should have a standard protocol for responding to reasonable accommodation requests:**

☞ Residents should be aware of their right to reasonable accommodation.

☞ Residents should know who to go to make a reasonable accommodation request.

☞ Requests can be made in writing or orally.

☞ All requests must be considered.

☞ A provider may request verification that the resident or applicant has a disability as defined by the Fair Housing Act, and that the accommodation is, in fact, necessary. This verification can be from a qualified individual knowledgeable about the individual's disability. Usually, this will be a physician, but it could also be a counselor or family member. Some providers use a verification form for this (See Attachment 4 for a sample form), but a verification letter is also acceptable.

☞ Requests should be evaluated in a timely manner.

☞ All requests must be considered and should be granted unless the request is unreasonable as determined by Fair Housing law:

- There is no connection between the disability and what is being requested.
- There is clear evidence that granting the request would be too costly and an undue administrative burden for the provider (the provider lacks the resources/staff capacity to make the accommodation or demonstrates the accommodation would interfere with the right to quiet enjoyment of other residents).
- Granting the request would be a fundamental alteration of the provider's business (for example, a request that a provider take the resident's assistance animal for walks).

## Fair Housing Guide: A Guide for Senior Communities

A request cannot be rejected simply because there is an assumption it will be problematic for other residents. If the accommodation does, however, create a negative impact on another resident's disability, that can be considered; for example, if a resident with an anxiety disorder needed to have his/her assistance animal in the common areas and this triggered post traumatic stress syndrome for another resident with a fear of dogs, that would have to be analyzed on a case by case basis to determine if there is a way to resolve the problem.

An applicant, who does not yet live in a provider's community also has the right to make a reasonable accommodation request. An applicant could request the provider waive eligibility criteria related to rental, credit or criminal history if that problem was directly related to a disability and the applicant can verify the problem has been corrected.



- ☞ For example, perhaps the problem was damage to a unit, but the applicant has a mental disability and at the time of the damage he/she was not taking prescribed mental health medications. The individual now does take the prescribed medications and the problem has ceased. The applicant should be able to verify with letters from mental health professionals or other qualified individuals that the problem was directly related to a disability and has been

corrected. The provider would need to review the applicant's request and make a determination. The applicant would, of course, need to meet all other eligibility guidelines. If the problem is related to criminal history and there is clear evidence of a direct threat of danger to others in the community or property, that could override the request.



A resident also has the right to request a reasonable accommodation after receiving a notice of termination (e.g. eviction, involuntary move out, involuntary transfer)



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from a provider if the problem is directly related to a disability and he/she has a plan for resolving it. For example, if the problem is poor housekeeping and the resident can verify the poor housekeeping is directly related to a disability, and that he/she has arranged to bring in a house keeping service, the termination notice should be rescinded. If the problem is that the individual is disturbing other residents, the accommodation requested could involve the resident committing to use mental health services. Again, the provider should grant the request so long as it does not impose an undue burden or constitute a fundamental alteration.

In Massachusetts, a resident had auditory hallucinations she believed were coming from her wall. To stop them, she would hit the walls with a stick or throw objects at the walls, including water. This caused damage to the walls and ceilings. The Court held that regardless of these actions, the resident was entitled to reasonable accommodation that postponed any eviction action to allow her time to pursue a “program of outreach and counseling” (see Attachment 2 for citation).

Another example is a resident receiving a termination notice because his/her health has deteriorated to a point beyond the capacity of the assisted living facility or other provider and then responding with a reasonable accommodation request to bring in a private caregiver or caregivers to provide additional assistance.



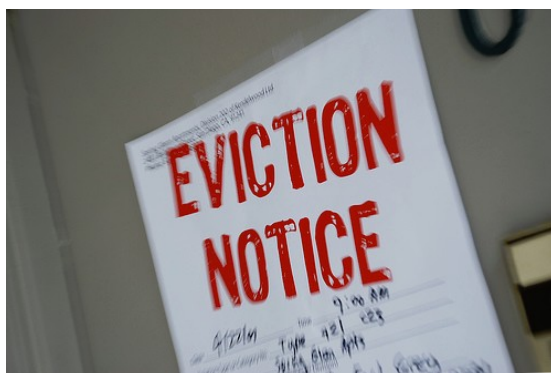
## Fair Housing Guide: A Guide for Senior Communities

***There is no limit on the number of times an individual with a disability can request a reasonable accommodation from a provider. The provider must use the same protocol to respond to each request made.***

If the resident keeps receiving termination notices and keeps proposing changes in behavior that don't materialize, then the law recognizes the right of the provider to determine the situation has become an undue burden and move forward with the termination. The law doesn't specify how many "chances" a resident has to correct this behavior; it would come down to when the provider has documented that the time and effort devoted to the situation has created an undue burden.

If a provider denies a reasonable accommodation request for reasons outside the protocol (too costly and undue burden or fundamental alteration of what the provider offers), it is probably a violation of fair housing law. The resident could then file a

fair housing complaint against the provider. It is in the provider's interest to clearly document why an accommodation request is turned down. If there is a fair housing complaint filed, the provider's records would be reviewed as part of the investigation.



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Again, we strongly recommend that providers notify all residents about their right to reasonable accommodation at move in, at recertification, if applicable, and if they serve a termination notice.

### Enforcing Fair Housing Law



Facing a fair housing lawsuit is a risky proposition for providers. There have been fair housing cases filed against retirement communities, assisted living communities, continuing care communities, adult foster care providers, room and board facilities and skilled care facilities. Damages can be as high as hundreds of thousands of dollars and may include compensatory damages, punitive damages, civil penalties, injunctive relief, declaratory relief and attorney fees. Ignorance of the law is not a defense.

An applicant or resident who believes he/she was discriminated against has up to two years to file a fair housing lawsuit against a provider and/or one year to file an administrative complaint with the appropriate government agency.

Usually, the initial complaint call is made to the Fair Housing Council of Oregon (FHCO) and the complaint proceeds through the Oregon Bureau of Labor and Industries (BOLI) Civil Rights Division, the US Department of Housing and Urban Development (HUD), the US Department of Justice (DOJ) or individual attorneys.

A fair housing investigation may involve reviewing a provider's paperwork, interviewing witnesses and conducting "tests", similar to "secret shopping." Testers pose as applicants with a provider and then report on how they were treated. FHCO complies with vigorous HUD testing guidelines to ensure and fair and accurate assessments of whether housing discrimination is occurring.

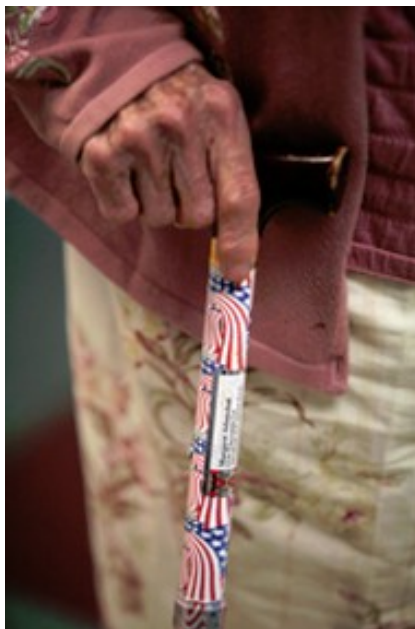


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The case may go through an administrative process through BOLI or HUD.

In this case, there may be an attempt to reach a conciliation agreement between the parties, if both agree. If BOLI or HUD finds evidence that discrimination occurred and both parties do not agree to conciliate, they will issue a determination of “reasonable cause” and charge the provider with violating the law. An Administrative Law Judge would then hear the case unless either party elects to have the case heard in federal or state civil court. (See Attachment 6 for a detailed flow chart on the enforcement process.) If the case is filed through an attorney, the hearing would be in US District Court.

It is illegal for providers to retaliate against any resident who files a fair housing complaint. This includes coercion, intimidation, threats, denying services or repairs, attempting to terminate a resident, etc. This protection extends to third parties who encourage the resident to file the complaint or aided in the process. A valid claim of retaliation can exist even if it is found that the provider did not, in fact, engage in any discriminatory activity.



## Best Practices for Providers

- Base behavior with residents on facts and not assumptions based on protected class. Be aware of any assumptions you may harbor about certain groups and make sure you don't permit those assumptions to influence your behavior. When screening applicants, use only individualized and fact-based criteria such as rental history, criminal history, level of income, etc. Don't make decisions based on your past experience with residents from the same protected class, including residents with the same type of disability.
- Be consistent in your treatment of all residents and applicants. This includes the application process and application criteria, access to facilities and programs, privileges, and enforcement of rules. (The only exception is a reasonable accommodation.)
- Have clear written rules that address specific behaviors. They should relate to the care and cleanliness of the community and the safety and comfort of the residents. Again, there may be an exception made to a consistent rule, policy or procedure as a reasonable accommodation for a disability.
- Be friendly with all your residents, but be very careful about establishing personal friendships with them. Maintain clear boundaries. Be aware that perceived favoritism could be construed as discrimination based on protected class.
- Be conscious that a comment made by anyone on a provider's staff could make a resident uncomfortable, regardless of the intent. Don't ever make jokes or other comments about a particular race, religion, sex/gender, national orientation, disability, sexual orientation, etc. Do not make sexual comments that could be considered harassment.
- Make sure residents are aware of their fair housing rights, including their right to reasonable accommodation and right to protection from harassment. We recommend this information be given at move in. Newsletters and posters are also valuable ways to notify residents of their fair housing rights. The right to reasonable accommodation should be listed alongside the Patient's Bill of Rights in skilled care facilities. If a resident is given a notice of termination, it should be accompanied with information on the right to a request reasonable accommodation.



## Fair Housing Guide: A Guide for Senior Communities

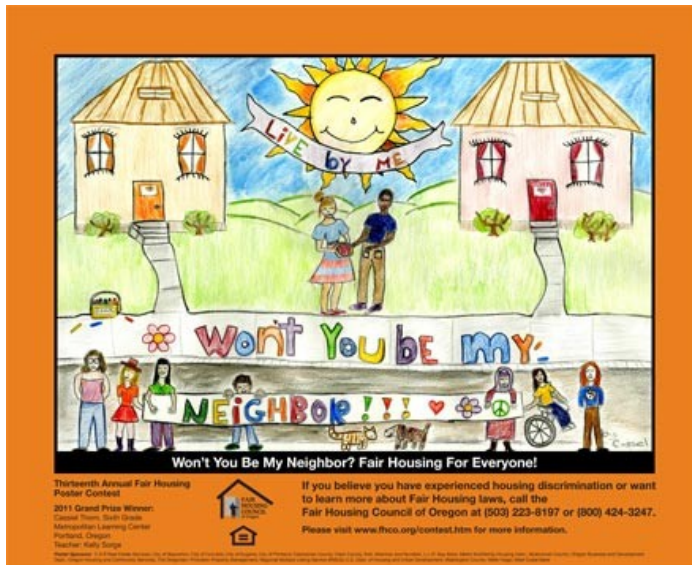
- Review rules, procedures, eligibility criteria, etc. to determine if there are policies and practices, however unintentional, that could result in members of a protected class being treated differently.
- In housing plus care communities, create a “firewall” between admissions staff and health care staff on issues related to disability. Admissions staff should determine only whether an applicant meets the essential entry requirement including a minimal inquiry into whether the resident is appropriate for the level of care offered. Information gathered to plan the applicant’s health care should be segregated and remain unavailable until after the eligibility determination has been made.
- We recommend communities do everything possible not to separate couples into different areas.
- Do not assume all couples are heterosexual. Use terms like partner instead of husband/wife.
- Ensure that all staff receive information on their fair housing responsibilities upon hiring and we recommend annual refresher trainings as well to reinforce key concepts and introduce any new requirements.
- Create an inclusive environment that recognizes the diversity in their community; for example, including people from non-Christian traditions in holiday season celebrations. If a community offers organized activities, they should make sure there activities available that people with disabilities can participate in. Newsletters and community bulletin boards can be important tools for in involving residents in a wide range of activities.





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- Post the HUD equal opportunity poster in a prominent location on the property (for a copy of poster, see attachment 7). The Fair Housing Council of Oregon also produces a colorful fair housing poster every year and will provide posters to providers free of charge.



- Institute clear protocols in the community:
  - ⇒ Consistent screening criteria and procedures for all applicants that do not discriminate based on protected class, including disability
  - ⇒ Clear rules based on behaviors
  - ⇒ Protocols designed to maintain resident confidentiality
  - ⇒ Protocols for how staff will respond to requests for reasonable modifications and reasonable accommodations
  - ⇒ Protocols for responding to acts of neighbor on neighbor harassment
- Determine who on staff is responsible for addressing any fair housing related issues (responding to complaints, reviewing requests for reasonable modifications and accommodations, responding to complaints of harassment, etc.)
- Maintain clear and legible files or logs for two years. This should include information on applicants, information related to resident-on-resident harassment, reasonable accommodation requests and discrimination complaints.

### **Additional Resources:**

If you have additional questions about your requirements to follow fair housing law, you can contact:

- **The Fair Housing Council of Oregon (FHCO):** FHCO can provide additional information about fair housing law. FHCO is private nonprofit agency serving Oregon and SW Washington, established to promote equal access to housing through education, outreach, technical assistance and enforcement. FHCO responds to requests for information from applicants, residents and providers, but does not dispense legal advice. Nothing discussed with providers seeking information will be used against them. (The only time FHCO becomes involved in any action against a provider is if an applicant or resident approaches FHCO for assistance with filing a complaint.) 503-223-8197, extension 2 or 800-424-3247, extension 2; [www.fhco.org](http://www.fhco.org)
- **Oregon Bureau of Labor and Industries (BOLI) Civil Rights Division:** BOLI can assist applicants and residents with filing fair housing complaints. They also offer technical assistance and resources for providers. [www.oregon.gov/BOLI](http://www.oregon.gov/BOLI)
- **US Department of Housing and Urban Development (HUD):** The Office of Fair Housing and Equal Opportunity at HUD administers federal laws and establishes national policies to insure all Americans have equal access to housing. Their website offers a wide range of useful documents, handouts and required postings-including the equal opportunity poster in English and Spanish. [www.hud.gov](http://www.hud.gov)
- **Your attorney**

# Fair Housing Guide: A Guide for Senior Communities

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## Written Materials

- Michael Allen, *We Are Where We Live: Seniors, Housing Choice, and the Fair Housing Act*: [http://www.americanbar.org/publications/human\\_rights\\_magazine\\_home/irr\\_hr\\_hr\\_spring04\\_seniors.html](http://www.americanbar.org/publications/human_rights_magazine_home/irr_hr_hr_spring04_seniors.html)
- Michael Allen and Susan Ann Silverstein, *Preserving Elders' Housing Rights*: <http://www.bazelon.org/LinkClick.aspx?fileticket=4-ZE3VhdZbo%3D&tabid=241>
- Eric Carlson, National Senior Law Center, *Disability Discrimination in Long Term Care: Using Fair Housing Act to Prevent Illegal Screening in Admissions to Nursing Homes and Assisted Living Facilities*: <http://law.bepress.com/cgi/viewcontent.cgi?article=7600&context=expresso&sei-redir=1#search=%22,+Disability+Discrimination+in+Long+Term+Care:+Using+Fair+Housing+Act+to+Prevent+Illegal+Screening+in+Admissions+to+Nursing+Homes+and+Assisted+Living+Facilities%22>
- *Joint Statement on Reasonable Accommodation*, HUD and Department of Justice, [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_7502.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7502.pdf)
- National Seniors Citizens Law Center, *LGBT Older Adults in Long Term Care Facilities*: [http://www.lgbtagingcenter.org/resources/pdfs/NSCLC\\_LGBT\\_report.pdf](http://www.lgbtagingcenter.org/resources/pdfs/NSCLC_LGBT_report.pdf)
- Robert Schwemm and Michael Allen, *For the Rest of Their Lives: Seniors and the Fair Housing Act*: <http://www.bazelon.org/issues/housing/moreresources/articles/11-04iowalawreview.pdf>





# Attachments

Fair Housing Protected Classes in Oregon																
	Federal (5)	State	Counties:	Municipalities:												
			Multnomah Co.	Benton Co.	Ashland (5)	Beaverton	Bend	Corvallis	Eugene	Hillsboro	Lincoln City	Lake Oswego	Portland	Salem	Springfield	
	42 USC 3601 et seq.	ORS 659A-145 & 421	Mult. Co. Code 15.340 et seq.	Benton Co. Code Chapter 28	Ashland Mun. Code 10.110.010 et seq.	Beaverton City Code Chapter 5.16.015 et seq.	Bend City Code 5.700 et seq.	Corvallis Mun. Code Chapter 1.23	Eugene City Code 4.613 et seq.	Hillsboro City Code Chapter 9.34.005	Lincoln City Code Chapter 9.14.050	Lake Oswego City Code Chapter 34.22.060	Portland City Code Chapter 23.01	Salem Municipal Code Chapter 97	Springfield City Code 5.558 et seq.	
<b>Protected Class</b>																
Race	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Color	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Religion	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
National Origin	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Sex (1)	X	X (6)	X	X	X	X	X	X	X (6)	X	X	X	X	X	X (6)	
Familial Status (2)	X	X	X	X	X (9)	X	X	X	X	X	X	X	X	X	X	
Mental or Physical Disability	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Source of Income (3)		X	X	X		X		X	X	X		X	X	X		
Marital Status		X	X	X		X	X	X	X	X	X	X	X	X	X	
Age over 18 (2)			X	X		X	X	X	X	X	X		X	X	X	
Sexual Orientation		X	X (7)	X (7)	X	X	X	X (7)	X (7)	X	X	X	X (7)	X (7)		
Gender Identity		X	X (8)	X		X	X			X	X	X	X (8)	X (8)		
Type of Occupation (4))			X	X		X		X	X				X	X		
Ethnicity									X							
Ancestry																
Domestic Partnership									X	X	X			X		
(1) Oregon state law (ORS Chapter 90) provides specific protection for Domestic Violence Survivors in rental transactions.																
(2) generally doesn't apply with respect to housing for "older persons"																
(3) most statutes provide exceptions for recipients of federal rent subsidy payments under 42 USC 1437f (Section 8) or income derived in an illegal manner																
(4) this protection is derived from the definition of "source of income"																
(5) certain religious organizations or private clubs are allowed to give members preference; certain owner-occupied units are exempt																
(6) may not be protected if real property is such that protection would result in unrelated persons of opposite sex using same bath or bedroom facilities																
(7) some exceptions apply (in certain owner-occupied units and property owned by a religious organization)																
(8) some exceptions apply (in certain owner-occupied units and property owned by a religious organization); documentation of gender status may be required in some situations																
(9) some exceptions apply (i.e.: where dwelling is less than 400 sq ft.; if state/federal housing; where regulations restrict occupancy)																



## Attachment # 2 : Cases Cited in Guide

### Cases Cited in Guide

- Page 9**      United States v. Lorantffy Care Center, Ohio, 1998
- Page 10**     Housing Rights Center v. Galaxy Apartments, California, 2002
- Page 24**     Neudecker v. Boisclair Corp., 8<sup>th</sup> Circuit, 2003
- Page 25**     United States v. Pacific Life Insurance, Texas, 2006
- Page 25**     United States v. Resurrection Retirement Community, Inc.,  
Illinois., 2002
- Page 28**     HUD v. Country Manor, Minnesota, 2001.
- Page 28**     United States v. Covenant Retirement Communities West,  
California, 2007
- Page 29**     United States v. Twining Village, Pennsylvania, 2005
- Page 38**     City Wide Associated v. Penfield, Massachusetts, 1991

## **Sample Policy on Resident-on-Resident Harassment**

As a provider of housing programs, we have a responsibility to all who are residing or participating in our housing programs to make sure that you know how you and others are granted protection under Fair Housing Laws.

We will respond to any and all complaints of harassment, threats, or intimidation related to race, national origin, religion, disability, gender, marital status, familial status (presence of children), source of income, sexual orientation, and gender identity against residents, or staff.

If we are informed of or witness a behavior that is considered a violation of Fair Housing law, we will take timely and appropriate action. We will notify the person(s) accused of the problem behavior of the following:

- 1) The behavior which occurred or was said to occur, and how the behavior is a violation of Fair Housing Laws
- 2) That such behavior will not be tolerated
- 3) Potential or actual actions which will be taken by our agency in order to enforce Fair Housing protections

Please be aware that depending on the seriousness of the incident, the behavior may be grounds for termination of residency. If you have questions about what types of behaviors which would be considered "harassment, threats, or intimidation" please ask us. We can provide you with examples and more information.

We also hope that all residents, guests or staff who experience an interaction which may be a Fair Housing violation report the incident to a member of our staff (space for the name or position) quickly. Our agency will not allow retaliation against a resident who comes forward with a complaint about such behavior or is a witness who supports the complaint.

Our standard is that we will communicate respectfully with one another and we will speak out if we are mistreated or witness others being mistreated. If you are too frightened or uncomfortable talking to our agency staff about an incident, please contact the Fair Housing Council of Oregon at 503-223-8197 or (800) 424-3247.

## Sample Verification of Request for Reasonable Accommodation Form

*If a housing provider requests verification of a tenant's disability and/or verification of the need for the reasonable accommodation, this form should be given to a qualified individual\*.*

Name of person requiring accommodation: \_\_\_\_\_

Description of accommodation being requested: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I understand that under federal and state law, an individual is disabled if he/she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, thinking, communicating, learning, performing manual tasks, and caring for oneself.

Impairments also include such diseases and conditions as orthopedic; visual; speech and hearing impairments; Cerebral Palsy; autism; seizure disorder; Muscular Dystrophy; Multiple Sclerosis; cancer; heart disease; diabetes; HIV; mental retardation, mental and emotional illness; drug addiction; and alcoholism. This definition does not cover any individual who is a drug addict and currently using an illegal drug, or an alcoholic who poses a direct threat to property or safety because of alcohol use (224 CFR Part 8.3 and HUD Handbook 4350.3, (Exhibit 2-2).

I certify that \_\_\_\_\_ has a physical/mental (circle) disability which meets the definition stated above.

I have treated \_\_\_\_\_ (person with a disability's name) since \_\_\_\_\_ (date) for a physical/mental (circle) condition. I have evaluated and/or treated \_\_\_\_\_ (person with a disability's name) \_\_\_\_\_ (number of) times in the past 12 months.

**Important Note:** *Revealing a diagnosis puts the person with a disability at risk of additional discrimination.*

I verify that this request is directly related to his/her disability and is necessary to afford him/her the opportunity to access housing, maintain housing, or fully use/enjoy housing. (Necessary indicates necessity as opposed to only a matter of convenience or preference).

I recommend that the request for \_\_\_\_\_ be approved.

I certify that the information above is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Professional Title: \_\_\_\_\_

Name of Clinic, Hospital, etc.: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_



*\*A Qualified Individual can be a doctor or other medical professional, a peer support group, a non-medical service agency, a caseworker, a vocational/rehab specialist, counselor, or a reliable third party who is in a position to know about the individual's disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.*



# ASSISTANCE/COMPANION ANIMAL AGREEMENT ATTACH A PHOTO OF THE ASSISTANCE ANIMAL

DATE \_\_\_\_\_ PROPERTY NAME / NUMBER \_\_\_\_\_

RESIDENT NAME(S) \_\_\_\_\_

UNIT NUMBER \_\_\_\_\_ STREET ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

Owner/Agent has granted Resident's request for an aid/assistance/companion animal. The resident agrees to the following:

1. Only the following described assistance animal will reside in my apartment: \_\_\_\_\_
2. The assistance animal must be properly licensed and have shots required by statute or regulation at all times.
3. No assistance animal with a history of aggressive, threatening or violent behavior will be allowed.
4. The assistance animal will not be allowed out of my apartment except when under my control.
5. The assistance animal will not be chained or tied in any way to the exterior part of the building.
6. The assistance animal will not be allowed to use any part of the property for depositing waste. Should this occur accidentally, I will immediately pick up the waste.
7. The assistance animal will not be allowed to make excessive noise or engage in threatening conduct which might disturb other residents.
8. Any animal waste that is accumulated in a tray inside the apartment will be disposed of properly and promptly.
9. The resident will immediately notify the manager of any personal injury or property damage caused by the assistance animal.
10. Any damage attributed to the assistance animal will be paid promptly by the resident.
11. Any additional assistance animals or any change of assistance animal will require a new agreement.
12. Resident, any guest or invitee shall indemnify, defend and hold Owner, Owner's agents, and employees, harmless from and against any actions, suits, claims, and demands (including legal fees, costs, and expenses) arising from damage or injury to any person or property of others by any assistance animal owned, kept, housed, or maintained by Resident, his/her guest or invitee.

**No Additional fee, deposit or insurance will be charged or required relating to the assistance animal.**

This agreement does not in any way alter the Landlord's right to pursue an eviction under the Landlord/Tenant Law

I certify that my pet has no history of aggressive, threatening or violent behavior.

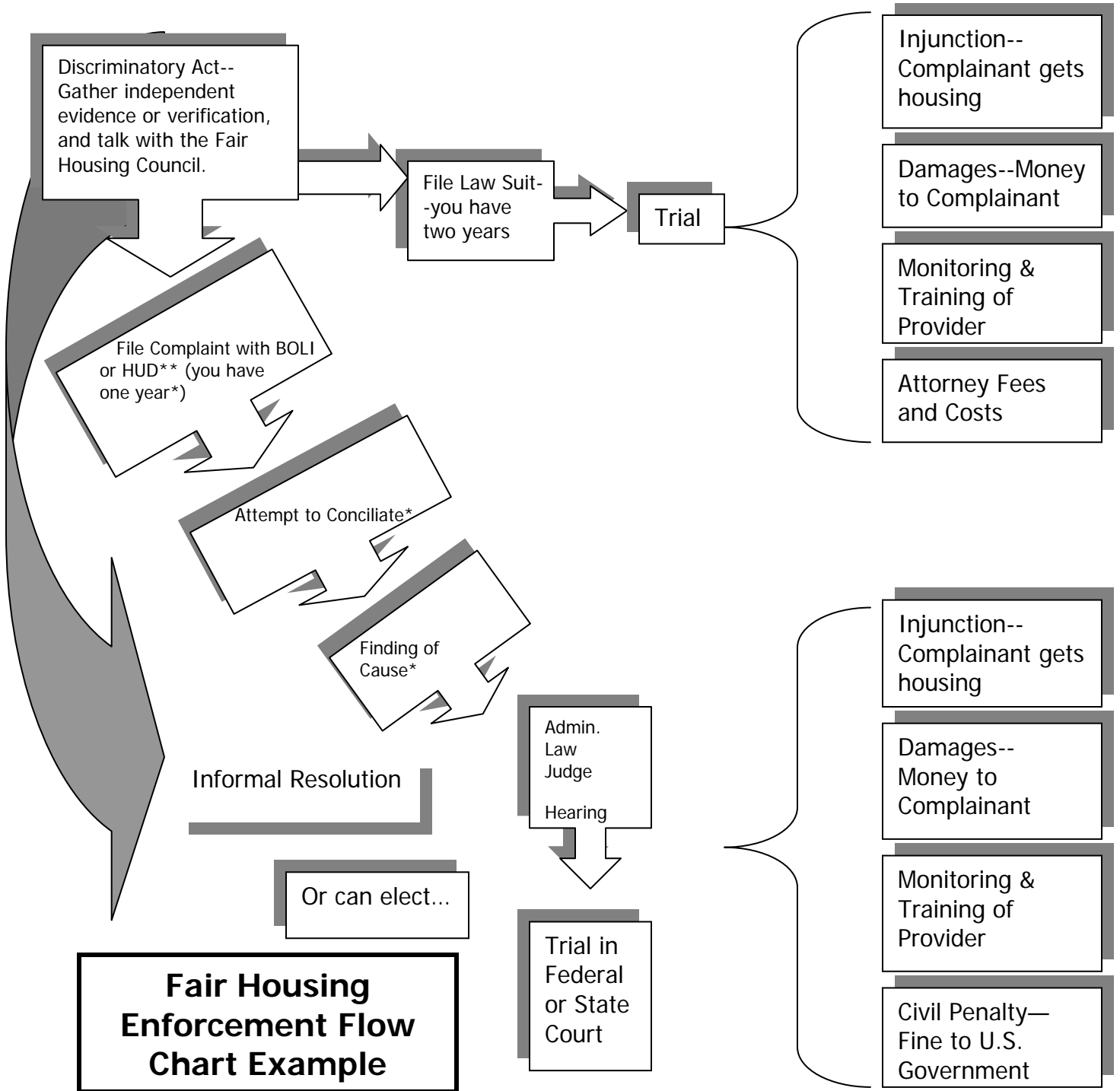
I agree to the above provisions.

X \_\_\_\_\_  
RESIDENT DATE

X \_\_\_\_\_  
RESIDENT DATE

X \_\_\_\_\_  
OWNER / AGENT DATE

## Attachment # 6: Enforcement Flow Chart



\*You can elect to withdraw from this process & file a private lawsuit  
 \*\*BOLI- Bureau of Labor and Industries; HUD- Department of Housing and Urban Development

HUD Complaint Hotline 1-800-877-0246  
 The work that provided the basis for this publication was supported by funding under a grant with the U.S. Dept. of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Federal Government.



**EQUAL HOUSING  
OPPORTUNITY**

**We Do Business in Accordance With the Federal Fair  
Housing Law**

(The Fair Housing Amendments Act of 1988)

**It is illegal to Discriminate Against Any Person  
Because of Race, Color, Religion, Sex,  
Handicap, Familial Status, or National Origin**

- |  |  |
|--|--|
| ■ In the sale or rental of housing or residential lots | ■ In the provision of real estate brokerage services |
| ■ In advertising the sale or rental of housing         | ■ In the appraisal of housing                        |
| ■ In the financing of housing                          | ■ Blockbusting is also illegal                       |

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:

1-800-669-9777 (Toll Free)  
1-800-927-9275 (TTY)

**U.S. Department of Housing and  
Urban Development  
Assistant Secretary for Fair Housing and  
Equal Opportunity  
Washington, D.C. 20410**



