

NEW LANDLORDS GUIDE TO FAIR HOUSING LAW



Opening Doors For Everyone

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Note: This booklet addresses only fair housing law. You will also need to learn about Oregon landlord tenant law, which addresses your legal responsibilities and those of your tenants related to rental agreements, deposits, late charges, repairs, right of entry, retaliation, evictions, etc. For more information, contact one of the associations listed inside about attending a landlord tenant law training or consult with your own attorney.

Make sure your attorney is familiar with fair housing laws. You may also contact the Oregon Bar Association for attorney referrals.



Table of Contents

Introduction	1
Fair Housing Laws	3
Families with Children	14
People with Disabilities	17
Fair Housing Complaints	25
Best Practices	27
Resources	32

Introduction

Congratulations on purchasing rental property and welcome to the benefits and responsibilities of being a landlord. Your rental property represents a source of revenue and long-term equity to you; it also represents a place your tenants will call home.



This booklet will give you basic information on your legal responsibilities under fair housing laws. These are



civil rights laws and all landlords are required to follow them-whether you own one single family home or a three hundred unit apartment complex. This informational booklet is a first step to give you fair

housing basics. We strongly recommend you attend a fair housing training session annually to learn more about these laws and how to comply with them.

As a new landlord, you will also need to familiarize yourself with Oregon landlord tenant law, contract law and general liability law. This booklet does not cover these laws, but does offer referrals to organizations and web sites that are resources for more information. (*See page 32*)

Again, all rentals are covered by these laws. As a landlord, you are held to the same legal standard, regardless of how many units you own, whether or not you have hired a property manager or management company, and whether or not you have received any training on fair housing laws or other relevant laws.



So What are “Fair Housing Laws”?

Fair housing laws insure that everyone has an equal right to housing. These federal, state and local laws protect all of us from discrimination in housing. They protect everyone who is a renter or home buyer; everyone who is purchasing a home loan or homeowner’s insurance. Fair housing laws insure no one will be denied a home, a loan or insurance because of a discriminatory reason such as your race, national origin or religion. *(For a complete list of protected classes, see page 5.)*

Before the passage of civil rights laws in housing, discrimination was a massive problem throughout Oregon and the entire United States. For example, historically,



African American home buyers were steered into segregated neighborhoods. Landlords commonly refused to rent to families with children, making rental housing off-limits to the majority of families. The Oregon Constitution originally prohibited African Americans and Chinese Americans from owning any real estate. Restrictive covenants, prohibiting homes

from being sold to African Americans and Asians, were once common. Those who managed to move into neighborhoods where they were not welcome, experienced everything from “the cold shoulder” to vandalism to violence.

In 1968, Congress passed the Fair Housing Act, protecting Americans from discrimination in housing based on their race, color, religion and national origin. In 1974, sex (gender) was added and then, in 1988, families with children and individuals with disabilities became “protected classes” as well.



Under Oregon state law it is also illegal to discriminate based on marital status, sexual orientation and gender identity. It is now also illegal to discriminate against survivors of domestic violence.

Source of income is also a protected class in Oregon. That means it is illegal to discriminate against applicants or tenants because their income is from a public assistance program such as the Department of Human Services, social security, child support, or any other form

of housing assistance, including the Section 8/Housing Choice voucher program.

Landlords are free to specify the amount of income required; for example, requiring an income twice the amount of the rent. They cannot, however, charge a

Federally Protected Classes:

Race, color, national origin, religion, gender, familial status, and disability

State Protected Classes:

Marital status, sexual orientation, gender identity, and source of income. It is illegal to discriminate because an income source is a public assistance program. This includes the Section 8/Housing Choice voucher program operated by local housing authorities and rent assistance from agencies. Landlords should use the same screening criteria for all applicants regardless of source of income. It is also illegal to discriminate against survivors of domestic violence.

Local Protected Classes:

Some cities and counties have added protections against discrimination based on age, occupation and domestic partnership. For a complete list visit the FHCO website.

higher amount of rent based on source of income, just as they cannot charge a higher amount of rent based on race or religion.



Some cities and counties have additional protected classes such as age over 18 and occupation. As a landlord, you can legally set your own rental screening criteria as long as it is not discriminatory and you use it consistently with all applicants. You can determine income levels and any rental, credit and/or

criminal history requirements. You cannot use criteria based on race, disability, sexual orientation or other protected classes. You should evaluate all applicants by the same criteria. We recommend you review applications in the order you receive them and rent to the first person who meets your requirements. Be wary of making exceptions to your criteria unless you have a written policy stating when you would make such an exception. You can protect yourself against receiving a fair housing complaint by consistently applying your application criteria and reviewing applications in the order received.



You cannot have overly broad criminal history criteria:

- ⇒ No blanket ban such as “no criminal history of any sort.” Your focus should be on crimes that would present a clear threat to your property and/or residents.
- ⇒ Arrest records should not be considered unless there is a charge currently pending when the applicant applies.
- ⇒ The look-back period should be short.
- ⇒ You should take into consideration the number of

convictions, the severity of the convictions, the age at the time of the crime(s) and time elapsed since release.

- ⇒ The applicant may have information to share with you verifying rehabilitation from addiction, employment stability, community involvement, etc. that you should consider, such as recommendations from parole/probation officers, therapists, employers, etc. You should have a procedure where you consider this information before you make a final decision to deny the application.

We recommend you have your application criteria and procedures written down and on file. We also recommend you retain rental applications and other documentation for at least two years. Individuals have up to two years to file a discrimination complaint.

Consider using a professional rental screening company to review your rental applications. You can give them your rental criteria and they will take responsibility for reviewing the applicants and giving you the results of their reviews. For names of rental screening companies in your area, you can contact a local rental owners association. *(See page 32)* That being said, you will want to interview screening companies carefully and review

their work periodically to insure the company is well-educated on fair housing laws and follows policies and procedures you are comfortable with. If your screening company violates fair housing law, you may be held liable.

What is illegal under Fair Housing Law?

Fair housing law governs your behavior with both applicants for your rentals and tenants living in your rentals. The bottom line is that you should treat everyone fairly and consistently. Do not make decisions based on any assumptions you may have about particular groups, but the facts. That means, when evaluating applications use standard screening criteria. If you had a problem tenant in the past who had, for example, certain religious beliefs, a specific disability, or a particular sexual orientation, you cannot use that experience to influence whether or not you will rent to someone else in the same category.

You also should treat your tenants fairly and consistently; do not judge them by assumptions you make about them based on their national origin, source of income, etc., but judge them by their behavior, specifically their following the rental agreement: paying the rent, not disturbing the neighbors, not damaging the property, and so on.

In managing the application process for your rentals, it is illegal under fair housing law to:

⇒ Reject applicants who fit your rental criteria because they are members of a protected class.

⇒ Run an ad that discriminates, directly or indirectly, against a protected class. For example, an ad that expresses a preference for individuals who are



“mature and quiet” could discourage families with children from applying. In general, an ad should describe the rental property and not the type of tenant you are looking for.

⇒ “Steer” applicants away from your rental because they are members of a protected class; for example, saying “I don’t think you’d feel comfortable living here; no one else in this complex is Hispanic.”

- ⇒ Not give out accurate information about any available rental to all applicants; for example, telling an applicant with a disability a unit is already rented when that is not the case, or telling an African-American applicant a higher amount of rent, or quoting a Latino applicant a higher deposit.

Remember to use only your consistent eligibility criteria in selecting tenants. We recommend you date and time stamp the application to verify that you review the applications in chronological order. If someone were to file a fair housing complaint against you, it benefits you to show that you followed professional practices and did not illegally discriminate.



The only time you should make an exception to your consistent eligibility is when you have a policy stating when exceptions can be made or when an applicant requests a “reasonable accommodation,” which is an exception based on a disability. *(Please see page 24 for details on how to respond when such a request is made.)*

The same principle of treating all applicants fairly & consistently applies to how you treat your tenants as well.

We recommend you have a written rental agreement that reflects current landlord\tenant law in Oregon. The best way to obtain such an agreement & other rental forms that meet legal standards is to join a rental housing association. *(For information on such associations, see page 32.)*

Enforce the rental agreement consistently among all tenants. This includes rules they must follow, facilities they can access, how repairs are handled, etc.

It is illegal to:

- ⇒ Prevent your tenants from having guests who are members of a protected class. For example, we encountered a landlord who tried to prevent a woman from having her boyfriend of another race visit and a landlord who refused to permit a tenant's same sex partner to visit. Landlords do have the right to require that tenants make sure their guests follow the rules; for example, not disturbing the neighbors or staying longer than the rental agreement stipulates. Landlords do not have the right to prevent tenants from associating with

individuals because of protected class.

- ⇒ Harass, threaten or intimidate your tenants because of their protected class; for example, harassing them because of their religion, source of income or disability. All forms of sexual harassment are also illegal.



- ⇒ Neglect to investigate and take action if you learn that one of your tenants has been harassing another of your tenants because of protected class; it is your legal responsibility to investigate such accusations and, if there is harassment, to take action against the harassing tenant.
- ⇒ Evict a tenant because of protected class.
- ⇒ Retaliate against a tenant who files a discrimination complaint against you.

It is important to remember that your liability under fair housing law extends to everyone you hire—screening companies, property managers, maintenance techs, groundskeepers, contractors, etc. So you will need

to make sure they are aware of fair housing laws. They need to treat all tenants fairly and never make discriminatory remarks, comments or jokes denigrating a protected class, or any sexual or flirtatious comments or jokes.

Discrimination Against Families with Children

It is just as illegal to refuse to rent to families with children as it is to refuse to rent to someone because of their race or ethnicity.

It is just as illegal to treat families with children unfairly

in rental housing as people of a particular religion. Fair housing law protects families with children under 18 from discrimination. So it is illegal to refuse to rent to families with children or to families with children of particular age groups: teenagers, children under ten, toddlers, etc.



All types of families with children are protected, including a family where a grandparent is raising children, a foster family or a noncustodial parent who has the children on weekends.



The only exception to the familial status protection is strictly defined senior citizens' housing. This is multifamily housing developed for seniors that meets certain legal requirements.

It is illegal to try to evict families with children or refuse to rent to them in order to attempt conversion to senior housing. (For more information on the senior housing exemption visit www.fhco.org.)

In most cases, it is illegal to have rules targeted at children just as it to have rules just for people with a particular sexual orientation or people from a particular country. Of course, children, like all tenants, need to abide by the rental agreement and not damage property or disturb neighbors.



If you have policies or rules that would have a negative discriminatory impact on families with children, those are probably illegal, even if the rules don't specifically use the word "children".

For example:

- ⇒ Charging additional per person rent, which would have a negative effect on families with children;
- ⇒ Not permitting tricycles in a rental community; the majority of tricycles belong to families with young children;

- ⇒ Restricting toys from being on unit balconies when other personal items are permitted;

- ⇒ Having an unreasonably restrictive occupancy standard that makes it difficult for a family with children to find housing, such as an occupancy standard of only one person per bedroom. (For more detailed information on occupancy standards visit <http://fhco.org/index.php/discrimination-in-oregon/protected-classes/familial/occupancy>.)



Fair Housing and People with Disabilities



Before the 1980s, the majority of people with disabilities lived with family members or in institutional settings. The Independent Living Movement led to passage of the Americans with Disabilities Act and the Fair Housing Amendments Act of 1988. Since then, it has been illegal to refuse to rent to someone because they have a disability or to treat a tenant unfairly because of a disability.

There is a broad definition of disability under the Fair Housing Act: a physical or mental condition that substantially impacts one or more major life activities such as walking, seeing, hearing, breathing, sleeping, learning, thinking, caring for oneself, etc. This may include a long list of conditions including cancer, seizure disorders, autism, asthma, schizophrenia, multiple sclerosis, etc.

Also included are individuals who are alcoholics or in recovery from drug addiction (not current users of illegal drugs).

It is important to respect the confidentiality of your tenants in matters related to their disabilities. You should not discuss a tenant's disability unless the tenant with the disability initiates the conversation. If a tenant does share information with you about a disability, you may not discuss it with other tenants.

Fair housing law requires landlords to accommodate the needs of tenants with disabilities whenever possible:

The Right to Reasonable Modifications

A tenant with a disability has the right to modify a rental to accommodate a disability, such as installing grab bars, putting in a roll in shower or lowering counters/cabinets. The landlord is not required to pay for the modification unless the rental has a federal subsidy, meaning the building is funded with federal funds from HUD or Rural Development. You have the right to make sure the work is done in a professional manner and with a licensed contractor, if appropriate. You can obviously require that the work meets all local building codes.

If you want the rental changed back to its original condition, in most cases you have the right to require the tenant to change it back. Be aware that it is difficult for individuals with disabilities to find accessible units; you can legally market your units' accessible features.



The Right to Reasonable Accommodations

While your general operating mode should be to have consistent policies and rules for everyone, an applicant or a tenant with a disability may request you make an exception if it is necessary for the person to live there. In other words, you may need to make an exception to a standard policy or rule to accommodate someone with a disability.

For example:

- ⇒ You may have a standard rental agreement form, but a tenant may require a form with large print.
- ⇒ You may have unassigned parking spaces, but a tenant with a mobility impairment may need you to provide a reserved parking spot close to his/her unit.
- ⇒ You may prohibit pets, but a tenant with a disability may need an assistance animal—a service animal or companion animal. *(See page 23 for more details on assistance animals.)*



All landlords should have a protocol for how to handle requests for reasonable accommodations.

Here is what federal Fair Housing law requires:

⇒ You must consider all requests for reasonable accommodations.



⇒ If the tenant's disability isn't obvious, you may require the tenant bring in a letter from his/her medical or mental health provider verifying that the tenant does have a disability as defined by fair housing law and that the accommodation is necessary. Rental owners' associations provide reasonable accommodation request forms for tenants and verification forms for medical/mental health providers. As a member of an association, you can use these forms. Be aware, however, that there are some disabilities that make it difficult for individuals to fill out forms so the request may come to you verbally. Legally, you are required to honor a verbal request and consider it just as you would a written request.

⇒ The request must be *reasonable* and the law is specific about what this means. It does not mean a landlord can deny a request because she/he doesn't agree with the verifying provider. It does mean that, if granting the request would hurt the landlord's ability to operate and this can be verified, the request would be considered unreasonable. This includes a request that

would be an undue financial and administrative burden to the landlord, a request that would require the landlord to do things that are not part of the landlord's business (such as supplying transportation or meals) or a request that would clearly put other residents of the community in danger.

- ⇒ Landlords should review and respond to reasonable accommodation requests as quickly as possible. A request can be denied only for one of the reasons listed above. If a tenant believes a request was denied unreasonably, he/she has the right to file a fair housing complaint against the landlord. So it is important that if you do turn down an accommodation request, you document that it was an undue financial and administrative burden, that it was not in your job description as a landlord and/or that it was a danger to others on the property-based on fact, not assumption.
- ⇒ Be aware that applicants also have the right to reasonable accommodation and may ask for an accommodation during the screening process. You are required to go through the same process as you would with a tenant.

More on Reasonable Accommodation Requests for Assistance Animals

Today animals are prescribed for many types of disabilities, not only for the sight and hearing impaired. Animals may help with balance or may warn people about seizures, migraines or blood sugar levels.

Bonding with a companion, therapy or comfort animal may have a significant impact on post-traumatic stress disorder (PTSD), clinical depression and anxiety disorders.



Be aware:

⇒ You have the right to prohibit pets in your rental units, but if someone has an assistance animal and you verify it has been prescribed for a disability, you are legally required to make a reasonable accommodation, an exception, to your no pets policy.



⇒ Under fair housing law, the assistance animal does not need to be a certified and/or trained service animal; it may also be a “companion,” “therapy,” “emotional support,” or “comfort” animal.

- ⇒ You may charge a deposit for pets, but it is illegal to charge a deposit or a fee for an assistance animal that is necessary for a person with a disability. (You cannot charge a deposit for any accommodation a tenant needs for their disability, such as a wheelchair or a caregiver.)
- ⇒ You may require the animal follow all of your rules and not damage the property or disturb the neighbors. Rental owner/property manager associations provide such assistance animal agreements to their members.
- ⇒ You may have weight and/or breed restrictions for pets, but a tenant or applicant may have an assistance animal larger than your weight limit or a breed you ordinarily do not permit. Tenants have the right to request a reasonable accommodation to your weight and/or breed restrictions if it is necessary because of his/her disability.



What Should You Do if a Tenant or Applicant Files a Fair Housing Complaint Against You?

A tenant or applicant who believes a landlord has discriminated against him/her based on protected class, may elect to file a fair housing complaint against a landlord.

They may contact the Fair Housing Council of Oregon's hotline or contact a state or federal enforcement agency or an attorney. If a fair housing complaint is filed, the landlord will then be notified.

First, there is a neutral fact finding investigation to determine whether or not the landlord violated fair housing law. That investigation could include reviewing the landlord's paperwork, contacting witnesses and/or using fair housing testers, similar to "secret shoppers", to see if the landlord is treating people differently based on protected class.

The outcomes of complaints where landlords have been found to discriminate vary. Sometimes the two parties conciliate; if not, the case could come before an administrative law judge or federal or state court. The landlord may have to pay substantial damages. Damages

in fair housing cases can add up to hundreds of thousands of dollars.

If a tenant or applicant does file a fair housing complaint against you, contact your attorney. Do not retaliate in any way against the individual who filed the complaint against you (initiate eviction proceedings, refuse to do repairs, harass, etc.). Even if you did not discriminate, your tenants have the legal right to file a complaint, based on their perception of the situation. Retaliation is illegal.

We at the Fair Housing Council of Oregon want to make sure you understand fair housing laws and your legal responsibilities! Knowledge of these laws will protect you and your tenants. This booklet provides a very basic introduction. For more information, visit the FHCO website www.fhco.org



Fair Housing Best Practices for Landlords

Remember, this booklet is only a brief introduction to fair housing law.

- ⇒ We all make assumptions about people based on past experience. Be aware of any assumptions you might make about protected classes and don't base any of your landlord decisions on those assumptions.
- ⇒ Be consistent in your communication with all applicants and tenants. If you ever make an exception in your policies, rules and/or procedures, you should have a written policy stating when such exceptions are made-and the exceptions cannot be made for a discriminatory reason. The one exception to policy of consistency is when you grant a reasonable accommodation for a tenant or applicant with a disability.
- ⇒ Use a check list to make sure you are providing the same information about your rental, including any specials you are offering, to all prospective applicants.
- ⇒ Make sure you have clear and written screening

criteria for evaluating applicants for your rental. We recommend you use forms designed by a professional association. Consider using a professional screening company.

⇒ Give your rental application and screening criteria to everyone who is interested in your rental.

⇒ Date and time stamp the applications you receive then review them in chronological order and rent to the first applicant who meets your application criteria.



⇒ Similarly, respond to all email and phone inquiries about vacancies in chronological order and maintain a log illustrating that you've done this. It is illegal to delay returning calls because of accents, audible disabilities, etc.



⇒ Keep records of any applicants rejected and why they were denied (There is a two year statute of limitations under fair housing law; this means that someone could wait as long as two years to file a fair housing complaint.)

⇒ Use a rental agreement consistent with current state

law. By joining a rental owners' association, you have access to the most current agreement forms available.

- ⇒ Enforce the rental agreement & all rules consistently with all of your tenants. Again, the only exception is for a reasonable accommodation.
- ⇒ Maintain professional boundaries with tenants. We recommend you treat all of your tenants consistently and not develop personal relationships with any of them. One of the reasons for this is that other tenants may interpret this as favoritism and even discrimination. A tenant you approach for a date could file a sex discrimination complaint against you; a tenant you dated and then evict could file a retaliation claim against you. Protect yourself by making sure you are equally friendly with all your tenants.
- ⇒ Have a protocol prepared in case you receive a complaint of neighbor-on-neighbor harassment. You are legally responsible for investigating such allegations and taking action. Again, by joining a rental owners' association, you'll have access to a rental agreement that explains such behavior is illegal. You can find a sample neighbor-on-neighbor

harassment policy and other useful documents at the FHCO website.

- ⇒ Make sure your tenants are aware that they do not have the right to violate the civil rights of other tenants, if they do, you are legally required to take action to stop such harassment.
- ⇒ Have a protocol prepared for responding to reasonable accommodation requests. We recommend you use a reasonable accommodation request form and a form for verification by medical or mental health provider working with the tenant.
- ⇒ Let your tenants know they have the right to reasonable accommodation in your rental agreement with language such as this: *“We provide accommodations for people with disabilities upon request”*. Rental agreements available through rental owners’ associations usually have such language.
- ⇒ Make sure anyone you hire receives training in fair housing. You are liable for their behavior if they discriminate, harass, etc.

- ⇒ Maintain all your records for at least two years. Again, individuals have up to two years to file a fair housing complaint. Maintain application forms, correspondence, forms related to neighbor on neighbor harassment and reasonable modifications/accommodations.
- ⇒ You are permitted to advertise that your rental is accessible for people with disabilities and that you welcome families and/or have amenities such as a playground.
- ⇒ The Dept. of Housing and Urban Development (HUD) requires all rental owners display a fair housing poster with the equal opportunity logo at rental offices. To obtain a copy, go to the HUD website:
<http://www.hud.gov/offices/fheo/promotingfb/928-1.pdf>
- ⇒ Use the HUD equal opportunity logo in your ads.



Resources for more information:

- ◆ *The Fair Housing Council of Oregon*
www.fhco.org (800) 424-3247 x5

- ◆ *Multifamily NW*
www.multifamilynw.org (503) 213-1281

- ◆ *Oregon Office for Community Dispute Resolution*
<http://oocdr.uoregon.edu/>

- ◆ *Oregon Rental Housing Association*
www.oregonrentalhousing.com

- ◆ *Oregon State Bar*
www.osbar.org

- ◆ *Rental Housing Alliance Oregon*
www.rhaoregon.org

To learn more about federally subsidized housing programs:

- ◆ *Oregon Housing and Community Services*
www.oregon.gov/ohcs

