A GUIDE TO FAIR HOUSING FOR HOMELESS AND DOMESTIC VIOLENCE SHELTER PROVIDERS

2018

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Why This Guide?

Fair housing laws are civil rights laws which apply to housing. Many nonprofit organizations are not fully aware of these laws, which cover all housing, including long- and short-term housing, and shelter programs. This short guide is intended as a first step in risk mitigation and gives general guidance to address common areas of confusion. It is not a substitute for professional legal advice. Organizations seeking help with a particular issue can contact the Fair Housing Council of Oregon for general information or their attorney for specific legal advice.

This guide was developed by the Fair Housing Council of Oregon through the support of a HUD Fair Housing Initiatives Program (FHIP) Education and Outreach Grant in 2018.

The information in this guide is based on federal fair housing law, state and local fair housing laws in Oregon and evolving fair housing case law throughout the country.

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What are Fair Housing Laws?

Fair housing laws are a set of federal, state and local civil rights laws that protect all of us from illegal discrimination in housing, lending and homeowners’ insurance. These laws include the federal Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973 (covers all entities that receive funds from any federal agency), Chapter 659A of the Oregon Revised Statutes (“Unlawful Discrimination in Employment, Public Accommodations and Housing”) and local ordinances in many Oregon cities and counties.

All housing providers, whether they are in the private, public or nonprofit housing sector, are required to follow fair housing laws. Owners and staff of apartment communities, rental homes, mobile home parks, condominiums, transitional housing and shelters are under precisely the same legal obligations. Motels that function as primary housing rather than vacation lodging also fall under fair housing laws. There can be substantial legal penalties for violating fair housing laws, including punitive and compensatory damages and attorney fees.

Unlike state landlord-tenant laws that regulate the respective roles of landlords and tenants, fair housing laws prohibit differential treatment in housing transactions and are similar to other civil rights laws in the areas of employment, education and public accommodations. This guide will provide information on fair housing laws, not Oregon Landlord Tenant law. Most permanent supportive and rapid rehousing programs and many shelters do fall under landlord tenant law, and providers may want to consult with legal counsel to insure that they are following all relevant requirements in this area.

Shelter providers that receive federal funds to build or operate their programs are also responsible for following Section 504 of the Rehabilitation Act of 1973 and Executive Order 13166: Limited English Proficiency. Section 504 outlaws discrimination on the basis of disability and requires providers take additional steps to serve people with disabilities, such as paying for certain structural changes to increase the accessibility of housing and common areas. Executive Order 13166 requires federally funded programs to identify the need for their services among those with limited English proficiency (LEP) and to develop and implement strategies to provide “meaningful access” to their services among these population groups. For details, please see HUD LEP Frequently Asked Questions at hud.gov.

It is important that all housing providers, including shelter providers, are aware of their responsibilities under fair housing laws. Providers should educate all relevant staff and volunteers and have an internal process in place in case a resident or applicant raises a concern related to fair housing or files a fair housing complaint. We recommend every provider have a staff person identified as their fair housing specialist.

As you review this guide, it is important to recognize that many fair housing issues are addressed on a case-by-case basis. Some aspects of the law are very clear, but in some situations, answers may not be so clear and will depend on a clear examination of all the relevant facts. We recommend caution in “gray areas” of the law.
Who is Legally Protected from Housing Discrimination in Oregon?

Together, federal and state fair housing laws protect all of us from illegal discrimination based on our:

- Race
- Color
- Religion
- National Origin (ethnicity, ancestry, etc.)
- Sex (gender)
- Familial Status (families with children): “Familial Status” is defined as the presence of children under 18 years of age as well as pregnant women and those who have adopted or fostered children.
- Disability (real or perceived): Disability protection under fair housing law is broadly defined as any physical or mental condition that substantially impairs a major life activity: walking, seeing, hearing breathing, thinking, learning, caring for oneself.
- Marital Status
- Source of Income: Protects people with incomes derived from public assistance programs such as TANF, SSD, SSI, Child Support, Unemployment Insurance, etc. It is illegal for housing providers to discriminate against Section 8 Housing Choice vouchers distributed by Public Housing Authorities and to refuse to accept rent payments from social service providers. In some areas of the state it is illegal to discriminate based on type of occupation. (See Attachment 1)
- Sexual Orientation And Gender Identity: Sexual Orientation (who one is physically or emotionally attracted to); Gender Identity (internal sense of being a girl/woman, boy/man, or another gender) See page 11 for more. (For a glossary of terms, see Attachment 2. For safety and privacy strategies (See Attachment 3).
- Age over 18 in some areas of the state (See Attachment 1)
- Status of Being a Survivor of Domestic Violence, Dating Violence, Sexual Assault or Stalking: This protection is under Oregon Landlord-Tenant Law

Collectively, these categories are known as “protected classes.” All counties and cities in Oregon are covered by the federal and state protected classes. Some counties and cities have added protected classes such as age or occupation. (See Attachment 1)

Illegal Housing Transactions

Fair housing laws cover the entire relationship between a housing or shelter provider and an applicant or resident from the time of the initial inquiry, through application and residency, to termination, move-out, and beyond. During that time, any transaction or interaction can give rise to a claim of discrimination.

This includes:

- Discrimination during the application process: outright denial, providing false information, steering a potential resident to other housing/shelter based on their
protected class, and advertising or marketing of the housing. Applicant screening decisions must be based on consistent fact-based criteria.

- Not treating all residents similarly in terms of procedures, rules, repairs, access to common facilities or other aspects of daily life. Consequences for not following agreements, rules, etc. must be applied consistently among all residents.
- Imposing additional program requirements on participants based on protected class such as parenting classes or support groups for persons with disabilities.
- Harassment, intimidation, threats and coercion based on protected class. In the case of Woods v. Foster, a federal trial court held that female residents of a homeless shelter had a valid fair housing claim against the shelter provider, who had made residence in the shelter contingent upon their submitting to his sexual advances. Providers have a legal responsibility not only to refrain from these activities themselves, but to protect their residents from harassment from staff, volunteers and other residents. The Fair Housing Act and a recent HUD ruling clearly require housing and shelter providers to have protocols for addressing resident on resident harassment based on protected class. (See Attachment 6)
- Termination for discriminatory reasons: Terminations that are not based on factual violations of the residency agreement could be construed as discriminatory, whether or not that was the provider’s intent. Termination should always be based on objective fact-based behavior.
- Retaliation against a resident for filing a fair housing complaint, whether the claim is valid or not. Retaliation includes coercing, threatening, intimidating and interfering with a resident on account of exercising their rights. This could mean making verbal threats, terminating their stay or blacklisting them from future housing unless they drop the complaint.

Under fair housing laws, a policy or practice can be discriminatory even if the provider did not intend for it to be. A policy that appears to be neutral and doesn’t single out residents of a protected class could be considered discriminatory if it has a harsher impact on people who are in a protected class. The legal term for this is disparate impact.

For example, a shelter policy that prohibits toys in the common areas, but permits other items to be left there, would have a harsher impact on families with children (“familial status” is a protected class).

It is very important that shelter providers review all of their policies, rules, procedures, eligibility criteria, etc. to determine if there are policies and practices which could result in members of protected classes being treated differently.
Fair housing laws are broad and inclusive. Some aspects of these laws are very clear; for example, it is obvious that a shelter cannot refuse to house an individual because they are African-American, Asian or Latinx. Other aspects of the laws may not always appear to have clear answers. Fair housing laws continue to be clarified over time through court cases and new rules or guidance from agencies such as the US Department of Housing and Urban Development (HUD).

Our assumption is that shelter providers with limited funding want to avoid the risk of fair housing lawsuits, that may involve financial damages, and we are presenting this information and these recommendations with that in mind. Our goal, in addition to protecting all residents from illegal housing discrimination, is to protect you, as the shelter provider, from being in the position of having to defend yourself from a fair housing complaint. As you develop your policies, procedures, rules and criteria for eligibility and termination, be aware that there are legal penalties if any of these are found to be discriminatory.

How Do Fair Housing Laws Relate to Nonprofit Organizations Providing Homeless and Domestic Violence Shelters?

Along with providing temporary housing, many shelter providers advocate for their residents’ fair housing rights as they seek permanent housing. These organizations may contact FHCO on behalf of residents or former residents who believe they have experienced discrimination or refer them to FHCO for assistance. If an individual is in a crisis situation and doesn’t have the time and/or capacity to file a complaint, they may choose to wait and file a complaint after their situation stabilizes.

Nonprofit organizations that provide shelter housing are ordinarily defined as offering “dwellings” under fair housing laws and, for the most part, are required to follow the laws in the same way as providers of permanent housing.

What is considered a “dwelling?”

In the event that a fair housing complaint is made against a shelter provider, an investigation would determine whether the provider offers a “dwelling” as that term is defined by fair housing laws. The FHA defines “dwelling” as “any building, structure, or portion thereof which is occupied as or designed or intended for occupancy as a residence.” Some courts have interpreted this to mean any place that a guest stays for a period of time and treats as their home. Others have said that it is a place where a person lives, whether temporarily or permanently, and intends to return to. This may include homeless shelters, domestic violence shelters, and alternative dwelling types such as tiny home pod villages and/or communities.

This determination is made on a case-by-case basis, reviewing multiple factors, such as:

- Whether there is some form of agreement between the provider and resident. This could be a signed rental agreement, a residency agreement, agreement to services, or possibly a set of rules that a resident agrees to follow.
- Whether the resident provides something in exchange for shelter. In permanent housing, this is typically a rent payment, but this could also simply be a program fee.
or an in-kind exchange such as performing chores or requiring participation in certain programs.

- Whether the individual has another current residence that they intend to return to. In the case of a domestic violence shelter, a resident may officially still have another address, but it is unlikely that they intend to return to it, so the shelter would probably be considered a dwelling under fair housing laws.

- Whether the primary purpose of the entity is housing. If the primary purpose of a program is treatment, such as a drug treatment facility, and the housing provided is only incidental to the program, it most likely will not be considered a dwelling. However, if the resident has no other housing to return to, the program may be considered housing under fair housing laws.

Another factor that would be considered in an investigation is the length of stay. If a resident only stays at a shelter for several nights such as a warming or severe weather shelter, it would fall under another set of civil rights laws, public accommodations laws. These laws are similar, but have some differences in protected classes. Under public accommodations law, age is a protected class; familial status is not. The Americans with Disabilities Act (ADA) applies to protect people with disabilities from discrimination. There are also some minor differences in reasonable accommodations for residents with disabilities who need assistance animals. (Unlike overnight shelter programs, day shelters are legally required to admit only service animals, not companion, comfort or therapy animals.) See Attachment 12 for more information on these differences. Oregon courts have not specifically addressed whether shelters generally are considered dwellings, but in Community House v. City of Boise, the Ninth Circuit (which reviews cases from Oregon) ruled that a men-only homeless shelter qualified as a dwelling under the FHA because it provided “more than transient” housing. In order to protect your shelter against fair housing liability, we recommend all shelter providers assume that their programs represent “dwellings” and should comply with fair housing laws.

An investigation determining whether or not a shelter is considered a dwelling could also take into account factors such as the provider’s mission, relevant licensing, funding sources, the level of time and resources allocated to services in relation to housing, and the qualifications of the staff providing services.

Fair housing laws apply equally to homeless shelters and shelters for survivors of domestic violence as well as tiny house pod villages.

Fair housing laws also apply to any other person or entity whose actions could “make housing unavailable.” This means a wide range of entities are covered, including
organizations operating rental assistance or shelter voucher programs, motels providing emergency shelter, etc. All of these programs are prohibited from discriminating on the basis of protected class and are required to follow all aspects of fair housing laws.
Common Fair Housing Issues that Arise in Shelters:

- Marital Status
- Sex/Gender
- Gender Identity
- Familial Status

Shelter providers in Oregon cannot legally refuse to serve individuals because of their race, color, national origin, religion, sex, familial status (the presence of children under 18), disability, marital status, source of income, sexual orientation, gender identity or status of being a domestic violence survivor. In many areas of the state, age and occupation are protected as well. (See Attachment 1 for the list.)

**Marital Status**

Shelter providers that discriminate on the basis of marital status are at risk of being in violation of Oregon’s fair housing laws. We recommend that shelters do not, for example, require married couples to present proof of marriage or ask unmarried couples how long they have been together. Shelters must serve all types of families and partnerships, including Lesbian, Gay, Bisexual, Queer, Gender Non-Binary, Gender Non-Conforming and Transgender couples and families.

**Sex/Gender Discrimination**

Sex discrimination in housing is illegal. Shelters that are defined as dwellings under fair housing law (See page 7 for factors to consider in defining dwelling) are not permitted to segregate residents by gender or to exclude an otherwise qualified applicant from housing because of gender. In an FAQ providing technical assistance to providers, HUD stated that single-gender housing is only lawful if there is “a strong privacy, health, or safety reason for the designation, or another compelling reason that is integral to the housing program”. The housing provider has the burden of showing that such a reason exists. Any provider seeking to do that should consult with their legal counsel.

HUD has provided some examples of what it would consider strong reasons for a provider to operate gender-specific or gender-segregated housing.

Privacy concerns generally correspond to whether the shelter has shared sleeping areas and bathrooms. If a shelter has only one bathroom with showers, this could signal a strong privacy reason for a gender-specific policy. However, if the shelter has more than one bathroom or if the bathroom can be locked, the privacy interest would be less compelling.

Whatever reasons a provider may have for wanting to operate a gender-specific or gender-segregated facility, these reasons must be objective and verifiable, not based on stereotypes and assumptions. The validity of a shelter or housing provider’s gender-specific housing policy is determined on a case-specific basis.

In one case (Community House, Inc. v. City of Boise), the court found that a city ordinance that established a shelter for men only was discriminatory on its face and violated fair housing laws against sex and familial status discrimination.

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A shelter that is not a dormitory cannot serve women only or women and children only. They can specify parents with children only, but that includes male parents and their children.

It is a violation of fair housing laws for a shelter to prohibit male children from staying with their parent(s). This includes domestic violence shelters.

Male and transgender domestic violence survivors are entitled to equal shelter and services. The Fair Housing Council of Oregon believes denying a male or transgender survivor equal access to a shelter and instead housing them in a motel, where they may be isolated and not in a safe secure environment, may constitute a violation of fair housing laws. (For tips on managing privacy, see Attachment 3)

**Fair Housing Issues Related to Sexual Orientation & Gender Identity**

In 2007, the Oregon legislature passed the Oregon Equality Act, which added sexual orientation and gender identity to the list of classes that are protected from housing and employment discrimination. In addition to Oregon state law, HUD's Equal Access Rule provides (updated 2016) guidance on appropriately serving transgender people in single-sex facilities (See Attachment 3 for more information).

Sexual orientation describes a person’s physical, romantic, and/or emotional attraction to another person (for example: straight, gay, lesbian, bisexual). Gender identity describes a person’s internal personal sense of being a man or a woman, or someone outside of the gender binary. Simply put: sexual orientation is about who you are attracted to; gender identity is about who you are. A person’s gender identity is outwardly expressed (their gender expression) through behavior, clothing, hairstyle, mannerisms, makeup, body language, voice, speech patterns, and social interactions that are perceived as masculine, feminine, or androgynous.

Transgender people identify as or express a gender different from the gender associated with their sex assigned at birth (assumption that male=boy/man, female=girl/woman). Included in the protected class of gender identity are people who identify as androgynous, genderqueer, genderfluid, bi-gender and transgender, as well as anyone who falls outside of gender norms or the gender binary. Shelters should adopt policies to ensure staff will treat transgender & other gender-nonconforming residents with understanding and respect and inform transgender people in need of shelter that these services are available to them. A shelter’s policy should include guidance on how to approach issues that may arise for transgender residents. (See Sample Policy: Attachment 4)

All individuals, including transgender persons and other gender nonconforming persons, can be safely accommodated in shelters and other buildings and facilities in accordance with their gender identity. Privacy concerns can be addressed through policy adjustments, such as the use of schedules that provide equal access to bathing facilities, and modifications to facilities, such as the use of privacy screens and, where feasible, the installation of single occupant restrooms and bathing facilities. Shelter providers should consider applicants or residents to be the gender they self-identify as and use the pronouns
the applicant or resident prefers (he/him, she/her, they/ ze/hir, Mr./Ms. etc.). A best practice is to ask program participants what their preferred gender pronouns are.

Respect a person's self-identification of their gender

At initial intake, applicants should have the right to self-identify their gender. Intake staff should be careful not to make assumptions about a person’s gender based on their voice, appearance or legal name. Access to shelter or services may not be based on an applicant’s appearance, ability to “pass”, or legal documentation. As with any resident, staff should not ask about a transgender person’s medical history, including asking about sex-reassignment surgery or hormone treatment.

Transgender people presenting for intake shall not to be turned away or referred to another shelter because of their transgender status, the length or extent of their gender transition, and/or because they do not meet the expectations of what a man or woman is supposed to look like. Shelter residents shall be treated according to their self-reported gender identity regardless of appearance, genital or other physical characteristics, or inconsistent legal documentation (such as a driver’s license).

Experiences of poverty and homelessness often present barriers to obtaining identification and to accessing transition-related medical care. Providers should understand that people may not have updated identification and accept residents according to their self-identified gender. Due to poverty and lack of access to transition related care, transgender people may not “look like” the people they feel they are. For example, transgender women’s lack of grooming supplies leads to facial hair. Additionally, it is not always safe for people to express their gender identity publicly and transgender women may present as more masculine to avoid street harassment or violence.

Don’t rely on biases or myths to make decisions.

Address shelter residents with the names, titles and pronouns of their choice.

In general, fair housing laws mandate that providers make decisions based on facts and not assumptions, characteristics, or inconsistent legal documentation.

Shelter staff should respect all residents’ right to privacy. If possible, providers should offer at least one gender-neutral bathroom and one private shower stall. Ideally, all bathroom stalls and showers should have doors or curtains. Providing an option for privacy in the bathroom or shower also will benefit a range of residents with medical conditions or personal needs that require privacy.

Suggestions to ensure greater privacy for all residents:

- Provide gender-neutral bathrooms for all guests to use.
- Try to have at least one single-stall restroom with a door that locks.
- If there are only multi-stall restrooms, make sure that the individual stalls have doors that can be locked.
• If only multiple-stall bathrooms exist and doors are not available, install a lock (with a key) on the entry door to the restroom.
• Create total privacy with private showering and dressing areas for everyone.
• Provide a special shower or ensure that at least one shower facility has total privacy.
• If the shelter cannot install a physical barrier in the shower area, residents should be given an option to reserve an alternate time to shower with the ability to lock the bathroom to insure privacy.
• Allow a resident to shower alone in the group shower, setting aside a separate shower time for them and putting a lock on the facility door.

(See Resources for Ensuring Safety and Privacy for Everyone in Attachment 3.)

Respond to inappropriate behavior or harassment

Statistics reveal that transgender residents are far more likely to be harassed than to harass others. If any harassment occurs, the shelter must take prompt action to stop it. To know of such harassment and neglect to take action is a violation of federal fair housing law. All shelter providers should institute policies to address resident-on-resident harassment. (See Attachment 6)

Harassment includes abuse, assault and threats, but it also can include jokes, consistent misgendering (e.g., calling a trans woman “he”) and making sexual comments. Different people have a different level of tolerance. Even if a resident does not intend to harass, if their words have the effect of making another resident feel uncomfortable, disrespected or fearful, this could be harassment and should be stopped.

Staff should check in with transgender residents after an incident of harassment or suspected harassment to make sure that they feel safe, offer resources and referrals, and see if they require any change in their accommodations.

Shelter staff should respect confidentiality and privacy concerns of transgender residents and receive proper training.

We strongly recommend providers keep a resident’s transgender status confidential unless the resident instructs otherwise. Private information, such as medical information about a shelter resident’s transgender status and/or transition, should be kept confidential. Transgender people face serious risks of danger, including verbal harassment and physical assault, when their transgender status or gender identity is revealed without their consent. Steps to keep a shelter seeker’s gender identity confidential include (1) safeguarding all documents and electronic files, (2) containing this information and having conversations about these topics in private to prevent disclosure, (3) establishing explicit nondiscrimination provisions, (4) ensuring safe environments in programs and shelters, (5)
implementing rigorous confidentiality safeguards, and (6) ensuring that shelter staff members receive appropriate training.

Shelter staff should be trained on fair housing annually, and the training should include:

- The shelter’s policies and procedures regarding transgender people;
- Terminology used to describe transgender people; and
- Applicable local, state, and federal laws protecting transgender people.

The consequences of denying shelter based on gender identity can be steep. The Bureau of Labor and Industries (BOLI), the agency that handles fair housing complaints in Oregon, brought a claim against a women’s domestic violence shelter for treating a bi-gender person differently and directing him/her to leave the housing. A bi-gender person identifies as both a man and a woman.

(See Resources for Ensuring Safety and Privacy for Everyone in Attachment 3.)

Religious Provider Exception

Religious organizations and the nonprofits they operate are permitted to reserve shelter or housing for members of the same religion or to give preference to the members. There is an exemption in the state protection for sexual orientation and gender identity for faith-based programs. If, however, federal funds are involved, the housing provider must follow the federal Equal Access Rule and not discriminate.
Fair Housing Issues Related to Familial Status

*Shelters that are defined as dwellings under Fair Housing law cannot deny families with children unless the dwelling is designated only for older individuals. The law has an exemption for housing where 100% of the residents are over 62 or at least 80% of the units have at least one resident who is 55 or older.*

It is important to note that specific funding requirements of various HUD programs may be relevant here as well. HUD programs for 62 plus do permit those who qualify & have legal custody of children to live with the children in this housing.

In general, providers of shelters designated for sexual offenders may prohibit families with children for safety reasons. Since discrimination claims are reviewed on a case-by-case basis, housing providers who house sex offenders and wish to exclude children should check with their legal counsel.

It is usually illegal for shelters to have different rules for children than adults or to have supervision requirements. For details, see page 34.
Fair Housing Issues Related to National Origin

The prohibition against discrimination based on a person’s national origin or ethnicity affects shelter providers in two main ways:

1. Providers should be sensitive to issues surrounding the citizenship and immigration status of their residents; and,
2. Providers should be aware of language barriers that applicants and residents might face due to not speaking English as their first language. They may be required to take additional steps so that these applicants and residents can have equal access to shelter.

Immigration status is not a protected class per se; however, fair housing laws protect every person in the United States, and discriminating against a person based on their national origin is illegal, regardless of that person’s immigration status. In other words, a provider who denies housing to an immigrant because they are from another country or has an accent or a foreign name is engaging in illegal discrimination, regardless of whether the immigrant is documented or undocumented. FHCO believes it is also illegal for a provider to refuse to provide housing or shelter to an undocumented individual because such a policy would have a disparate impact—-discriminatory impact—based on national origin. (There is an exception in that some HUD-funded programs require at least one household member be a U.S. citizen.)

If Social Security numbers are routinely used in screening, providers should be prepared to use other documents that can establish identity and history. (See Attachment 5 for a list of alternative documents that can be utilized to screen immigrant populations.)

Executive Order 13166 requires that federally funded housing and shelter providers examine the services they offer, identify the need for those services among local populations with limited English proficiency (LEP) and then develop a plan to insure they are able to access services.

In identifying need, there are four factors that providers should analyze:

1. The number or proportion of LEP persons in the area;
2. How frequently LEP persons use or have need for the provider’s program;
3. The nature and importance of the provider’s programs, activities or services;
4. The resources available to the provider and the cost to the provider of supplying language assistance.

Based on those factors, providers should determine what language assistance is needed and what help they can reasonably provide. Examples of reasonable language assistance measures include providing translations of shelter application rules and seeking bilingual employees or volunteers to provide interpretation. (Visit www.lep.gov for more on LEP requirements)

We are aware of shelters that target their services to a particular national origin and/or speakers of a particular language. Although these programs may provide outreach in languages other than English and through networks that serve their target group, they must
also market to the broader public. They cannot refuse to provide shelter/housing to individuals outside of the targeted national origin/language group. This falls under discrimination based on national origin.
Definition of Disability

Disability protection under fair housing law is broadly defined as any physical or mental condition that substantially impairs a major life activity: walking, seeing, hearing, breathing, thinking, learning, caring for oneself.

The definition of disability under fair housing laws is much broader than the definition used by the Social Security Administration (SSA) or similar state agencies that administer cash or medical benefits for people with disabilities. While approximately 10.5 million Americans receive benefits from SSA, there are as many as 54 million people who are protected against discrimination based on disability.

Disability protection includes, but is not limited to:

- Mental and emotional disabilities;
- Developmental disabilities;
- Cognitive impairment;
- Long-term conditions such as Cancer, HIV/AIDS, Autism, Asthma, Cerebral Palsy, Multiple Sclerosis, Muscular Dystrophy, Diabetes and Heart Disease;
- Alcoholism;
- Drug addiction (provided that there is no “current use” of illegal drugs).

In addition to protecting people who currently have disabilities, fair housing laws also prohibit discrimination based on:

- A history of having a disability. In essence, Congress outlawed differential treatment because of a disabling condition—such as mental illness, cancer or addiction—in a person’s past.
- Being regarded as a person with a disability. This protection extends to people who have physical or mental impairments which are not substantial enough to limit a major life activity and to people who have no impairment at all, but are mistakenly thought to have one.

Shelter providers may not inquire about the existence or the severity of an applicant’s or resident’s disability and may not require applicants or residents to waive the confidentiality of medical records. Providers may also be required to provide residents with reasonable modifications (physical changes to their living areas) and to provide reasonable accommodations (exceptions to standard policies, procedures, rules or application criteria to enable the disabled individual to live in the housing). (See page 20 for details)
Fair Housing Issues Related to Individuals with Disabilities

- Preferences for Specific Disabilities
- Confidentiality Requirements for Individuals with Disabilities
- Reasonable Accommodations for Individuals with Disabilities
- Accessibility Requirements

Preferences for a Specific Disability Generally Not Allowed
Shelter providers cannot refuse to house individuals because they have a particular disability.

For example, a provider cannot:

- Refuse to house an individual who is HIV positive;
- Refuse to house a person who is in recovery from addiction;
- Refuse to house someone with a disability which prohibits them from using a top bunkbed;
- Refuse to house an individual who uses an oxygen tank.

Note: Providers concerned about fire risk can refuse to permit smoking in the area where the tank is located.

Section 504 of the Rehabilitation Act of 1973 states that a provider who receives federal funding cannot have a preference for one disability over another unless such a preference is specifically authorized by a federal statute or executive order signed by the President. At this time, the only programs having this explicit authorization are Housing Opportunities for People with AIDS (HOPWA), Section 811, Shelter Plus Care, Emergency Shelter Grants and the Supportive Housing Program.

Other funding programs like the Low Income Housing Tax Credit, public housing, Section 202, Section 236, Section 8, Community Development Block Grants (CDBG) and the HOME Investment Partnership programs do not permit recipients to favor specific disabilities. The fact that another funder may permit such a preference is not sufficient legal authorization to permit limiting admission or showing a preference in admission for people with specific disabilities.
Confidentiality Requirements for Individuals with Disabilities

Shelter providers are prohibited from requiring applicants or residents to disclose information related to the nature or extent of a disability. Any such information shared by an applicant with a provider needs to be shared on a voluntary basis and should be not required as a condition for acceptance into the program. The provider may share information with all residents about any disability-related programs/services that are offered.

Note: Some federal funds stipulate that only individuals with disabilities or even individuals with a specific disability can be served. In these situations providers may ask all applicants if they meet that definition of disability, but they cannot require specific information about the nature and/or extent of the disability.

Here are some specifics to be aware of:

Applicants and residents should be screened or interviewed in a private area. Someone may not want to disclose confidential information in a setting where others may hear.

A shelter provider may notice that a resident has a visible disability and may want to ask if extra help is needed. While it is not permissible to ask the resident specific questions about the disability, medications taken, etc., all residents could be asked questions such as these:

“Would you like to share anything about yourself that might help us to serve you better?”

“We offer a variety of resources to ensure equal access to our programs and services. Are you interested in information about these resources?”

If a shelter provider has the capacity to offer medical or mental health services directly or through a partner agency, they can preface questions related to disability by saying something like the following:

“I am going to ask you some questions regarding physical and mental disabilities. You do not have to answer these questions, and assistance will not be denied if you do not answer (except in the case of a grant that requires participants to have a specific disability to meet program requirements). If you do answer, however, it may help us to serve you better.” Be aware that the wording of this preface should be the same for all residents.

If the shelter provider does not offer any medical or mental health services directly or through a partner agency and provides only basic referrals, they should not ask these questions at all.

If data regarding the nature and extent of residents’ disabilities is required for statistical purposes by a funder, that information should be tracked separately. If a resident
refuses to provide that information, the shelter should then leave that part of the form blank or note that there was a refusal.

Shelters that are not primarily treatment facilities should not require residents to share information about their medications, as that could identify the nature or extent of their disability. Providers can require residents to keep medications in a central storage area, but need to ensure that the contents will remain confidential (i.e., not visible to staff) and easily accessible by the residents when needed. To accomplish this, shelter providers could provide individual locked or sealed containers, drawers, or lockers where the labeling is not visible.

Shelters may ask applicants and residents for the names of other service providers they are working with if they ask all residents this question and it is clear that providing the information is voluntary, not required.

It is illegal to share information related to a resident’s disability without permission from the resident. If a shelter provider’s staff would like to share information about residents with social service staff to create an opportunity for the service staff to assist residents, they must have the resident’s written permission. We recommend the shelter ask the resident to approve a release of information each time the resident agrees the shelter can disclose information about their disability. The shelter cannot require the resident to sign this form.

If a shelter uses a centralized database, any resident information related to a disability should be accessible only to relevant clinical/service staff. The release of information form should be used.
Reasonable Accommodations for Individuals with Disabilities

There are times when an individual is unable to move into, or remain in, a shelter because of circumstances related to a disability. In these cases the applicant or resident may request the provider make an exception to a standard policy, procedure, rule or eligibility criteria. This is called a reasonable accommodation.

While the general fair housing guideline is to treat all applicants and residents consistently, the law also addresses the right of individuals to equal access to housing. In order to have that equal access, people with disabilities have the right to request reasonable accommodations to allow them to live in shelters. A request for an accommodation is reasonable if the person has a disability as defined by fair housing law, the request is related to the disability and the request is necessary because of the disability.

The shelter provider can ask for proof that the requested accommodation is needed because of the resident’s disability and that it is necessary for the individual to live in the shelter. This is ordinarily done through written verification by a qualified individual who has been working with them on the disability. (See Page18 for a definition of qualified individual and Attachment 8 for a sample verification form.)

Here are some examples of reasonable accommodations:

- An individual with a disability requests permission for a part-time or live-in caregiver to help them with bathing, eating and other daily tasks.

- An individual with a physical disability who is unable to stand in line for hours on a daily basis to get into a shelter with a “first-come, first-served” admission policy, requests to take a number and sit in a designated location during the waiting period.

- An individual with a physical disability who lives in a shelter that requires residents to be out of the shelter at 9:00 a.m., requests additional time in the morning because it takes them longer to eat, shower and dress.

- An individual with a disability that prevents them from doing a required chore at a shelter requests an alternative chore or reduced chore requirements.

- An individual with a disability, who is unable to work and receives disability income, requests a waiver for a required job search support group at a shelter.

- An individual with a disability requests their shelter provider contact a family member or social service agency that can assist with addressing problems that may come up.

- An individual with a disability who is staying in a shelter that prohibits pets may request an accommodation for their assistance animal (a.k.a. aid, service, therapy, companion animal). This animal may aid them with seeing, hearing or balance. It could warn them of an approaching seizure or warn others if they have a severe...
migraine. It could be that the animal’s presence has a therapeutic effect on a mental or emotional disability such as clinical depression or anxiety. Under fair housing laws, an individual with a disability has the right to an assistance animal if it has been prescribed for a disability.

- An applicant with a history of evictions and behavioral problems in housing requests a shelter provider overlook this history because the behavior was the result of a mental disability, addiction, etc. and the behavior has since been corrected. The provider can require verification from reputable sources—including medical/therapeutic providers, case managers, parole officers, employers and pastors—to confirm that the problem was, in fact, related to the disability and has since been corrected.

- A resident faced with termination from a shelter requests a reasonable accommodation because the problem behavior was the result of their disability. In order for them to get another chance, their reasonable accommodation request would need to present a strategy for correcting this behavior—for example, going into treatment, attending Alcoholics Anonymous or Narcotics Anonymous meetings, participating in another service program, etc. The provider can work with the resident to develop such a strategy. (Note: If the provider discovers the resident is no longer going to the therapeutic program, that cannot, in and of itself, be a cause of termination, but if the resident begins to violate the contract/agreement again, that could lead to reinitiating the termination process.)

- An individual with a disability has the right to request a reasonable accommodation to be removed from a shelter’s “do not house” list or “blacklist” if the reason they were put on the list was for behavior caused by a disability and they have since corrected this behavior. The provider could require verification from reputable sources that the behavior has changed.

Here are some additional pointers related to reasonable accommodations for assistance animals:

- While public accommodations laws that cover public places like grocery stores and buses permit only trained service animals, fair housing laws permits both service animals and companion animals that are prescribed for mental and emotional disabilities.
- A reasonable accommodation request may involve asking the provider to make an exception to weight or breed restrictions.
- Pet deposits cannot be charged for assistance animals.
- If there is evidence an applicant has failed to control the animal in their past and this led to violations related to noise, property damage, etc., the request could be turned down on this basis. The individual could, however, verify the behavior has been corrected through training.
Providers can require the animals to be vaccinated or licensed in keeping with local governmental requirements. They also can require flea treatments, etc.

Providers can refuse exotic animals, as defined by local health departments.

If an animal violates the shelter contract, agreement or house rules by damaging property or harassing other residents, the owner is responsible for the animal’s behavior.

A request for an animal cannot be rejected based on the assumption that it will be problematic for other residents. If another resident does have a disability that is aggravated by the presence of the animal—such as debilitating allergies or PTSD—and makes a reasonable accommodation request to not be near the assistance animal, the provider should see if there is a way to accommodate the needs for both individuals with disabilities if at all possible. It is a good idea for providers to have a policy for how to resolve a situation where two residents with disabilities have conflicting reasonable accommodation requests, such as giving preference to the resident who has lived there the longest.

We recommend shelters consider foregoing verification for reasonable accommodations for assistance animals due to the potential time and difficulty of homeless individuals getting appointments with providers to verify and instead focus on enforcing rules related to the animals (noise, damage, etc.)

There are many fair housing complaints against providers who refuse assistance animals and many have led to lawsuits with substantial damages.

All housing and shelter providers (including rental assistance, motel voucher and other similar programs) should develop policies and procedures for handling reasonable accommodation requests.

We recommend providers notify all new residents that they have the right to reasonable accommodation in writing (See Attachment 7) and verbally as well, in case the resident has limited reading skills or cognitive limitations. We also recommend providers notify residents of their right to reasonable accommodation when they give a notice of termination.

While it is preferable for a resident or applicant to put their reasonable accommodation request in writing, it is not legally required. There may be individuals with disabilities who are not able to compose such a letter. It is also not required that they use the exact phrase “reasonable accommodation” in explaining their request.

Shelter providers can require residents and applicants to verify their request is needed because of their disability and is necessary for them to use the shelter or to follow the rules of the shelter. This verification can be in the form of a letter or verification form.
from a medical or therapeutic provider who is working with them. (See Attachment 8 for a sample form shelter providers can use.)

Fair housing laws permit a range of qualified individuals to verify the need for a reasonable accommodation. These include physicians, nurse practitioners, clinicians, psychiatrists, psychologists, counselors, social workers, rehabilitation centers, social service agencies and case managers—in short, any qualified individual who is assisting the resident or applicant with their disability.

Individuals who have no medical or therapeutic provider to provide verification can be referred to a local public health or behavioral health service provider.

An individual with an obvious visible disability should not be required to obtain an outside verification of their disability if their request is related to that disability. The same is true for an individual who has been referred through a disability advocacy agency that prescreens for disability. The general spirit of the law requires that barriers be removed for individuals with disabilities, not that more barriers be created by excessive demands to meet verification standards. For example, a shelter program should fax an out-of-state physician, therapist, etc. for verification for an applicant with a disability who just arrived in town instead of requiring the applicant to see a new provider in the area.

There is no time limit determining when a letter verifying the need for a reasonable accommodation request is too old. It depends on the nature of the disability. Because of the changing nature of some disabilities, there may be circumstances where an old letter is no longer valid.

All requests for reasonable accommodations must be considered by the shelter provider. Providers should have a standardized procedure for reviewing these requests. The response to the request must be in a timely fashion. How long the provider takes to respond will depend on the nature of the request.

The Fair Housing Council of Oregon has adopted a policy recommending that shelters forego obtaining verification for reasonable accommodations such as assistance animals due to the potential difficulty and time needed to acquire such verifications.

Shelter providers are required to consider all requests and to grant them unless they are not “reasonable.” Determining reasonableness does not mean the provider can second-guess the qualified individual verifying the need of the accommodation, though a provider may contact that individual to verify their identity or to confirm that the accommodation is, in fact, necessary.

Under fair housing laws, there are three reasons a provider would reject a request as unreasonable:

1. Granting the request would be too costly and an undue burden to the provider (based on verifiable facts);
2. Granting the request would be a fundamental alteration of what the provider does -- essentially outside of the provider’s area of work or program;
3. Granting the request would be a direct threat (danger) to other residents and/or staff (again, based on verifiable facts).

The law requires that all reasonable accommodation requests be considered. If a request for a reasonable accommodation is turned down, the provider needs to engage in an interactive process to see if there is an alternative accommodation that would meet the resident’s needs.

Rejecting a request because it is too costly and an undue burden is something a provider would need to verify. An undue burden is when a provider can verify they lack the resources or staff capacity to make the accommodation or verify the accommodation would interfere with the ability of other residents to use and enjoy the housing/shelter. The size of a provider’s budget and staff may influence the point when an accommodation could be considered an undue financial burden. For example:

- A resident requests a shelter provider pay the cost of a third-party mediator to communicate between the provider and the resident.
- A tiny house village resident has been presented with termination notices repeatedly because of their behavior toward other residents. They were granted reasonable accommodations in the form of additional chances to correct the behavior, but the behavior has continued. The provider could document that continuing to work with the resident under these circumstances would be an undue burden on staff. However, if the provider rejects an accommodation request because of cost or undue burden, it is very important that the provider document the staff time and financial resources it has spent and/or would spend addressing the situation.

A shelter provider may reject a request if it represents a “fundamental alteration” of the services provided. For example:

- Requesting that a housing provider take an assistance dog for daily walks or change the cat litter for an assistance cat;
- Requesting a housing provider prepare meals, help with showers, administer insulin injections, etc.

A shelter provider may reject a request if it would be a direct threat to other residents and/or staff, putting them at physical risk. Such a determination must be based on factual evidence from past behavior, not assumptions. For example, if an applicant requests a provider overlook a criminal history that includes violent crimes or sexual predator offenses; the provider could seek permission to contact a probation or parole officer to discuss the possibility of future risk.

It is critical that shelter providers be aware that refusing to grant a reasonable accommodation request for any reason other than those listed is illegal. If any of the above reasons for rejecting a request comes into play, the provider should consult with the individual making the request to see if another strategy would also work.
Shelters should review reasonable accommodation requests on a case-by-case basis. We recommend providers establish clear policies for addressing reasonable accommodations in a timely fashion.

These policies should include:

- Which staff member takes the request and how receipt of the request is documented;
- Which staff member reviews the request and what steps are taken next;
- How verification is validated;
- Who makes the final decision to approve or deny the request. (This staff person may want to consult with the provider’s attorney);
- The procedure for notifying the resident of the outcome;
- The procedure for documentation, including any reasoning for denying the request.

A best practice might be to include a grievance procedure in the shelter’s policies which could include when the shelter must notify participants of their rights to file a grievance as well as if a reasonable accommodation is denied or not handled properly.

Providers generally cannot require their residents to be able to able to “live independently”. While the law does not expect providers to provide services they do not routinely provide (such as housekeeping, showering assistance, transportation or assistance with pushing a wheelchair), they cannot reject a resident solely for having such needs. Many people who have disabilities may be able to secure caregivers or utilize other agencies to assist with these activities. Providers cannot refuse to house/shelter a caregiver. They are permitted to do a criminal background check for caregivers. They cannot make shelter or transitional housing contingent on the applicant verifying that they have such help. They can, however, notify all applicants that they do not provide these types of services.

At times, some shelter residents may have medical marijuana cards. Providers that don’t receive federal funding may determine whether or not to permit the use of medical marijuana in their facilities. If they turn down a reasonable accommodation request for using medical marijuana, they need to go through the interactive process with the resident as to possible alternatives. Or the shelter could determine that although smoking medical marijuana would not be permitted on or near the premises, the resident could ingest it as needed in certain pre-arranged areas of the shelter. If the shelter or agency receives federal funds, all marijuana use is illegal. If not, the shelter determines whether to permit it or not as long as their policy is consistent.
Accessibility Requirements

Shelter providers have an affirmative responsibility to help their residents with disabilities overcome barriers to obtaining or maintaining housing. This includes constructing shelters that are physically accessible. The Fair Housing Amendments Act (FHAA) mandates accessibility requirements for multifamily housing (i.e., housing, including shelters that have four or more units) built after March 1991. Under the FHAA, all units in an elevator building must be accessible and all ground floor living units in a non-elevator building must be accessible.

This includes:

- Accessible building entrances on an accessible route;
- Accessible and usable public and common areas;
- Doorways wide enough to accommodate wheelchairs;
- Light switches, outlets, thermostats and environmental controls in an accessible location;
- Walls reinforced to allow for later installation of grab bars;
- Kitchens and bathrooms designed with sufficient space for a wheelchair to maneuver.

Shelter providers who are unsure if their housing units are required to meet these standards may visit the Fair Housing First website at www.fairhousingfirst.org for more information.

Fair housing laws permit residents with disabilities to physically modify their dwellings, when it falls under the definition of dwelling. This is true whether the dwelling is made up of multifamily units, is a large house or a dormitory setting. If the housing provider receives federal funding, Section 504 of the Rehabilitation Act of 1973 applies and the shelter provider is required to pay for the modification unless they can prove that it would too costly (taking into account the provider’s entire budget) or would require a fundamental change to the provider’s program.

Providers not receiving federal funding are not required to pay for such modifications. Theoretically, they are required to permit residents with disabilities to pay for the modifications, but, practically speaking, that isn’t relevant to shelters for homeless individuals without financial resources.

If the multifamily units were constructed prior to 1991 and are not accessible or if the building is a converted home or other structure, the shelter or transitional housing provider should make every effort to provide reasonable alternatives to accommodate a resident with a disability. The provider should be prepared to make alternative arrangements in order to accommodate the individual. For example, a shelter may have one vacant room without accessible features and another room with accessible features, which is currently occupied by a resident who does not require them. Instead of turning away the individual with a disability, the program should move the resident currently occupying the accessible room to the vacant room. Other acceptable options may include offering motel vouchers for an accessible room or arranging a placement in a nearby accessible shelter.
A shelter that is in a large house that routinely uses upstairs rooms could accommodate someone with mobility impairment unable to use stairs by putting a bed in a downstairs room. Also, it would be illegal to deny a resident a shelter bed if they are unable to use a top bunkbed due to a mobility disability.

Funders should be aware that a fair housing complaint could be lodged against them for providing funds for a building that is not accessible, particularly when federal funds are involved. This may include motels used as emergency housing as well. Funders should consider assisting providers to make shelter accessible or, at the very least, to ensure alternative accessible options are available.

For more guidance on accessibility requirements, visit the HUD Fair Housing First website, www.fairhousingfirst.org.
Admission Screening

Individuals should be accepted into shelter programs based on clear, objective and consistent admissions criteria. These criteria must be based on facts and not assumptions.

Fact-based criteria could, for example include:

✓ Rental history- including stays in shelters, hospitals and other alternative housing arrangements
✓ Criminal history -Housing and shelter providers can restrict residency for those with a history of crimes that would threaten the safety of other residents or threaten the property. These cannot be blanket requirements; the provider needs to consider how long ago the crime was committed, the seriousness of the crime, and rehabilitation and/or restitution. The shelter provider also needs to consider only crimes that would affect the health or safety of people or property. The shelter provider should do an individualized assessment of the applicant with the criminal background. (NOTE: Please be aware that domestic violence survivors may have charges on their criminal record that are directly related to domestic violence incidences where they were actually the victims of crime.)
✓ Observable behavior- For example, an applicant could, obviously, be rejected for pulling a knife on the staff person doing the screening/intake
✓ Recommendations by identified referral agencies or programs- social service, mental health, etc., as long as these programs do not have discriminatory practices; however, the recommendations from these agencies/programs must also be based on objective criteria

Of course, shelter providers are different from providers of permanent housing. Their missions generally involve housing individuals who have barriers that prevent them from living in market housing, and screening criteria should take this into account. Shelter providers do need to make sure their criteria are consistent and, if they do ever make exceptions to those standard criteria, they have written policies explaining when these exceptions would occur.

We recommend that all shelter providers:

1. Put standardized screening and intake criteria in writing and use them to evaluate all applicants;
2. Use standardized forms;
3. Train staff how to conduct a screening interview.

In general, all applicants should be screened, evaluated and selected using consistent intake procedures. Screening paperwork should be kept on file for at least two years. (Note: many federal funders require three years) and include the information collected in the screening, including reasons for any rejection of applicants. Shelter providers should also record the dates on which applications were received and processed. Applicants can file a fair housing complaint against a provider for up to two years if they believe they were rejected based on a discriminatory reason. Maintaining complete and legible records can be a shelter provider’s best defense in the event of a complaint.
Shelter providers are permitted to devise their own screening criteria as long as it is not discriminatory and applied consistently. For example, a shelter could give priority to clients of certain social services programs as long as those programs are inclusive of all protected classes. Providers should still accept the first applicant who meets their criteria or prioritization policy. (Note: Some funding sources require that providers offer specific preferences. The funding documentation will identify the prioritization policy and how the records are to be maintained to ensure that the provider does not violate fair housing laws.)

Shelters should be extremely careful about targeting their programs to a particular ethnic or religious group. If they are going to do this, they should have a clear programmatic reason for marketing to this group, backed up by community needs assessments. Even in these cases, shelters cannot turn away an applicant seeking shelter because they are not a member of the target group. It is important not to market programs in a way that has a “chilling effect” on potential applicants, as well—that is, the marketing should not discourage other groups from applying or encourage certain applicants to think, “This program doesn’t accept people like me.”

Requiring residents to be in recovery or clean and sober for a specified period of time is problematic. Fair housing laws exclude people who are “current users of illegal drugs” from coverage under the protected class of disability. The courts have not set hard and fast rules about clean and sober criteria, but it is generally accepted that participation in a formal drug rehabilitation program and abstinence from drug use means that an individual is no longer a “current user,” even if the last incidence of use was only weeks in the past. Shelters using such standards should be prepared to be flexible and take individual circumstances into account.

In screening applicants, shelter providers should never reject individuals based on subjective assumptions such as:

- “Odd” behaviors (as opposed to behaviors that present a threat to others);
- An “intuitive sense” of an applicant’s willingness to commit to a program, get along with others, etc. Such an assessment needs to be based on objective facts. For example, one can’t assume someone who doesn’t look you in the eye is “shady” and a potential threat. Nor can a decision to reject an applicant be based on a “gut feeling” that the individual might threaten a staff person. Some people from different cultures or with disabilities may have behaviors that staff could interpret incorrectly. All shelter providers should consider cultural competency training to raise employee awareness;
- Assuming that an individual with a particular disability or gender identity will create a problem with other residents. If a problem does develop after the individual moves in, it should be addressed at that time.

Providers who use a lottery approach to screening should be very cautious to make sure the procedure doesn’t discriminate against individuals with disabilities by requiring them to appear at a certain location or a certain time.
Coordinated Entry and Fair Housing

Coordinated Entry is a HUD initiative for those who may be at-risk of losing their housing, or who are homeless. The Coordinated Entry initiative supports people in matching their shelter and housing needs with the appropriate resources. According to HUD, many communities have tended to employ a ‘first-come, first-serve’ method for service provision as a central barrier to ending homelessness. Such a strategy places the most vulnerable individuals in the same selection pools as individuals with less dire housing needs.

Coordinated entry processes help communities prioritize assistance based on vulnerability and severity of service needs to ensure that people who need assistance the most can receive it in a timely manner. Coordinated entry processes also provide information about service needs and gaps to help communities plan their assistance and identify needed resources. Standardized assessment tools, such as the VI-SPDAT or the Safety and Stabilization Assessment, are used to gather this information.

There is a possibility that housing discrimination could occur if the standardized assessment tool is used to selectively rule out particular protected classes such as race or national origin. Also, there could be privacy concerns regarding the information gathered through this screening method as well as how that information is used and stored and who has access to it.
Rules and Regulations for Residents

In general, community or house rules must be enforced consistently among all residents.

Shelters should be very careful to not show favoritism among residents. This could be perceived as discrimination, whether or not that is the intent. Be aware that if you do something special for a particular resident—for example, take them to the store, clean their unit or walk their dog—other residents may request the same service. If you don’t offer it to these other residents as well, this may be interpreted as discrimination. If a provider occasionally would like to make exceptions to standardized rules or to grant additional services, there should be a written policy explaining under what circumstances this would happen. (Please note that reasonable accommodation requests from residents with disabilities may also come into play here. See page 28)

Some shelter providers require their residents to attend religious services. Be aware that it is illegal for providers receiving federal funds to provide housing/shelter contingent on attending services. Such participation must be voluntary. Fair housing laws don’t expressly prohibit dwellings that do not receive federal funding from requiring attendance at services, but proselytizing could be considered “coercion“, which is a violation. We suggest that shelters that offer services promote them, but don’t require them. At the very least, residents should have the option of obtaining a waiver from attending services if they believe attendance would conflict with their religious beliefs or lack of religious beliefs. In this case, the provider could ask them to perform some other task in lieu of attending the services.

Shelter programs for individuals in recovery from alcoholism or drug addiction may require participation in recovery-related services or groups. However, if the program requires participation in a 12-step program and a resident does not feel comfortable with that type of program for religious reasons, the resident should be able to obtain a waiver from attendance if they are able to verify they are participating in another recovery program.

Shelters should be cautious about requiring all of their residents to enroll in case management, support groups, etc. Some fair housing attorneys believe requiring such services violate fair housing laws. Shelters committed to such requirements should, at the very least, match services to the individual needs of the resident. For example, it is not acceptable for a program to put a resident at risk of losing their job because they are required to attend a support group at the same time they are scheduled to be at work. It is similarly not acceptable to require a resident living on a disability income to attend job search classes or spend time searching for employment.

Under fair housing laws, it is legal for shelters to administer drug testing, provided every single applicant is tested. Providers doing random testing should be extremely cautious that whatever procedure they use (such as testing every 12th individual or testing every hour, etc.) has no risk of possible discrimination, however unintended. Providers performing such tests should give residents the opportunity to share information about any prescription medication they are taking that could affect the test results.
Marijuana use is legal in Oregon, but providers may determine whether or not to permit the use of medical marijuana. Federally funded providers are required to prohibit marijuana use under federal law.

Whether a shelter adopts a no-drinking policy for all residents is not a fair housing issue, although it may raise concerns regarding landlord-tenant law. Certified drug and alcohol-free housing programs may legally enforce no-drinking rules, as abstinence is essential for their recovery programs to succeed. (See Attachment 11, for Oregon Revised Statute 90.243, which dictates the standards a program must meet to be considered drug- and alcohol-free housing.) Any drug testing of residents must be carried out in a non-discriminatory manner. Random testing is acceptable but cannot be used to target any protected class.

Rules and Regulations Related to Families with Children under Fair Housing Laws

It is illegal to exclude families with children or show a preference for households without children. Yet, it is legal to limit housing to families with children or to show a preference for families with children.

There are a few exemptions to the familial status protection. If the shelter is limited to seniors, meaning all of the units are for individuals 62 and older or each unit has at least one resident 55 or older, children could be legally excluded. HUD’s Single Room Occupancy (SRO) program restricts units to one resident, although they should not exclude children under two. A halfway house for individuals who have been sexual predators could also restrict children based on safety concerns.

Having rules solely for children is generally just as illegal as targeting any other protected class. In other words, just as a shelter provider wouldn’t say residents of a certain race can’t be outside their units, they cannot say that children can’t be outside their units. Generally speaking, rules should be the same for all residents and should address specific behaviors, not the type of individuals violating the rules.

For example, it is not acceptable to have a rule “No children in the laundry room.” However, a provider can have a rule stating “No loitering in the laundry room.”

Shelter staff should not make decisions that belong to parents: Parents determine their children’s bed times, recreational activities, etc. These cannot be mandated by a shelter provider. (The provider can prohibit all residents from making loud noises after a specified time.)

Shelters can offer parenting classes or hand out materials addressing parenting skills. If staff suspects child neglect or other abuse, consult the shelter’s policies around mandatory reporting and follow rules applicable to facility licensing requirements.

Shelters can have safety-related rules specifically for children only if these are based on rules developed by state/local governments or manufacturers. For example, a shelter would be following state law by prohibiting children from riding a bicycle without a helmet or enforcing an age limit on a play structure established by a manufacturer. If a local
jurisdiction has a curfew, a shelter could adopt curfew hours that mirror that local law but could not adopt an earlier curfew.

A shelter provider’s best strategy for avoiding accident-related lawsuits is ensuring that their properties don’t have hazards such as open ditches or rickety banisters.

There have been successful fair housing cases against rental housing providers that required parents to supervise their children. A wiser strategy is to require all residents follow certain rules related to caring for the property and not disturbing other residents. If a child violates such rules, the parents/guardians are responsible for the child’s behavior. Instead of a rule stating “Parents must supervise their children at all times”, a better way to put it is “Parents are responsible for the behavior of their children.”

There have not as yet been any cases against shelters for having rules specifying supervision for children; for example, keeping the child in the parent’s “line of sight” or requiring the child to be in the same room as the parent. We don’t know how a court would rule on this issue. If a shelter believes they have strong justification for such requirements, they should consult their attorney about writing up their justification and having it on file in case a familial status complaint is filed against them.

Teenagers commonly babysit, and it isn’t reasonable to require that child care providers be over the age of 18. It probably is reasonable for a shelter provider to use a policy similar to the policy Child Welfare uses with foster families and require that the child care provider be 14 or older. Some federal funders require licensed child care providers. The shelter can offer informational handouts on how to select a babysitter or child care provider.

The choice of school or day care provider belongs to the parent. Shelter providers cannot, for example, force parents to enroll children in special schools provided for homeless children instead of the schools of their choice.
Harassment Protection under Fair Housing Laws

Harassment based on protected class is illegal under the Fair Housing Act (Section 818) and Oregon State Landlord-Tenant Law (839-005-0206(5)). It is illegal for a staff member, volunteer or resident at a shelter to “harass, intimidate, threaten or coerce” another resident because of their disability, religion, race, national origin, sex, gender identity or any other protected class. The harassment can be verbal or written, including the use of social media; it can involve deliberately interfering with a tool or product that a disabled resident needs for their daily activities. Be aware that people have different levels of tolerance and what one person may think is a harmless joke could be experienced as harassment by someone else.

There has been a dramatic increase in harassment in housing in recent years. HUD issued a ruling in 2016 reinforcing that harassment is a violation of the Fair Housing Act and providers are legally required to investigate and take action when harassment, including resident-on-resident harassment, occurs. Shelter providers are liable for harassment, including sexual harassment by staff, volunteers, and residents. They are liable for not taking immediate corrective action to respond and to end resident-on-resident harassment/intimidation based on protected class.

Once a shelter learns a resident has been harassed, they are legally required to investigate. It should be clear to all staff and volunteers who is responsible for investigating. Investigation of harassment includes interviewing the person who alleges harassment and determining which protected class may be involved. It also includes interviewing the alleged harasser and any possible witnesses. If it is confirmed that harassment has occurred, immediate action must be taken to remedy the situation and staff need to check back with the individual who experienced the harassment to ensure the problem has been resolved. Shelters should keep records to verify how they addressed the harassment and the outcome.

We strongly recommend shelters make sure all new staff and volunteers receive fair housing training that includes awareness of the prohibition against harassment and techniques for addressing resident-on-resident harassment.

We also recommend providers have policies prohibiting harassment (See Attachment 6 for sample policy) and procedures in place to respond to violations. This should be incorporated into the shelter’s grievance procedures. Residents should all be notified that that if they are harassed by another resident, they should notify shelter staff and if they are responsible for harassing others, they are at risk of losing their shelter.

Shelters that fail to address harassment by their staff, volunteers or other residents have been found liable under fair housing laws for creating or perpetuating a hostile housing environment.

Terminating Residents from Housing or Shelter Programs

Evicting or terminating a resident from a shelter must be based on an objective or fact-based violation of the written residency agreement, house rules, essential program requirements, or other established policies and rules of the program.
Objective reasons could include:

- Nonpayment of rent or program fees;
- Threatening, harassing or intimidating other residents;
- Destruction of property;
- Noncompliance with chores or other required services, unless there is justification for a waiver;
- Violations of rules related to noise, weapons, pets, curfew, etc.;
- Not having been truthful with essential eligibility information;
- Becoming ineligible for the housing based on a change in circumstances. For example, income increases to a level above the eligibility limit;
- Deliberate or ongoing violations of the confidentiality of another resident;

A resident with a disability can request a reasonable accommodation to delay or avoid a termination notice. For example, a resident with a mental health disability who receives a termination notice for making excessive noise and disturbing other residents may request a reasonable accommodation to remain in the shelter longer if they show evidence that they are, for example, back on their medications which serve to prevent certain erratic behaviors and they have a verification letter from a medical or mental health provider who can attest that the medication should ameliorate the behavior.

A shelter should not terminate an individual for behavior that is “odd”, but does not damage property, harm other residents or interfere with residents’ use and enjoyment of their housing. Residents should not be terminated for vague reasons such as “conflict with staff”; instead, specific behaviors need to be referenced, such as “threats of violence.”

Similarly, if the staff of a shelter has a list of individuals they will not serve in the future, sometimes referred to as a “blacklist,” this must be based on objective criteria. Usually this is limited to violent behavior or threatened violent behavior. The length of time an individual is refused re-entry should also be dealt with in a consistent manner.

**Enforcement of Fair Housing Laws**

An applicant, resident or former resident who believes they have experienced discrimination has one year to file a complaint with an administrative agency and two years to file a lawsuit. (See Attachment 13 for a detailed flow chart of the enforcement process.) For shelter providers, it is very important to keep clear and legible documentation in resident files, logs and other records in case a complaint is filed.

Fair housing complaints can be filed through the U.S. Department of Housing and Urban Development (HUD) or the Oregon Bureau of Labor and Industries (BOLI) Civil Rights Division. There are also Legal Aid, civil rights and other attorneys who specialize in fair housing cases. Many individuals who believe they have been discriminated against initially contact the Fair Housing Council of Oregon (FHCO) discrimination hotline. If it appears someone has experienced discrimination, FHCO can assist them in a number of ways, including offering individual advocacy, helping them to file and submit a complaint form and...
referring them to the most appropriate enforcement agency. FHCO may also become involved in aspects of the complaint investigation, including reviewing paperwork, interviewing witnesses or “testing.”

“Testing” is a process to determine if a housing or shelter provider engages in illegal discrimination in its ordinary practices. Individuals may pose as applicants as a way to “test” whether a provider discriminates against protected classes. FHCO complies with vigorous HUD testing guidelines to ensure fair and accurate assessments of whether housing discrimination is occurring.

The FHCO hotline staff is also available to answer questions from shelter providers. The number to call is (800) 424-3247. Nothing FHCO discusses with a shelter provider seeking information will be used against the provider. The only time FHCO becomes involved in legal action against a provider is if an applicant or resident approaches FHCO to file a complaint. FHCO also will provide fair housing training to shelter staff, board members and volunteers. Sometimes there is a charge for such trainings; other times grant funding is available to cover these costs.

How the enforcement process in fair housing cases unfolds varies depending upon which enforcement agency or attorney is involved (See Attachment 13). If a shelter provider is found to have discriminated, a court would order them to cease the discriminatory acts or policies and could require them to pay compensatory and/or punitive damages without limit as well as to do such things as submitting monitoring reports, and training of all staff.

There have been cases against shelters for refusing to allow assistance animals and refusing to shelter boys over the age of 11 in family shelters. These cases settled for thousands of dollars and required trainings for shelter staff, positive advertising and quarterly reporting for two to three years.

Funders of nonprofit housing and shelter providers that are found to discriminate could be liable as well. We advise any entities providing funding to nonprofit housing and shelter providers to be aware of the contents of this guide and to implement funding and monitoring criteria to prevent discrimination.

Where Do You Go From Here?

Some shelter providers have only recently learned that fair housing laws relate to their programs. This guide is a general overview of fair housing law. There are some scenarios that could come up in shelter environments that have not yet been specifically addressed by the courts.

The best ways for nonprofit housing and shelter providers to protect themselves are to:

- Review all policies, procedures, rules and application criteria for unintended discrimination;
- Make sure there are policies to address when any exceptions might be made to application criteria or rules;
☐ Develop new policies and procedures as needed. We recommend having a grievance procedure for residents who believe their rights may have been violated; i.e. denial of a reasonable accommodation request.

☐ Develop a clear process on how to handle resident-on-resident harassment and identify staff involved;

☐ Develop a clear process for how to handle reasonable accommodation requests and identify staff involved.

☐ Have a protocol for how to assist individuals with limited English. This is a requirement for federally-funded providers, but a best practice for all providers. It is important that confidentiality is maintained for any translation services used.

☐ Make sure staff know how to document any fair housing issues that come up and document the time spent addressing them. Documentation should be clear and legible. Individuals can file fair housing complaints up to two years after an alleged act of discrimination, so thorough documentation is extremely important;

☐ Identify a staff person to be the fair housing “specialist.” This person will keep abreast of fair housing issues, address any concerns and be the point person for handling a fair housing complaint;

☐ Develop a strategy to train all new staff and volunteers in fair housing requirements and to have regular refresher trainings as well. We recommend annual training for board members as well.

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If you have general questions about fair housing laws, contact the Fair Housing Council of Oregon at (503) 223-8197 ext. 5 in the Portland metro area or (800) 424-3247 ext. 5 throughout Oregon.

For specific legal advice, you should contact your attorney.
Attachment 1: Federal, State, and Local Protected Classes

Fair housing laws apply to all of us. Federal protected classes include: Race; Color; Religion; National Origin; Sex\(^3\); Familial Status; Disability

In Oregon, additional protected classes include: Source of Income\(^2\); Marital Status; Sexual Orientation; Gender Identity

<table>
<thead>
<tr>
<th>Local Protected Classes</th>
<th>Age (over 18)(^1)</th>
<th>Type of Occupation</th>
<th>Ethnicity</th>
<th>Domestic Partnership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multnomah County Code 15.340 et seq.</td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td>Benton County Code Chapter 28</td>
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<tr>
<td>Ashland Municipal Code 10.110.010 et seq.</td>
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<tr>
<td>Beaverton City Code Chapter 5.16.015 et seq.</td>
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<tr>
<td>Bend City Code 5.700 et. Seq.</td>
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<tr>
<td>Corvallis Municipal Code Chapter 1.23</td>
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<tr>
<td>Eugene City Code 4.613 et seq.</td>
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<td>Hillsboro City Code 9.34.005</td>
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<tr>
<td>Lincoln City Code Chapter 9.14.050</td>
<td>X</td>
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<tr>
<td>Portland City Code Chapter 23.01</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Salem Municipal Code Chapter 97</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Springfield City Code 5.558 et seq.</td>
<td>X</td>
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</tr>
</tbody>
</table>

(1) Generally doesn’t apply to housing for “older persons”
(2) Most statutes provide exceptions for recipients of income derived in an illegal manner
(3) 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
Attachment 2: LGBTQ Glossary

LGBTQ+ Terms related to protected classes of gender, sex, sexual orientation, and gender identity

**Sexual Orientation or “who you go to bed with”**

**Sexual Orientation:** Sexual orientation describes a person's physical, romantic, and/or emotional attraction to another person (for example: straight, gay, lesbian, bisexual). It is usually defined by who you are physically, romantically, or emotionally attracted to in relation to your own sex/gender.

**Aromantic:** experiencing little or no romantic attraction to others and/or has a lack of interest in romantic relationships/behavior.

**Asexual:** experiencing little or no sexual attraction to others and/or a lack of interest in sexual relationships/behavior.

**Bisexual:** a person who is emotionally, physically, and/or sexually attracted to people of their gender and another gender. Also an umbrella term for people who experience sexual and/or emotional attraction to more than one gender.

**Gay:** Typically refers to men whose emotional, romantic, and sexual attractions are primarily for other men. In some contexts, still used as a general term for gay men and lesbians.

**Lesbian:** a woman whose emotional, romantic, and sexual attractions are primarily for other women.

**Pansexual:** Capable of being attracted to many/any gender(s).

**Queer:** a historically derogatory term for a gay man, lesbian, or gender-nonconforming person. The term has been widely re-claimed, especially by younger LGBT people, as a positive social and political identity. It is sometimes used as an inclusive, or umbrella, term for all LGBT people. More recently, queer has become common as a term of self-identification for people who do not identify with the restrictive and binary terms that have traditionally described sexual orientation (for instance, gay, lesbian, or bisexual only). Some LGBT community members still find queer an offensive or problematic term.

**Gender Identity or “who you go to bed as”**

**Gender Identity:** The way in which people identify their own gender or inner sense of being male, female, or something else. It is an internal, personal, innate sense of being a girl/woman, boy/man, or another gender outside of the gender binary. One’s gender identity may or may not align with their assigned gender role, and gender identity is not necessarily visible to others. Both cisgender and transgender people have a gender identity.

**Gender Expression:** External expression of gender identity exhibited through behavior, clothing, hairstyle, mannerisms, makeup, body language, voice, speech patterns, and social interactions that are perceived as masculine, feminine, or androgynous.

**Perceived Gender Identity:** the gender with which a person is perceived (viewed by others) to identify based on that person’s appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents. HUD’s Equal Access Rule requires that individuals not be discriminated against based on actual or perceived gender identity.

**Transgender/Trans:** umbrella term encompassing many gender identities of people whose gender identity is different from the gender associated with their assigned sex (female=girl/woman; male=boy/man).
Transgender is an adjective, not a noun and can be both an individual and group identifier; “I am transgender,” “She is transgender,” “All the youth in that group are transgender.”

**The Gender Binary:** A system of viewing gender as consisting solely of two, opposite categories, termed “male and female”, in which no other possibilities for gender or anatomy are believed to exist. This system is oppressive to anyone who defies their sex assigned at birth, but particularly those who are gender-variant or do not fit neatly into one of the two standard categories.

**Gender Role:** Cultural expectations for what people should do with their lives, what activities they should enjoy or excel at, and how they should behave, based on their gender.

**Agender:** An umbrella term encompassing many different genders of people with no (or very little) connection to the traditional system of gender, no personal alignment with the concepts of either man or woman, and/or someone who sees themselves as existing without gender.

**Bigender:** Refers to those who identify as two genders. Can also be a person who fluctuates between traditionally “woman” and “man” gender-based behavior and identities, identifying with both genders.

**Cisgender:** Someone whose gender identity matches the gender role they were assigned at birth; a person who is not transgender. The Latin prefix ‘cis’ means “on the same side of.” Cisgender is preferable to “biological,” “genetic” or “real” male or female.

**Genderfluid:** A changing or “fluid” gender identity. A person who is gender fluid may always feel like a mix of the two traditional genders, but may feel more man some days, and more woman other days.

**Genderqueer:** An identity commonly used by people who do not identify or express their gender within the gender binary. Those who identify as genderqueer may identify as neither male nor female, may see themselves as outside of or in between the binary gender boxes, or may simply feel restricted by gender labels.

**Non-binary:** Non-binary people don't neatly fit into the categories of "man" or "woman," or “male” or “female.” For example, some people have a gender that blends elements of being a man or a woman, or a gender that is different than either male or female. Some people experience a gender that is “both” man and woman and some experience it as “neither”. Some people don't identify with any gender. Some people's gender changes over time.

**Transgender man:** a person whose gender identity is male but who was assigned female at birth.
- **FTM/F2M/Female-to-Male:** Refers to someone with a female birth sex and assigned gender role but who identifies as male. While still commonly used, it is considered inaccurate and disrespectful by many transgender men. This term puts the emphasis on changing a physical state or becoming something ‘other’ than what you already are.

**Transgender woman:** a person whose gender identity is female but who was assigned male at birth.
- **MTF/M2F/Male-to-Female:** Refers to someone with a male birth sex and assigned gender role but who identifies as female. While still commonly used, it is considered inaccurate and disrespectful by many transgender women. This term puts the emphasis on changing a physical state or becoming something ‘other’ than what you already are.

**Related Terms**
**Sex:** refers to a person's biological status and is typically categorized as male, female or intersex. There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs and external genitalia. (APA, 2012).

**Sex (Sex assigned at birth):** Sex is typically assigned at birth (or before during ultrasound) based on the appearance of external genitalia. When the external genitalia are ambiguous other indicators (e.g., internal genitalia, chromosomal and hormonal sex) are considered to assign a sex at birth. (APA, 2015). The assignment and classification of people as male, female, intersex, or another sex assigned at birth often based on physical anatomy at birth and/or karyotyping. No one, whether cisgender or trans, gets to choose what sex they’re assigned at birth. This term is preferred to “biological male/female”, “male/female bodied”, “natal male/female”, and “born male/female”, which are used in disparaging ways toward transgender people and exclude intersex people.

**Intersex:** A term for describing a person with a combination of chromosomes, gonads, hormones, internal sex organs, and genitals that differs from the two expected combinations of hormones, chromosomes, and anatomy that are used to assign sex at birth as male or female.

**AFAB/ AMAB:** Abbreviation for Assigned Female At Birth or Assigned Male At Birth. Refers to the assigned gender role a person is given at birth. Some transgender people use them in describing their gender history. They are also helpful in avoiding being pinned down to an essentialist narrative about their sex.

**Transitioning (Gender Transition):** Process that some (but not all) trans people go through to live as the gender they identify as, rather than their assigned gender based on sex at birth. Transition may or may not include hormonal, medical, or surgical treatment. People transition in different ways and may do some or none of the following:

- **Medical Transition:** A person may consult a doctor/mental health provider and/or undergo hormone therapy. They may undergo surgical procedures.
- **Social Transition:** Coming out to friends, family and co-workers. Using a different name and/or pronouns. They may change ones appearance
- **Legal Transition:** They may change name or gender marker on legal documents

**Misgendering:** To refer to a person using terms (pronouns, nouns, adjectives, etc.) that express the wrong gender, either accidentally or on purpose. Calling a transgender woman ‘Sir’ or transgender boy, ‘Miss.’

Attachment 3: Additional Resources for Ensuring Safety and Privacy for Everyone

Improve Privacy as a Strategy to Increase LGBTQ Access to Existing Domestic Violence (DV) Shelter Programs

Creating Trans-Inclusive Bathrooms in Shelters

Dealing with Conflict and Bias in Gender-Integrated Shelters

Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People

Shelter for All Genders: Best Practices for Homeless Shelters, Services, and Programs in Massachusetts in Serving Transgender Adults and Gender Non-Conforming Guests

Open Minds Open Doors: Transforming Domestic Violence Programs to Include LGBTQ Survivors

HUD’s Equal Access Rule
http://www.transequality.org/sites/default/files/docs/resources/Equal-Access-for-Transgender-People-Supporting-Inclusive-Housing-and-Shelters.pdf and
Attachment 4: Transitioning our Shelters Model Policy

MODEL POLICY FOR SAFE SHELTERS

RESPECT:
At this shelter, we have a policy of respect for all people, including transgender people. Our policy is to respect the gender of each person as they self-identify it. For example, if someone says she is a woman, she is a woman. A person’s gender does not depend on whether or not they have had surgery or other medical treatments. People are who they say they are.

HOUSING, BATHROOMS, AND SHOWERS:
People who identify as men are to be housed with the men and are to use the men’s showers and bathrooms. People who identify as women are to be housed with the women and use the women’s showers and bathrooms. People who do not clearly identify as male or female are to be housed in and use the bathrooms and showers in whichever section they feel safest. If this bothers the other residents of that section, staff should patiently explain to those residents that the person is not a threat to them and that they should be respected. Residents who are worried about privacy should be reminded that all showers and bathrooms in the facility allow for bodily privacy and that single-use showers and bathrooms are available if they more comfortable using those.

THE PRIVATE BATHROOMS AND SHOWERS:
All residents should be told about the single-use showers and bathrooms in the facility and all should be welcome to use them.

SLEEPING ARRANGEMENTS:
Transgender residents, and others with increased safety needs, should be offered bed space closest to the night staff so that if there is a problem, they may contact staff quickly for help.

HARASSMENT:
Harassment of all kinds is prohibited. If residents are harassing a transgender person, staff must make sure that it stops.

INTAKE:
All incoming residents are to be told that:
1. This shelter respects transgender residents.
2. Private information, such as medical information and information about whether or not a person is transgender, etc., is kept confidential unless the resident wishes otherwise.
3. No harassment of other residents is allowed.

If a resident reveals to staff that he or she is transgender, the intake conversation should include the following additional topics:
1. Housing placement and sleeping arrangements, including the availability of beds close to night staff if the resident prefers
2. Shower and bathroom placement, including the availability of private showers and bathrooms that the resident may use if he or she prefers
3. The name and pronouns (“he” or “she”) the resident would like staff to use

QUESTIONS:
Questions about this policy should be addressed to your immediate supervisor and if he or she is not available, contact the director of the shelter at _________
## Attachment 5: Suggested Alternative Documents

### Suggested Alternative Documents for Screening Immigrant Populations

*Courtesy of the Fair Housing Center of Washington*

<table>
<thead>
<tr>
<th>Documents that can establish identity</th>
<th>Documents that can establish past rental history</th>
<th>Documents that can establish credit or ability to pay rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Citizenship Card, Consulate Cards</td>
<td>• Records from school district to establish stability</td>
<td>• Letter from employer</td>
</tr>
<tr>
<td>• INS Form I-864 Sponsorship verification</td>
<td>• Letter from utility company to establish rental history</td>
<td>• Current contracts for major purchases to help identify credit</td>
</tr>
<tr>
<td>• Certificate of Naturalization (INS I-550)</td>
<td>• Letter from former landlord with a phone number</td>
<td>• Bank records</td>
</tr>
<tr>
<td>• Voter's registration card</td>
<td>• Copy of lease from former residence</td>
<td>• Sponsorship letters</td>
</tr>
<tr>
<td>• U.S. Passport</td>
<td></td>
<td>• INS Form I-864 Sponsorship verification</td>
</tr>
<tr>
<td>• Certificate of U.S. Citizenship (N-550 or N-561)</td>
<td></td>
<td>• Social Security card</td>
</tr>
<tr>
<td>• Unexpired foreign passport, with 1-555 stamp or INS form 1-94 indicating unexpired employment authorization</td>
<td></td>
<td>• Individual Taxpayer Identification number (ITIN)</td>
</tr>
<tr>
<td>• Alien registration receipt card with photograph (I-151 or I-551)</td>
<td></td>
<td>• Current Pay stubs</td>
</tr>
<tr>
<td>• Unexpired temporary resident card (I-688)</td>
<td></td>
<td>• Benefit Award Letter (SSA, DSHS, etc.)</td>
</tr>
<tr>
<td>• Unexpired employment authorization card (I-688A or I-688B)</td>
<td></td>
<td>• Section 8 Voucher</td>
</tr>
<tr>
<td>• Unexpired reentry permit (I-327)</td>
<td></td>
<td>• School Pmt Contracts</td>
</tr>
<tr>
<td>• Unexpired refugee travel document (I-571)</td>
<td></td>
<td>• Paid off Installment contracts</td>
</tr>
<tr>
<td>• Driver's license or ID card</td>
<td></td>
<td>• Paid Utility Bills</td>
</tr>
<tr>
<td>• Military card or draft record or military depend card</td>
<td></td>
<td></td>
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<tr>
<td>• School ID card with photograph</td>
<td></td>
<td></td>
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<tr>
<td>• Hospital records</td>
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<td></td>
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<tr>
<td>• Day care or nursery school records</td>
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</table>
Attachment 6: 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:

✓ The behavior which occurred or was said to occur, and how the behavior is a violation of Fair Housing Laws
✓ That such behavior will not be tolerated
✓ 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.
Attachment 7: Sample Reasonable Accommodation/Modification Policy

Sample Reasonable Accommodation/Modification Policy

Applicants and Residents with Disabilities Have the Right to Reasonable accommodations or Modifications

Please let us know if you have a disability and you need:

- A change in a policy or rule that is necessary for you to live here or participate in the programs here.
- An opportunity to successfully address a problem that led you to receive an eviction notice (lease violation, termination, etc.).
- A physical change to your unit necessary to accommodate your disability.
- A change in the way we communicate with you or give you information.

We will give you a Reasonable Accommodation/Modification Request Form and help you fill it out if needed. We may also contact your medical or therapeutic provider to make sure you have the disability and that what you are requesting is necessary for you.

If you can demonstrate to us that you have a disability and that your request is necessary, we will do our best to accommodate you.

We will give you an answer within   unless there is a delay getting the information we need from your medical or therapeutic provider.

If we turn down the request, we will explain the reason in writing. It may be that it is too costly, too much work for our staff, or a service that our organization is unable to provide. If that is the case, we may also be able to work with you to come up with another accommodation/modification that we would be able to provide.

All information about the request will be kept confidential.
Attachment 8: 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 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.
SPECIAL ATTENTION OF: HUD Regional and Field Office Directors of Public and Indian Housing (PIH); Housing; Community Planning and Development (CPD), Fair Housing and Equal Opportunity; and Regional Counsel; CPD, PIH and Housing Program Providers

FHEO Notice: FHEO-2013-01
Issued: April 25, 2013
Expires: Effective until Amended, Superseded, or Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

1. Purpose: This notice explains certain obligations of housing providers under the Fair Housing Act (FHA Act), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice’s (DOJ) amendments to its regulations 1 for Titles II and III of the ADA limit the definition of “service animal” under the ADA to include only dogs, and further define “service animal” to exclude emotional support animals. This definition, however, does not limit housing providers’ obligations to make reasonable accommodations for assistance animals under the FHA Act or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHA Act and Section 504. In situations where the ADA and the FHA Act/Section 504 apply simultaneously (e.g., a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHA Act/Section 504 and the service animal provisions of the ADA.

2. Applicability: This notice applies to all housing providers covered by the FHA Act, Section 504, and/or the ADA 2.

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2 Title II of the ADA applies to public entities, including public entities that provide housing, e.g., public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.
3. **Organization:** Section I of this notice explains housing providers’ obligations under the FHA Act and Section 504 to provide reasonable accommodations to persons with disabilities with assistance animals. Section II explains DOJ’s revised definition of “service animal” under the ADA. Section III explains housing providers’ obligations when multiple nondiscrimination laws apply.

**Section I: Reasonable Accommodations for Assistance Animals under the FHA Act and Section 504**

The FHA Act and the U.S. Department of Housing and Urban Development’s (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD’s Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHA Act nor Section 504 requires an assistance animal to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

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3 Reasonable accommodations under the FHA Act and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

4 Assistance animals are sometimes referred to as “service animals,” “assistive animals,” “support animals,” or “therapy animals.” To avoid confusion with the revised ADA “service animal” definition discussed in Section II of this notice, or any other standard, we use the term “assistance animal” to ensure that housing providers have a clear understanding of their obligations under the FHA Act and Section 504.

5 For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD’s final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834,63835 (October 27, 2008).
(1) Does the person seeking to use and live with the animal have a disability — i.e., a physical or mental impairment that substantially limits one or more major life activities?

(2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

If the answer to question (1) or (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) and (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct — not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional support to complete a form attesting to the assistance animal’s ability to provide the requested support. If the request is for a service or therapy animal that can serve as an assistance animal, the housing provider may require the individual to provide documentation that the animal is a service or therapy animal. If a housing provider’s practice is to require tenants for any damage they cause to the premises, for more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act, http://www.hud.gov/offices/lbeo/library/hudjostatement.pdf.
support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person’s physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.7

Section II: The ADA Definition of “Service Animal”

In addition to their reasonable accommodation obligations under the FHAAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ’s revised ADA regulations define “service animal” narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The revised regulations specify that “the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”8 Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses9), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of “service animal” applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAAct and Section 504, an individual’s use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of “service animal” to be allowed into a covered facility.

7 Ibid.
9 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).
To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (e.g., individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures. A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal’s actual conduct—not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.

Section III. Applying Multiple Laws

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHA and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHA and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA’s regulations does not ensure compliance with the FHA or Section 504. The preambles to DOJ’s 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities “may not use the ADA definition [of “service animal”] as a justification for reducing their FHA obligations.”

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8 C.F.R. § 36.302(c).
9 For more information on ADA requirements relating to service animals, visit DOJ’s website at www.ada.gov.
10 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).
The revised ADA regulations also do not change the reasonable accommodation analysis under the FHA or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHA, "an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a 'reasonable accommodation' that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat." In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may "nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHA." While the preambles expressly mention only the FHA, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for "service animal," the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider's responsibility to know the applicable laws and comply with each of them.

Section IV. Conclusion

The definition of "service animal" contained in ADA regulations does not limit housing providers' obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHA or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

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13 75 Fed. Reg. at 56194, 56268.
14 75 Fed. Reg. at 56166, 56240.
15 28 C.F.R § 35.136; 28 C.F.R. § 36.302(c).
Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.

John Trasvina, Assistant Secretary for Fair Housing and Equal Opportunity
Attachment 10: Sample Assistance Animal Agreement

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 tidy 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 11: Oregon Landlord-Tenant Law related to Alcohol & Drug Free Housing

ORS 90.243 Qualifications for drug and alcohol free housing; “program of recovery” defined.

1) A dwelling unit qualifies as drug and alcohol free housing if

(a)(A) For premises consisting of more than eight dwelling units, the dwelling unit is one of at least eight contiguous dwelling units on the premises that are designated by the landlord as drug and alcohol free housing dwelling units and that are each occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery; or

(B) For premises consisting of eight or fewer dwelling units, the dwelling unit is one of at least four contiguous dwelling units on the premises that are designated by the landlord as drug and alcohol free housing dwelling units and that are each occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery;

(b) The landlord is a nonprofit corporation incorporated pursuant to ORS chapter 65 or a housing authority created pursuant to ORS 456.055 to 456.235;

(c) The landlord provides for the designated drug and alcohol free housing dwelling units:

(A) A drug and alcohol free environment, covering all tenants, employees, staff, agents of the landlord and guests;

(B) Monitoring of the tenants for compliance with the requirements described in paragraph (d) of this subsection;

(C) Individual and group support for recovery; and

(D) Access to a specified program of recovery; and

(d) The rental agreement for the designated drug and alcohol free housing dwelling unit is in writing and includes the following provisions:

(A) That the dwelling unit is designated by the landlord as a drug and alcohol free housing dwelling unit;

(B) That the tenant may not use, possess or share alcohol, illegal drugs, controlled substances or prescription drugs without a medical prescription, either on or off the premises;

(C) That the tenant may not allow the tenant’s guests to use, possess or share alcohol, illegal drugs, controlled substances or prescription drugs without a medical prescription, on the
premises;

(D) That the tenant shall participate in a program of recovery, which specific program is described in the rental agreement;

(E) That on at least a quarterly basis the tenant shall provide written verification from the tenant's program of recovery that the tenant is participating in the program of recovery and that the tenant has not used alcohol or illegal drugs;

(F) That the landlord has the right to require the tenant to take a test for drug or alcohol usage promptly and at the landlord's discretion and expense; and

(G) That the landlord has the right to terminate the tenant's tenancy in the drug and alcohol free housing under ORS 90.392, 90.398 or 90.630 for noncompliance with the requirements described in this paragraph.

(2) A dwelling unit qualifies as drug and alcohol free housing despite the premises not having the minimum number of qualified dwelling units required by subsection (1)(a) of this section if:

(a) The premises are occupied but have not previously qualified as drug and alcohol free housing;

(b) The landlord designates certain dwelling units on the premises as drug and alcohol free dwelling units;

(c) The number of designated drug and alcohol free housing dwelling units meets the requirement of subsection (1)(a) of this section;

(d) When each designated dwelling unit becomes vacant, the landlord rents that dwelling unit to, or holds that dwelling unit for occupancy by, at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery and the landlord meets the other requirements of subsection (1) of this section; and

(e) The dwelling unit is one of the designated drug and alcohol free housing dwelling units.

(3) The failure by a tenant to take a test for drug or alcohol usage as requested by the landlord pursuant to subsection (1)(d)(F) of this section may be considered evidence of drug or alcohol use.

(4) As used in this section, "program of recovery" means a verifiable program of counseling and rehabilitation treatment services, including a written plan, to assist recovering alcoholics or drug addicts to recover from their addiction to alcohol or illegal drugs while living in drug and alcohol free housing. A "program of recovery" includes Alcoholics Anonymous, Narcotics

Guide to Fair Housing for Homeless and Domestic Violence Shelter Providers, May 2018 page 59
Attachment 12: Accessibility Guidelines Under the Fair Housing Act & ADA

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
Office of the Assistant Secretary for
Fair Housing and Equal Opportunity 24 CFR Ch.I
[Docket No. N-94-;FR-2665-N-08]

Supplement to Notice of Fair Housing Accessibility
Guidelines: Questions and Answers about the Guidelines

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines.

SUMMARY: On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines) to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act) that are applicable to certain multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Since publication of the Guidelines, the Department has received many questions regarding the applicability of the technical specifications set forth in the Guidelines to certain types of new multifamily dwellings and certain types of units within covered multifamily dwellings. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to the design and construction requirements of the Fair Housing Act.

This document reproduces the questions that have been most frequently asked by members of the public, and the Department's answers to these questions. The Department believes that the issues addressed by these questions and answers may be of interest and assistance to other members of the public who must comply with the design and construction requirements of the Fair Housing Act. This notice of questions and answers about the Fair Housing Accessibility Guidelines will be codified in the 1994 edition of the Code of Federal Regulations as Appendix IV to the Fair Housing regulations (24 CFR Ch.I., Subch.A, App. IV).

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Special Advisor for Disability Policy, Office of Enforcement, Office of Fair Housing and Equal Opportunity, 451 Seventh St., S.W., Washington, DC 20410, telephone 202-708-2333, Ext. 7058 (voice) or 202-708-1734 (TTY).

SUPPLEMENTARY INFORMATION:

Background

The Fair Housing Amendments Act of 1988 (Pub.L. 100-430, approved September 13, 1988) (the Fair Housing Amendments Act) amended title VIII of the Civil Rights Act of 1968 (Fair Housing Act or Act) to add prohibitions against discrimination in housing on the basis of disability and familial status. The Fair Housing
Amendments Act also made it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with disabilities, and established design and construction requirements to make these dwellings readily accessible to and usable by persons with disabilities. Section 100.205 of the Department's regulations at 24 CFR part 100 implements the Fair Housing Act's design and construction requirements (also referred to as accessibility requirements).

On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines) to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Act. (The Guidelines are codified at 24 CFR Ch.I, Subch .A., App. II. The preamble to the Guidelines is codified at 24 CFR Ch.I, Subch.A., App.III.) The Guidelines are organized to follow the sequence of requirements as they are presented in the Fair Housing Act and in 24 CFR 100.205. The Guidelines provide technical guidance on the following seven requirements:

Requirement 1. Accessible building entrance on an accessible route.
Requirement 2. Accessible common and public use areas.
Requirement 3. Usable doors (usable by a person in a wheelchair).
Requirement 4. Accessible route into and through the dwelling unit.
Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

The design specifications presented in the Guidelines are recommended guidelines only. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. The Fair Housing Act and the Department's implementing regulation provides, for example, for use of the appropriate requirements of the ANSI A117.1 standard. However, adherence to the Guidelines does constitute a safe harbor in the Department's administrative enforcement process for compliance with the Fair Housing Act's design and construction requirements.

Since publication of the Guidelines, the Department has received many questions regarding applicability of the design specifications set forth in the Guidelines to certain types of new multifamily dwellings and to certain types of interior housing designs. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to compliance with the design and construction requirements of the Fair Housing Act. Given the wide variety in the types of multifamily dwellings and the types of dwelling units, and the continual introduction into the housing market of new building and interior designs, it was not possible for the Department to prepare accessibility guidelines that would address every housing type or housing design. Although the Guidelines cannot address every housing design, it is the Department’s intention to assist the public in complying with the design and construction requirements of the Fair Housing Act through workshops and seminars, telephone assistance, written replies to written inquiries, and through the publication of documents such as this one. The Department has contracted for the preparation of a design manual that will further explain and illustrate the Fair Housing Act Accessibility Guidelines.

The questions and answers set forth in this notice address the issues most frequently raised by the public with respect to types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.
The question and answer format is divided into two sections. Section 1, entitled "Dwellings Subject to the New Construction Requirements of the Fair Housing Act" addresses the issues raised in connection with the types of multifamily dwellings (including portions of such dwellings) constructed for first occupancy after March 13, 1991, that must comply with the Act's design and construction requirements. Section 2, entitled "Accessibility Guidelines," addresses the issues raised in connection with the design and construction specifications set forth in the Guidelines.

Date: June 28, 1994

Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity

Accordingly, the Department adds the "Questions and Answers about the Fair Housing Accessibility Guidelines" as Appendix IV to 24 CFR, Ch. I, Subchapter A to read as follows:

Appendix IV to Ch. I, Subchapter A -- Questions and Answers about the Fair Housing Accessibility Guidelines

Questions and Answers about the Fair Housing Accessibility Guidelines

Introduction

On March 6, 1991 (56 FR 9472), the Department published final Fair Housing Accessibility Guidelines (Guidelines). (The Guidelines are codified at 24 CFR Ch. I, Subch. A, App. II.) The Guidelines provide builders and developers with technical guidance on how to comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act) that are applicable to certain multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Since publication of the Guidelines, the Department has received many questions regarding the applicability of the technical specifications set forth in the Guidelines to certain types of new multifamily dwellings and certain types of units within covered multifamily dwellings. The Department also has received several questions concerning the types of new multifamily dwellings that are subject to the design and construction requirements of the Fair Housing Act.

The questions and answers contained in this document address some of the issues most frequently raised by the public with respect to the types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines. The issues addressed in this document are addressed only with respect to the application of the Fair Housing Act and the Guidelines to dwellings which are "covered multifamily dwellings" under the Fair Housing Act. Certain of these dwellings, as well as certain public and common use areas of such dwellings, may also be covered by various other laws, such as section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157); and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213).

Section 504 applies to programs and activities receiving federal financial assistance. The Department's regulations for section 504 are found at 24 CFR part 8.

The Architectural Barriers Act applies to certain buildings financed in whole or in part with federal funds. The Department's regulations for the Architectural Barriers Act are found at 24 CFR parts 40 and 41.

The Americans with Disabilities Act (ADA) is a broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local
government services, and telecommunications. The Department of Justice is the lead federal agency for implementation of the ADA and should be contacted for copies of relevant ADA regulations.

The Department has received a number of questions regarding applicability of the ADA to residential housing, particularly with respect to title III of the ADA, which addresses accessibility requirements for public accommodations. The Department has been asked, in particular, if public and common use areas of residential housing are covered by title III of the ADA. Strictly residential facilities are not considered places of public accommodation and therefore would not be subject to title III of the ADA, nor would amenities provided for the exclusive use of residents and their guests. However, common areas that function as one of the ADA's twelve categories of places of public accommodation within residential facilities are considered places of public accommodation if they are open to persons other than residents and their guests. Rental offices and sales office for residential housing, for example, are by their nature open to the public, and are places of public accommodation and must comply with the ADA requirements in addition to all applicable requirements of the Fair Housing Act.

As stated above, the remainder of this notice addresses issues most frequently raised by the public with respect to the types of multifamily dwellings subject to the design and construction requirements of the Fair Housing Act, and the technical specifications contained in the Guidelines.

Section 1: Dwellings Subject to the New Construction Requirements of the Fair Housing Act. The issues addressed in this section concern the types of multifamily dwellings (or portions of such dwellings) designed and constructed for first occupancy after March 13, 1991 that must comply with the design and construction requirements of the Fair Housing Act.

Townhouses

Q. Are townhouses in non-elevator buildings which have individual exterior entrances required to be accessible?
A. Yes, if they are single-story townhouses. If they are multistory townhouses, accessibility is not required. (See the discussion of townhouses in the preamble to the Guidelines under "Section 2--Definitions [Covered Multifamily Dwellings]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

Q. Does the Fair Housing Act cover four one-story dwelling units that share common walls and have individual entrances?
A. Yes. The Fair Housing Act applies to all units in buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. This would include one-story homes, sometimes called "single-story townhouses," "villas," or "patio apartments," regardless of ownership, even though such homes may not be considered multifamily dwellings under various building codes.

Q. What if the single-story dwelling units are separated by firewalls?
A. The Fair Housing Act would still apply. The Guidelines define covered multifamily dwellings to include buildings having four or more units within a single structure separated by firewalls.

Commercial Space
Q. If a building includes three residential dwelling units and one or more commercial spaces, is the building a "covered multifamily dwelling" under the Fair Housing Act?

A. No. Covered multifamily dwellings are buildings consisting of four or more dwelling units, if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. Commercial space does not meet the definition of "dwelling unit." Note, however, that title III of the ADA applies to public accommodations and commercial facilities, therefore an independent determination should be made regarding applicability of the ADA to the commercial space in such a building (see the introduction to these questions and answers, which provides some background on the ADA).

Condominiums

Q. Are condominiums covered by the Fair Housing Act?

A. Yes. Condominiums in covered multifamily dwellings are covered by the Fair Housing Act. The Fair Housing Act makes no distinctions based on ownership.

Q. If a condominium is pre-sold as a shell and the interior is designed and constructed by the buyer, are the Guidelines applicable?

Yes. The Fair Housing Act applies to design and construction of covered multifamily dwellings, regardless of whether the person doing the design and construction is an architect, builder, or private individual. (See discussion of condominiums in the preamble to Guidelines under "Section 2-- Definitions [Dwelling Units]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

Additions

Q. If an owner adds four or more dwelling units to an existing building, are those units covered by the Fair Housing Act?

A. Yes, provided that the units constitute a new addition to the building and not substantial rehabilitation of existing units.

Q. What if new public and common use spaces are also being added?

If new public and common use areas or buildings are also added, they are required to be accessible.

Q. If the only new construction is an addition consisting of four or more dwelling units, would the existing public and common use spaces have to be made accessible?

A. No, existing public and common use areas would not have to be made accessible. The Fair Housing Act applies to new construction of covered multifamily dwellings. (See section 804(f)(3)(C)(i) of the Act.) Existing public and common use facilities are not newly constructed portions of covered multifamily dwellings. However, reasonable modifications to the existing public and common use areas to provide access would have to be allowed, and the Americans with Disabilities Act (ADA) may apply to certain public and common use areas. An independent determination should be made regarding applicability of the ADA. (See the introduction to these questions and answers, which provides some background on the ADA.)

Units Over Parking

Q. Plans for a three-story building consist of a common parking area with assigned stalls on grade as the first story, and two stories of single-story dwelling units stacked over the parking. All of the stories above the
parking level are to be accessed by stairways. There are no elevators planned to be in the building. Would the first story of single-story dwelling units over the parking level be required to be accessible?

A. Yes. The Guidelines adopt and amplify the definition of "ground floor" found in HUD’s regulation implementing the Fair Housing Act (see 24 CFR 100.201) to indicate that "...where the first floor containing dwelling units is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor." (See definition of "ground floor" in the Guidelines at 24 CFR Ch. I, Subch. A, App. II, Section 2.) Where no dwelling units in a covered multifamily dwelling are located on grade, the first floor with dwelling units will be considered to be a ground floor, and must be served by a building entrance on an accessible route. However, the definition of "ground floor" does not require that there be more than one ground floor.

Q. If a building design contains a mix of single-story flats on grade and single-story flats located above grade over a public parking area, do the flats over the parking area have to be accessible?

A. No. In the example in the above question, because some single-story flats are situated on grade, these flats would be the ground floor dwelling units and would be required to be accessible. The definition of ground floor in the Guidelines states, in part, that "ground floor means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors." Thus, the definition includes situations where the design plan is such that more than one floor of a building may be accessed by means of an accessible route (for an example, see Question 6, which follows). There is no requirement in the Department's regulations implementing the Fair Housing Act that there be more than one ground floor.

More Than One Ground Floor

Q. If a two or three story building is to be constructed on a slope, such that the lowest story can be accessed on grade on one side of the building and the second story can be accessed on grade on the other side of the building, do the dwelling units on both the first and second stories have to be made accessible?

A. Yes. By defining "ground floor" to be any floor of a building with an accessible entrance on an accessible route, the Fair Housing Act regulations recognize that certain buildings, based on the site and the design plan, have more than one story which can be accessed at or near grade. In such cases, if more than one story can be designed to have an accessible entrance on an accessible route, then all such stories should be so designed. Each story becomes a ground floor and the dwelling units on that story must meet the accessibility requirements of the Act. (See the discussion on this issue in Question 12 of this document.)

Continuing Care Facilities

Q. Do the new construction requirements of the Fair Housing Act apply to continuing care facilities which incorporate housing, health care and other types of services? A. The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a "dwelling" under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings. Factors that the Department will consider in making such an examination include, but are not limited to:

- the length of time persons stay in the project;
• whether policies are in effect at the project that are designed and intended to encourage or discourage occupants from forming an expectation and intent to continue to occupy space at the project; and
• the nature of the services provided by or at the project.

Evidence of First Occupancy

Q. The Fair Housing Act applies to covered multifamily dwellings built for first occupancy after March 13, 1991. What is acceptable evidence of “first occupancy”?

A. The determination of first occupancy is made on a building by building basis. The Fair Housing Act regulations provide that "covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 (and therefore exempt from the Act’s accessibility requirements) if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, county or local government on or before June 15, 1990." For buildings that did not obtain the final building permit on or before June 15, 1990, proof of the date of first occupancy consists of (1) a certificate of occupancy, and (2) a showing that at least one dwelling unit in the building actually was occupied by March 13, 1991. For example, a tenant has signed a lease and has taken possession of a unit. The tenant need not have moved into the unit, but the tenant must have taken possession so that, if desired, he or she could have moved into the building by March 13, 1991. For dwelling units that were for sale, this means that the new owner had completed settlement and taken possession of the dwelling unit by March 13, 1991. Once again, the new owner need not have moved in, but the owner must have been in possession of the unit and able to move in, if desired, on or before March 13, 1991. A certificate of occupancy alone would not be an acceptable means of establishing first occupancy, and units offered for sale, but not sold, would not meet the test for first occupancy.

Converted Buildings

Q. If a building was used previously for a nonresidential purpose, such as a warehouse, office building, or school, and is being converted to a multifamily dwelling, must the building meet the requirements of the Fair Housing Act?

No, the Fair Housing Act applies to "covered multifamily dwellings for first occupancy after" March 13, 1991, and the Fair Housing Act regulation defines "first occupancy" as "a building that has never before been used for any purpose." (See 24 CFR 100.201, for the definition of "first occupancy," and also 24 CFR Ch. I, Subch. A, App. I.)

Section 2: Accessibility Guidelines.

The issues addressed in this section concern the technical specifications set forth in the Fair Housing Accessibility Guidelines.

Requirement 1 -- Accessible Entrance on an Accessible Route

Accessible Routes to Garages

Q. Is it necessary to have an accessible path of travel from a subterranean garage to single-story covered multifamily dwellings built on top of the garage?
A. Yes. The Fair Housing Act requires that there be an accessible building entrance on an accessible route. To satisfy Requirement 1 of the Guidelines, there would have to be an accessible route leading to grade level entrances serving the single-story dwelling units from a public street or sidewalk or other pedestrian arrival point. The below grade parking garage is a public and common use facility. Therefore, there must also be an accessible route from this parking area to the covered dwelling units. This may be provided either by a properly sloped ramp leading from the below grade parking to grade level, or by means of an elevator from the parking garage to the dwelling units.

Q. Does the route leading from inside a private attached garage to the dwelling unit have to be accessible?

A. No. Under Requirement 1 of the Guidelines, there must be an accessible entrance to the dwelling unit on an accessible route. However, this route and entrance need not originate inside the garage. Most units with attached garages have a separate main entry, and this would be the entrance required to be accessible. Thus, if there were one or two steps inside the garage leading into the unit, there would be no requirement to put a ramp in place of the steps. However, the door connecting the garage and dwelling unit would have to meet the requirements for usable doors.

Site Impracticality Tests

Q. Under the individual building test, how is the second step of the test performed, which involves measuring the slope of the finished grade between the entrance and applicable arrival points?

A. The slope is measured at ground level from the entrance to the top of the pavement of all vehicular and pedestrian arrival points within 50 feet of the planned entrance, or, if there are none within 50 feet, the vehicular or pedestrian arrival point closest to the planned entrance.

Q. Under the individual building test, at what point of the planned entrance is the measurement taken?

A. On a horizontal plane, the center of each individual doorway should be the point of measurement when measuring to an arrival point, whether the doorway is an entrance door to the building or an entrance door to a unit.

Q. The site analysis test calls for a calculation of the percentage of the buildable areas having slopes of less than 10 percent. What is the definition of "buildable areas"?

A. The "buildable area" is any area of the lot or site where a building can be located in compliance with applicable codes and zoning regulations.

Second Ground Floors

Q. The Department’s regulation for the Fair Housing Act provides that there can be more than one ground floor in a covered multifamily dwelling (such as a three-story building built on a slope with three stories at and above grade in front and two stories at grade in back). How is the individual building test performed for additional stories, to determine if those stories must also be treated as "ground floors"?

A. For purposes of determining whether a non-elevator building has more than one ground floor, the point of measurement for additional ground floors, after the first ground floor has been established, is at the center of the entrance (building entrance for buildings with one or more common entrance and each dwelling unit entrance for buildings with separate ground floor unit entrances) at floor level for that story.
Q. What happens if a builder deliberately manipulates the grade so that a second story, which also might have been treated as a ground floor, requires steps?

A. Deliberate manipulation of the height of the finished floor level to avoid the requirements of the Fair Housing Act would serve as a basis for the Department to determine that there is reasonable cause to believe that a discriminatory housing practice has occurred.

Requirement 2 -- Public and Common Use Areas

No Covered Dwellings

Q. Are the public and common use areas of a newly constructed development that consists entirely of buildings having four or more multistory townhouses, with no elevators, required to be accessible?

A. No. The Fair Housing Act applies only to new construction of covered multifamily dwellings. Multistory townhouses, provided that they meet the definition of "multistory" in the Guidelines, are not covered multifamily dwellings if the building does not have an elevator. (See discussion of townhouses in the preamble to the Guidelines under "Section 2--Definitions [Covered Multifamily Dwellings]" at 56 FR 9481, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.) If there are no covered multifamily dwellings on a site, then the public and common use areas of the site are not required to be accessible. However, the Americans with Disabilities Act (ADA) may apply to certain public and common use areas. Again, an independent determination should be made regarding applicability of the ADA. (See the introduction to these questions and answers, which provides some background on the ADA.)

Parking Spaces and Garages

Q. How many resident parking spaces must be made accessible at the time of construction?

A. The Guidelines provide that a minimum of two percent of the parking spaces serving covered dwelling units be made accessible and located on an accessible route to wheelchair users. Also, if a resident requests an accessible space, additional accessible parking spaces would be necessary if the two percent are already reserved.

Q. If both open and covered parking spaces are provided, how many of each type must be accessible?

A. The Guidelines require that accessible parking be provided for residents with disabilities on the same terms and with the full range of choices, e.g., surface parking or garage, that are provided for other residents of the project. Thus, if a project provides different types of parking such as surface parking, garage, or covered spaces, some of each must be made accessible. While the total parking spaces required to be accessible is only two percent, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

Q. If a project having covered multifamily dwellings provides parking garages where there are several individual garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, are there any requirements for the inside dimensions of these individual parking garages?

A. Yes. These garages would be public and common use space, even though the individual garages may be assigned to a particular dwelling unit. Therefore, at least two percent of the garages should be at least 14' 2" wide and the vehicular door should be at least 10'-0" wide.
Q. If a covered multifamily dwelling has a below grade common use parking garage, is there a requirement for a vertical clearance to allow vans to park?

A. This issue was addressed in the preamble to the Guidelines, but continues to be a frequently asked question. (See the preamble to the Guidelines under the discussion of “Section 5--Guidelines for Requirement 2” at 56 FR 9486, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.) In response to comments from the public that the Guidelines for parking specify minimum vertical clearance for garage parking, the Department responded: No national accessibility standards, including UFAS, require particular vertical clearances in parking garages. The Department did not consider it appropriate to exceed commonly accepted standards by including a minimum vertical clearance in the Fair Housing Accessibility Guidelines, in view of the minimal accessibility requirements of the Fair Housing Act.

Since the Guidelines refer to ANSI A117.1 1986 for the standards to follow for public and common use areas, and since the ANSI does not include a vertical clearance for garage parking, the Guidelines likewise do not. (Note: UFAS is the Uniform Federal Accessibility Standard.)

**Public Telephones**

Q. If a covered multifamily dwelling has public telephones in the lobby, what are the requirements for accessibility for these telephones?

The requirements governing public telephones are found in Item #14, "Common use spaces and facilities," in the chart under Requirement 2 of the Guidelines. While the chart does not address the quantity of accessible public telephones, at a minimum, at least one accessible telephone per bank of telephones would be required. The specifications at ANSI 4.29 would apply.

**Requirement 3 -- Usable Doors**

**Required Width**

Q. Will a standard hung 32-inch door provide sufficient clear width to meet the requirements of the Fair Housing Act?

A. No, a 32-inch door would not provide a sufficient clear opening to meet the requirement for usable doors. A notation in the Guidelines for Requirement 3 indicates that a 34-inch door, hung in the standard manner, provides an acceptable nominal 32-inch clear opening.

**Maneuvering Clearances Hardware**

Q. Is it correct that only the exterior side of the main entry door of covered multifamily dwellings must meet the ANSI requirements?

A. Yes. The exterior side of the main entry door is part of the public and common use areas and therefore must meet ANSI A117.1 1986 specifications for doors. These specifications include necessary maneuvering clearances and accessible door hardware. The interior of the main entry door is part of the dwelling unit and only needs to meet the requirements for usable doors within the dwelling intended for user passage, i.e., at least 32 inches nominal clear width, with no requirements for maneuvering clearances and hardware. (See 56 FR 9487-9488, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

**Doors to Inaccessible Areas**
Q. Is it necessary to provide usable doors when the door leads to an area of the dwelling that is not accessible, such as the door leading down to an unfinished basement, or the door connecting a single-story dwelling with an attached garage? (In the latter case, there is a separate entrance door to the unit which is accessible.)

Yes. Within the dwelling unit, doors intended for user passage through the unit must meet the requirements for usable doors. Such doors would have to provide at least 32 inches nominal clear width when the door is open 90 degrees, measured between the face of the door and the stop. This will ensure that, if a wheelchair user occupying the dwelling unit chooses to modify the unit to provide accessibility to these areas, such as installing a ramp from the dwelling unit into the garage, the door will be sufficiently wide to allow passage. It also will allow passage for people using walkers or crutches.

**Requirement 4 -- Accessible Route Into and Through the Unit**

**Sliding Door**

Q. If a sliding door track has a threshold of 3/4", does this trigger requirements for ramps?

A. No. The Guidelines at Requirement 4 provide that thresholds at doors, including sliding door tracks, may be no higher than 3/4" and must be beveled with a slope no greater than 1:2.

**Private Attached Garages**

Q. If a covered multifamily dwelling has an individual, private garage which is attached to and serves only that dwelling, does the garage have to be accessible in terms of width and length?

A. Garages attached to and which serve only one covered multifamily dwelling are part of that dwelling unit, and are not covered by Requirement 2 of the Guidelines, which addresses accessible and usable public and common use space. Because such individual garages attached to and serving only one covered multifamily dwelling typically are not finished living space, the garage is not required to be accessible in terms of width or length. The answer to this question should be distinguished from the answer to Question 14(c). Question 14(c) addresses parking garages where there are several garages or stalls located together, either in a separate, detached building, or in a central area of the building, such as at one end. These types of garages are not attached to, and do not serve, only one unit and are therefore considered public and common use garages.

**Split Level Entry**

Q. Is a dwelling unit that has a split entry foyer, with the foyer and living room on an accessible route and the remainder of the unit down two steps, required to be accessible if it is a ground floor unit in a covered multifamily dwelling?

Yes. Under Requirement 4, there must be an accessible route into and through the dwelling unit. This would preclude a split level foyer, unless a properly sloped ramp can be provided.

**Requirement 5 -- Environmental Controls**

**Range Hood Fans**

Q. Must the switches on range hood kitchen ventilation fans be in accessible locations?
No. Kitchen ventilation fans located on a range hood are considered to be part of the appliance. The Fair Housing Act has no requirements for appliances in the interiors of dwelling units, or the switches that operate them. (See "Guidelines for Requirement 5" and "Controls for Ranges and Cooktops" at 56 FR 9490 and 9492, March 6, 1991, or 24 CFR Ch. I, Subch. A, App. III.)

**Requirement 6 -- Reinforced Walls for Grab Bars**

**Type of Reinforcement**

Q. What type of reinforcement should be used to reinforce bathroom walls for the later installation of grab bars?

A. The Guidelines do not prescribe the type of material to use or method of providing reinforcement for bathroom walls. The Guidelines recognize that grab bar reinforcing may be accomplished in a variety of ways, such as by providing plywood panels in the areas illustrated in the Guidelines under Requirement 6, or by installing vertical reinforcement in the form of double studs at the points noted on the figures in the Guidelines. The builder/owners should maintain records that reflect the placement of the reinforcing material, for later reference by a resident who wishes to install a grab bar.

**Type of Grab Bar**

Q. What types of grab bars should the reinforcement be designed to accommodate and what types may be used if the builder elects to install grab bars in some units at the time of construction?

The Guidelines do not prescribe the type of product for grab bars, or the structural strength for grab bars. The Guidelines only state that the necessary reinforcement must be placed "so as to permit later installation of appropriate grab bars." (Emphasis added.) In determining what is an appropriate grab bar, builders are encouraged to look to the 1986 ANSI A117.1 standard, the standard cited in the Fair Housing Act. Builders also may follow State or local standards in planning for or selecting appropriate grab bars.

**Requirement 7 -- Usable Kitchens and Bathrooms**

**Counters and Vanities**

Q. It appears from Figure 2(c) of the Guidelines (under Requirement 5) that there is a 34 inch height requirement for kitchen counters and vanities. Is this true?

A. No. Requirement 7 addresses the requirement for usable kitchens and bathrooms so that a person in a wheelchair can maneuver about the space. The legislative history of the Fair Housing Act makes it clear that the Congress intended that the Act affect ability to maneuver within the space of the kitchen and bathroom, but not to require fixtures, cabinetry or plumbing of adjustable design. Figure 2(c) of the Guidelines is illustrating the maximum side reach range over an obstruction. Because the picture was taken directly from the ANSI A117.1 1986 standard, the diagram also shows the height of the obstruction, which, in this picture, is a countertop. This 34 inch height, however, should not be regarded as a requirement.

**Showers**

Q. Is a parallel approach required at the shower, as shown in Figure 7(d) of the Guidelines?
Yes. For a 36" x 36" shower, as shown in Figure 7(d), a person in a wheelchair would typically add a wall hung seat. Thus the parallel approach as shown in Figure 7(d) is essential in order to be able to transfer from the wheelchair to the shower seat.

**Tub Controls**

Q. Do the Guidelines set any requirements for the type or location of bathtub controls?

A. No, except where the specifications in Requirement 7(2)(b) are used. In that case, while the type of control is not specified, the control must be located as shown in Figure 8 of the Guidelines.

**Paragraph (B) Bathrooms**

Q. If an architect or builder chooses to follow the bathroom specifications in Requirement 7, Guideline 2, paragraph (b), where at least one bathroom is designed to comply with the provisions of paragraph (b), are the other bathrooms in the dwelling unit required to have reinforced walls for grab bars?

A. Yes. Requirement 6 of the Guidelines requires reinforced walls in bathrooms for later installation of grab bars. Even though Requirement 6 was not repeated under Requirement 7--Guideline 2, it is a separate requirement which must be met in all bathrooms. The same would be true for other Requirements in the Guidelines, such as Requirement 5, which applies to usable light switches, electrical outlets,

**Bathroom Floor Clear Space**

Q. Is it acceptable to design a bathroom with an in-swinging 2'10" door which can be retrofitted to swing out in order to provide the necessary clear floor space in the bathroom?

A. No. The requirements in the Guidelines must be included at the time of construction. Thus, for a bathroom, there must be sufficient maneuvering space and clear floor space so that a person using a wheelchair or other mobility aid can enter and close the door, use the fixtures and exit.

**Lavatories**

Q. Would it be acceptable to use removable base cabinets beneath a wall-hung lavatory where a parallel approach is not possible?

A. Yes. The space under and around the cabinet should be finished prior to installation. For example, the tile or other floor finish must extend under the removable base cabinet.

**Wing Walls**

Q. Can a water closet (toilet) be located in an alcove with a wing wall?

A. Yes, as long as the necessary clear floor space shown in Figure 7(a) is provided. This would mean that the wing wall could not extend beyond the front edge of a lavatory located on the other side of the wall from the water closet.

**Penalties**

Q. What types of penalties or monetary damages will be assessed if covered multifamily dwellings are found not to be in compliance with the Fair Housing Act?
A. Under the Fair Housing Act, if an administrative law judge finds that a respondent has engaged in or is about to engage in a discriminatory housing practice, the administrative law judge will order appropriate relief. Such relief may include actual and compensatory damages, injunctive or other equitable relief, attorney's fees and costs, and may also include civil penalties ranging from $10,000 for the first offense to $50,000 for repeated offenses. In addition, in the case of buildings which have been completed, structural changes could be ordered, and an escrow fund might be required to finance future changes. Further, a Federal district court judge can order similar relief plus punitive damages as well as civil penalties for up to $100,000 in an action brought by a private individual or by the U.S. Department of Justice.
Attachment 13: Enforcement Flow Chart

Discriminatory Act—
Gather independent evidence or verification, and talk with your local fair housing resource

File Agency Complaint—
you have one year*

Attempt to Conclude*

Finding of Cause*

Informal Resolution

Or can elect...

File Law Suit—
you have two years

Trial

Injunction--
Complainant gets housing

Damages--Money to Complainant

Monitoring & Training of Provider

Attorney Fees and Costs

Injunction--
Complainant gets housing

Damages--Money to Complainant

Monitoring & Training of Provider

Civil Penalty—Fine to U.S. Government

Admin: Law Judge
Hearing

Trial in Federal or State Court

Fair Housing Enforcement Flow Chart Example

*You can elect to withdraw from this process & file a private lawsuit