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# A Fair Housing Guide for Homeowners Associations in Oregon



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## Overview of Fair Housing Laws

Fair Housing laws are federal, state, and local civil rights laws that apply to housing providers including Homeowners Associations (HOA). The term HOA includes Condo Associations, Housing Cooperatives, Homeowners Associations, Civil Associations, and Master Associations. Fair Housing laws prohibit discrimination and differential treatment of individuals based on their protected class. HOAs and their boards, board members, community management companies, staff, and contractors are all required to follow Fair Housing laws.

These laws differ from and provide constraints on declaration of covenants, conditions, and restrictions (CC&Rs), master leases, occupancy agreements, by-laws, rules, and board resolutions to ensure non-discriminatory practices and promote inclusion and equity. Fair Housing laws are intended to provide equal access and enjoyment for everyone seeking housing and living in our communities.

Fair Housing laws are always evolving through creation of new law, case law, and guidance from Department of Housing and Urban Development and the Department of Justice. It's recommended that those in the housing industry, like HOA board members, management companies, and site staff receive regular training to stay current on Fair Housing law. Impact supersedes intent and failure to follow fair housing law can be costly for an organization.

This guide provides a general introduction to Fair Housing law and recommendations of best practices. Aspects of Fair Housing law can be complicated, and, in some situations, there may be need for more rigorous analysis on the applicability of the law.

If you have questions about Fair Housing law and its application, you can call the **Fair Housing Council of Oregon (FHCO)** at **(503) 233-8197** or **1 (800) 424-3247, extension 2**. There are also resources available on our website at [www.fhco.org](http://www.fhco.org).

### A History of Discrimination in HOAs

There are over 350,000 HOAs in the United States with an average of twenty-two new associations forming every day. Fifty-eight percent of homeowners live in HOA communities, equaling about 40 million housing units. In Western United States, that number is closer to sixty-seven percent and an equivalent number of newly constructed homes are part of HOA communities.

HOAs weren't always as abundant. Rapid growth in suburban development in the 1960s



and the simultaneous growth of HOAs in the United States was, according to experts, driven in large part by anti-Black racism with a desire to maintain and reinforce segregated neighborhoods. Evidence from historical records and housing policy discussions show that anti-Black racism motivated strategies like restrictive deeds and covenants which explicitly discriminate against the sale of homes to Black people. HOAs were used from the beginning as a tool to implement privatized segregation across the country.

In 2019, a Florida woman contacted an attorney when she found out that the HOA in her prospective neighborhood still had a "Caucasian-only" restriction. While the restriction was unconstitutional, the covenant was still considered active because of an easement in the document. Initially the city of Tallahassee considered the outdated covenant a private matter, but later agreed to address the issue.

These practices denied access to housing to many Black families, thereby denying wealth-generating opportunities and limiting options for employment and access to services. Neighborhoods with HOAs today have, on average, fewer Black residents than non-HOA areas, and homes in non-HOA neighborhoods typically sell for 4% less than homes in HOA neighborhoods.

At the Fair Housing Council of Oregon, we receive thousands of contacts a year reporting discrimination, or about one tenth of the total instances of discrimination. Barriers to access housing for Black families and other protected classes continues to block access to wealth-generating opportunities for millions of Americans. Fair Housing laws provide the minimum legal protections for underserved communities. As an HOA, it's your responsibility to proactively promote fair housing practices, regularly review policies and practices, maintain training for employees and board members, and to lead in your communities by creating an atmosphere of inclusion, equity, and justice.

HOA discrimination can also look like preferential treatment of white homeowners. In 2019, a Black homeowner in South Carolina sued his HOA board over a long-running dispute over removing a shed in his backyard. The homeowner claimed that his HOA had a history of targeting his family while other white homeowners were not in compliance with rules and faced no consequences. He removed the shed but refused to pay additional attorney fees. The homeowner filed a lawsuit against his HOA for \$1 million, citing "racial discrimination, harassment, and emotional distress."



## Protected Classes under Fair Housing Law

Under Federal Fair Housing Law, it is illegal to discriminate on the basis of:

- **Race**
- **Color** (Treating people with lighter skin differently than those with darker skin, for example.)
- **Religion**
- **National Origin** (Latino, Native American, Middle Eastern, Asian, etc., for example. Also referred to as ethnicity.)
- **Sex** (Includes gender identity, sexual orientation, and survivors of domestic violence)
- **Familial Status** (The presence of children under the age of 18 in the household)
- **Disability** (An individual with a physical or mental impairment that substantially limits one or more major life activities or a record of such impairment)



Under Oregon Fair Housing Law, it is illegal to discriminate on the basis of:

- **Marital Status** (Single, married, divorced or unmarried)
- **Sexual Orientation and Gender Identity**
- **Source of Income** (Including Section 8 Vouchers, agency and nonprofit rent payments and public assistance income, Social Security)
- **Domestic Violence** (survivors of domestic violence receive protections under Oregon Landlord Tenant Laws that serve similarly as a protected class status)

Some cities and counties have additional protected classes such as age, student status, or occupation. For a complete list of local protected classes in Oregon jurisdictions, please visit our website at <https://fhco.org/document/oregon-protected-classes/>.

Addiction to alcohol and/or drugs (if the individual is not a current user of illegal substances) is protected under the class of disability. A homeowner opened a group home in an HOA community for 10-12 adults recovering from drug or alcohol addiction. The HOA failed to approve a Reasonable Accommodation to exempt the household from a rule which permitted fewer than 5 unrelated persons to live together while any number of related persons could live together. The court found that the HOA had denied the request with an intent to foster the character of the neighborhood rather than on the living space per occupant, thereby discriminating based on the class of disability.

## **Illegal Transactions**

Fair Housing laws govern all practices and transactions from initial contact with a prospective community member to the final interaction after a member leaves. They protect prospective, current, and past community members from discrimination based on their protected class. The following are examples of transactions that are illegal under Fair Housing Law:

### **Denial of Housing and Services**

Community members and their guests cannot be illegally denied housing, use of the facilities, or services, etc. based on their membership in a protected class.

### **Discriminatory Advertising**

Discriminatory advertising that expresses preference or limitations based on protected class is illegal. Advertising should be scrutinized to ensure it does not create a chilling effect on members of a protected class. For example, the phrase “We’re looking for active independent seniors” implies that individuals with disabilities which limit their ability to be active will not be welcome. To avoid this, it’s advisable to restrain advertisements to a description of the property and its amenities.

### **Steering**

Steering is a practice of overtly or covertly directing potential community members to a certain area or unit within the property or away from your property because they are members of a protected class. Steering can often appear to be done for positive purposes, but it limits choice or discourages the person looking for housing. For example:

- Directing families with children toward a particular area of the community or to ground floor units only due to the assumption that they will disturb neighbors by making too much noise.
- Referring all Somalis to a neighboring property because a number of Somali families already live there.

### **Subjective and Inconsistently Applied Admissions Procedures and Criteria**

Approval of new community members must be based on consistent fact-based criteria. Criteria should be documented in writing and available to potential community members. Criteria should be consistently applied. Reasons for exceptions should be documented and the HOA should consistently apply those exceptions in all similar circumstances.

### **Differential Treatment**

Differential Treatment is best avoided by having clear and consistent procedures for all interactions with community members. That includes response to service requests, reasons for and timing of routine inspections, application of penalties such as fines and removal of community privileges, and access to facilities and common areas, among others. Special favors and exceptions to rules or requirements always carries with it the risk of differential treatment and should be avoided except in cases where exceptions are due to a reasonable accommodation or modification related to an individual’s disability that restores equal access or enjoyment of their housing.

In Oregon, a Fair Housing complaint was filed on the basis of national origin discrimination by a woman in a planned community who taught Indian dance classes out of her home. She was penalized by the HOA for violating a community prohibition on businesses being run out of homes. Other homeowners in the community also operated businesses out of their homes but weren't penalized.

It's highly recommended that an HOA conduct regular reviews of rules, policies, their application, and communications such as websites and newsletters for language that could have a discriminatory impact. If you have questions, the Fair Housing Council of Oregon can conduct an initial review of materials.

### Harassment

Community members have the right to live in an environment free from harassment. Harassing, threatening, intimidating, or coercing homeowners or home buyers by making comments that would make the homeowner uncomfortable, regardless of intent can be regarded a discriminatory if that homeowner is a member of a protected class.

Derogatory remarks, insulting terms, and offensive jokes based on protected classes have a discriminatory impact whether they are made directly to the homeowner or indirectly. This applies to everyone, including board members, staff, contractors, vendors, and other community members. Religious evangelizing by board members or staff members may be considered harassment based on religion. In addition, we recommend that if such comments are made by community members at a board meeting that board members repudiate them. Boards and management have a role of setting a climate of civility and respect in their communities.



Sexual harassment is also illegal under Fair Housing laws. This includes a range of behaviors and comments that threaten, intimidate, coerce and/or create a "hostile environment." Specifically, sexual harassment includes:

- Blatant threats based on refusal of sexual favors
- Offering benefits in exchange for sexual favors
- Making the homeowner feel uncomfortable by making sexual remarks, jokes, invitations, commenting on appearance, physical contact, or any other behavior which makes someone uncomfortable regarding sex.

It's the perception of the homeowner, not the perpetrator, that determines whether a comment or action constitutes sexual harassment. To avoid instances of harassment, it's advisable to have regular harassment training for employees and volunteers, and to ensure vendors and other businesses that do work on the property conduct regular training for their employees.

If you receive a complaint of harassment from a homeowner about any member of the HOA, staff, vendors, or another homeowner in the community, you have a legal obligation to investigate and take action under Fair Housing law.

### **Neighbor on Neighbor Harassment Based on Protected Class**

Any complaint of harassment based on a protected class must be investigated and complaints need to be handled in a consistent and expedient manner. A process for handling harassment complaints should include a designated individual or individuals who will conduct an investigation, guidelines for conducting interviews, a process for documenting the investigation, and a guideline for assessing consequences.

If a protected class-based complaint is found to be valid, steps need to be taken to remedy the situation so that harassment stops. This can include fines, denial of privileges, and other methods. If a homeowner believes that the HOA has not responded to their complaint and the harassment continues, the homeowner may file a Fair Housing complaint against the HOA. Homeowners have up to one year to file their complaint with Department of Housing and Urban Development and two years after such a situation occurs to file their complaint in court.

To protect your community members against harassment, it is recommended that every community member sign an anti-harassment policy that includes a definition of harassment and that the process for handling instances of harassment is clearly outlined. You can find our example of a harassment policy online here <https://fhco.org/document/sample-harassment-policy/>, or visit our website at FHCO.org and search under resources in the Education tab for “sample harassment policy”.

In Washington D.C., an African American attorney living in a condominium community reported that her neighbor had repeatedly yelled racist and sexist epithets at her and threatened her with violence. She took her HOA to court for failing to adequately address the harassment. An appeals court found that the HOA had authorization through its bylaws to address such behavior with a variety of sanctions but had failed to do so. The HOA settled the case, paying the woman \$550,000 and buying her condominium.

In Illinois, a young man living in a condominium experienced a brain injury in a car accident that caused him to have difficulty speaking and walking. He suffered neighbor on neighbor harassment because of his disability in the form of name calling, taunting, and children stealing his wallet and shoes when he was at the pool. The man and his family made repeated complaints to the HOA which took no action. The case went to federal court where the HOA's damages were \$160,000.



## **Fair Housing Laws and Your Covenants, Conditions, and Restrictions, Rules, and Documents**

Despite the Supreme Court ruling that racially restrictive covenants were illegal in 1948 and the Fair Housing Act making *all* discriminatory covenants illegal in 1968, many discriminatory covenants and provisions remain in deeds and CC&Rs. The Fair Housing Act also rendered them null and void, but they should still be removed.

In 2018, Oregon made removal easier. Communities and individuals may send a request for removal by certified mail to anyone with legal or financial interest in their property, such as lien holders or title companies, among others. For more information, please visit our website at FHCO.org and visit the Education/Resources section.

It's possible you may have discriminatory provisions in your deed and CC&Rs and be unaware. Some provisions may appear neutral on the surface but may have disparate impact on members of a protected class. These are illegal as well. Disparate impact is discrimination due to a neutral sounding policy that, when put into practice, has a greater negative effect on one group of people of a certain protected class more than another group of people.

States are also regulating HOAs more and more and many new statutes can conflict with existing CC&Rs. When a provision of an association's CC&Rs, bylaws, or any other association document is made null and void, the provision should be removed. Most associations have strict provisions for amending these documents, so removal may take time. Since they are null and void, they are also unenforceable, and HOAs can continue to function during the time it takes to remove the language.

To avoid confusion and future issues, it's advisable that the board inform all owners when a clause is made null and void. This can be done by passing a general resolution announcing which clause or clauses are null and void and publishing a resolution in the association's newsletter, website, or by distributing copies to each property.

### **Flying of Flags**

The right to fly flags and regulations to control the flying of flags has become a common issue for HOAs and property management companies over the past several years. The Freedom to Display the American Flag Act of 2005 prohibits HOAs from restricting members from flying the American Flag. In addition, Fair Housing laws prohibit HOAs from restricting flags based on national origin, sexual orientation, gender identity, or other protected classes. For example, asking a homeowner to take down a flag representative of their country of origin would violate Fair Housing protections based on a person's nation origin. Requiring removal of Pride Flags or Black Lives Matter flags would be discriminatory based on sexual orientation and gender identity, or race.

A floating home community's HOA had a requirement that all residents fly the American flag on national holidays and decorate their homes for Christmas. A family who was Jehovah's Witnesses were refused admittance to the community because they would not follow these requirements as a matter of their faith. These requirements had a discriminatory impact based on religion.

The right to free speech should also be considered if your HOA is looking to create restrictive rules regarding the flying of flags. Regulations should to be reasonable, and it's recommended that HOAs remain flexible in their enforcement and avoid restrictive regulations to prevent potential instances of discrimination and negative media backlash.

### **Occupancy Guidelines**

Restrictive occupancy guidelines have been found to have discriminatory impact on protected classes, particularly families. The "two people per bedroom" standard has been repeatedly challenged and strict adherence to that standard could result in discriminatory practices. If a fair housing complaint is made due to occupancy standards, the enforcement process could involve investigation of a range of factors including the unit's square footage, egress, availability of other sleeping areas, and the ages of children, etc. In areas with a shortage of supply of housing, modifications to occupancy standards may need to be even more flexible to ensure housing choice for everyone.

### **Family Status**

In the 1980's family was added as a protected class, but it's not uncommon to still find language in rules and provisions that discriminates against families. Excluding children from your community is illegal unless your property is designated as senior housing and meets the requirements for that designation. It's also illegal to discriminate against other types of families with children: part-time parents, grandparents raising grandchildren, foster families, and same sex parents, etc.



An HOA and property management company in Pico Rivera, California agreed to a penalty of \$130,000 after having prohibited children from playing in common areas, balconies, and grass covered yards of a 56-unit complex.

A more common and subtle form of discrimination often appears to have children's safety as its primary concern but when scrutinized reveals discriminatory impact. These often come in the form of restrictions or requiring adult supervision of children. As a rule, parents have the responsibility to keep their children safe. A community's rules should only make restrictions where it applies to all community members without regard for age.

- **Rules should apply to all residents and not specific groups of residents.** If your community restricts recreation, for example, it needs to restrict recreation for everyone and should ensure that there are areas in the community easily available to everyone where recreation is permitted.
- **Rules should address behaviors not people.** For example, it is illegal to have a rule prohibiting unsupervised children from being in the laundry room. (In some families, children are responsible for doing laundry.) It is, however, acceptable to have a rule against loitering in the laundry room.
- **Beware of rules that covertly target specific groups.** A rule such as "no bicycles or tricycles are allowed anywhere in the complex" has been found to have a discriminatory impact on families with children.
- **Restrictions based on age have discriminatory impact.** Restrictions which designate adult pool times, for instance, have a discriminatory impact on families with children. Restrictions based on age should only exist when outside authorities already have them in place, like a state restriction for children under 14 being in the pool area unsupervised.
- **Activities shouldn't be restrictive either.** Fair housing questions have been raised in communities where organized activities were for "adults only." Ensure your activities are appropriate for all ages.

How you speak is important too. A condominium community in Idaho promoted itself as an "active adult community" even though it wasn't designated as senior housing. Both the developer and the agent handling the sale of units made illegal statements suggesting the property was for "empty nesters" and that they preferred "people 55 and over." Those statements among other violations resulted in a suit seeking \$350,000 in damages.

## Disability

The definition of disability under fair housing laws is intentionally broad and extends well beyond individuals who receive disability-related income. Disability is defined by fair housing law as any "physical or mental impairment which substantially limits one or more of [a] person's major life activities" such as walking, seeing, hearing, breathing, thinking, and caring for oneself. That includes, among others, chronic medical conditions like cerebral palsy, schizophrenia, autism, seizure disorder, asthma,



PTSD, ADHD, depression, anxiety, and addiction to alcohol and/or drugs. This does not include current users of illegal drugs. It also pertains to individuals who have had a history of disability and the assumption of disability.

Fair housing laws require specific physical accessibility provisions for individual housing units and common areas in multifamily housing built after March 13, 1991. All new construction since is required to be built to accessibility standards but meeting those requirements is left up to developers, designers, and builders. It's wise to review your property to ensure it meets accessibility standards.

### **Reasonable Modification Requests**

Fair housing laws generally require consistency in all your policies, procedures, and rules. Disability protection under fair housing law; however, includes the right of residents with disabilities to request HOAs make reasonable accommodations and reasonable modifications related to their disability so they may have equal enjoyment and access to housing. While this may appear to be a discrepancy, it provides the opportunity for people with disabilities to have equal access and enjoyment of housing that would otherwise be unavailable.

Reasonable modifications pertain to making physical changes to their home or a common area in the community to accommodate a disability. Examples may include, but certainly aren't limited to, adding a ramp, grab bars in the shower, installation of blinking smoke detectors, or an accessible microwave in the community room kitchen.

In Longview, Washington, a homeowner living with a disability requested to use two adjacent parking spaces until an accessible space became available. The HOA denied the request and began eviction proceedings. The resident was awarded \$35,000.

If a homeowner requests a modification to the common areas in a community the homeowner would be responsible for paying for the modification. The HOA, however, would be responsible for ongoing maintenance after the modification has occurred. If the development was built after March 13, 1991, all common areas should have been built to meet fair housing accessibility requirements. This is not always the case, however. If the building is in violation and the HOA should pay to make the necessary modifications as soon as possible. Public areas must adhere to both FHA and ADA laws regarding design and construction. These laws govern public areas such as accessible parking at each building entrance, accessible entrances and routes, sidewalk width, curb design, public and common areas, doors, bathrooms, kitchens, counter heights, table heights, height of stiches, thermostats, and outlets.

The HOA has the right to make sure the modification is built in a skillful fashion and is built to meet code requirements. The HOA can also require the modification fit in your community's architectural standards as long as this presents no additional costs. If making the modification fit your standard does present additional costs, then the HOA would be responsible for paying the difference.



### **Reasonable Accommodation Requests**

Reasonable accommodations are requests for an exception to a standard community policy, rule, or procedure due to disability, disability of a family member, other occupant of one's housing and or guest. The accommodation will provide equal access to living in the community and use of community spaces. For example, someone who uses a wheelchair could request an alternative location to drop off HOA dues payments if they can't reach the drop box. A resident with a vision impairment could ask to be notified of meetings by telephone if they are unable to read a written notice. A resident who is deaf or hard of hearing can request to have an American Sign Language interpreter present at community meetings when normally only community members are allowed.

There shouldn't be any penalties associated with the granting of a request. Someone with a disability that affects their mobility could request an assigned parking space closer to their unit at a community where spots are not normally assigned. If a housing provider granted a reasonable accommodation request for an assigned spot, the provider may not charge more than what is normally charged for parking spaces at their community.

The community should review and abide by association rules in regard to assignment of parking spaces. In many condominiums, parking spaces are deeded to each unit owner and cannot be reassigned. In those circumstances, the HOA should work with the unit owner with a disability to see if any other unit owner is willing to "exchange" or "sell" a more accessible parking space. If this is not possible, the unit owner may have to request alternative accommodations from the HOA. The bottom line is, if the request concerns common areas, HOA rules, or procedures, the HOA must consider the request for accommodation.

A resident may request an accommodation to a community's architectural requirements. For example, there was a case where a resident was prescribed tinted windows in their unit for dealing with a condition that involved severe headaches. This led to a reasonable accommodation request to waive a community rule prohibiting any window coverings or alterations.

In Minnesota, a planned community prohibited fences in front yards and fences around the perimeter yards. A homeowner requested a reasonable accommodation for a perimeter fence for a child with autism who required a secure area for his intense activity. The request was approved with the caveat that the owner would remove the fence if the child no longer lived there or if the property was sold.

## Assistance Animals

Likely, one of the most common accommodation requests you'll receive will be requests for an exception to policy for assistance animals. Assistance animals are not pets and are prescribed by medical and therapeutic professionals to assist with vision and hearing impairments, balance, depression, anxiety, and many other mental and physical disabilities.



Think of assistance animals like any other assistance device, like a hearing aid or wheelchair. They perform a wide range of tasks, like assisting with vision or hearing impairments, balance, depression, and anxiety. They may warn of impending migraines or seizures or alert their owners of dangerous blood sugar levels. Assistance animals are also not subject to weight or breed restriction policies you may have at your community for pets.

Fair housing law uses the term assistance animals which is a blanket term for all animals that assist their owners, including service animals, aid animals, therapy animals, emotional support animals, and companion animals. Weight and breed restriction policies for pets in your community cannot be applied to assistance animals. Requests could be for any number of exceptions, including:

- Requesting an assistance animal in a community with a no-pet policy
- A request for an exotic species – if the animal is not typically kept in the home, like a dog or cat, the requester would need to provide the reason why that particular animal is needed
- Requesting to have the deposit or fees waved. Assistance animals are not pets and owners cannot be charged fees and deposits. (Residents are still responsible for the cost of damages caused by assistance animals)

## Evaluation and Response: Reasonable Accommodation and Reasonable Modifications Requests

HOAs should have clear written protocols for evaluating and responding to reasonable accommodation and modification requests. Documentation of those evaluations, communication, and decisions should be stored for at least two years.

All residents should be made aware of the option to submit reasonable accommodation and modification requests in writing and how and where to submit them. A homeowner is not limited in the number of requests they can submit, and each request needs to be evaluated on its own merits as well as responded to in a timely manner. There aren't specific guidelines for timing, but responses should be handled with an urgency which demonstrates the awareness of the resident's need.

HOAs should also have clear procedures on how those requests are handled internally. Procedures should address things like who will evaluate the requests, taking into consideration that some requests may require research and communication with outside entities, like attorneys and insurers. They should also address how staff members should handle a request when initially received and how communications with the requesting homeowner should be handled during the review process.

### **Verification**

The first step is to determine that the request is related to a person's disability. If the disability is obvious, if the individual uses a wheelchair for example, then the HOA should not seek any further verification. If the disability is not obvious, verification can be provided by a qualified individual. Furthermore, the HOA cannot ask about the nature or severity of the disability, cannot share information about the disability with other residents, or require a resident to be examined by the medical professional of the HOA's choice.

In some circumstances, an individual can verify their own disability using their SSA or SSI statements. If that's not possible, verifiers must be a qualified individual or reliable third party in the position to know. Qualified individuals can be but are not limited to a doctor, nurse, physician assistant, nurse practitioner, counselor, psychiatrist, psychologist, drug and alcohol counselor, therapist, social worker, sponsor, religious leader, etc. The nature of disability does not have to be disclosed or the physical benefits of the request. Verification can be letters, graduate certificate from a drug and alcohol program, documentation showing a change in behavior related to disability, etc. HOAs cannot require tenants or homeowners to use the reasonable accommodation or modification forms they provide. It can be delivered by homeowner, tenant, applicant, or provider by email, mail, or fax as well as in person.

If a person is making a reasonable accommodation request for an assigned parking spot due to a disability and they have a disability license plate, their vehicle registration is sufficient evidence of a disability to be considered verification of a disability.

### **Evaluation of a Reasonable Accommodation or Modification Request**

Unlike "reasonable" in other areas of the law, there is legal criteria that clearly defines how to evaluate reasonableness in regard to reasonable accommodation and reasonable modification requests. It is not a matter of opinion as to whether the reviewer believes the request to be reasonable or not, but rather whether the impact on the HOA is reasonable. Even if the impact is found to have an unreasonable impact under very limited criteria, the HOA should work with the resident to find a reasonable solution.

There are a limited number of reasons that a reasonable accommodation or reasonable modification can be denied.

- **If the request is too costly and/or places an undue burden on the HOA.** If the cost of granting the request would severely hinder the ability of the community to function or would pose such a burden that it would severely hinder the ability of the provider to do their work. Proof of that burden would need to be shown.

- **Granting the request require board or staff to do something clearly beyond their job descriptions**, such as running errands for a homeowner or having maintenance staff pick up dog waste.
- **Granting the request would pose a direct threat to health or safety or result in substantial physical damage to property.** This threat cannot be an assumed threat. It needs to be based on evidence specific to the request. For example, if a request was for a large dog the HOA could only deny the request if that particular animal has a history of causing damage or being a threat to safety.
- **If a person does not have a disability**

This assessment must be made based on facts and not assumption. Financial burden would need to be proven by the housing provider through investigation and documentation of cost. Threat to health or safety could not be based, for example, on a dog's breed or size. There would need to be evidence that the particular dog in question has a history of threatening or harmful behavior.

## Enforcement of Fair Housing Laws

A homeowner, homebuyer, current, and former community member has the right to file a claim if they believe they have experienced housing discrimination for up to 1 year to a state or federal agency and up to two years to file a lawsuit. Individuals usually file claims with the Civil Rights Division of the Bureau of Labor and Industry (BOLI) or the Department of Housing and Urban Development (HUD). The housing provider will have 10 days after receiving the notice from either BOLI or HUD to submit a response to the complaint if they choose.



- **Investigation:** BOLI/HUD will then carry out an investigation. They have the authority to take depositions, issue subpoenas and interrogatories, and compel testimony or documents.
- **Conciliation:** The Fair Housing Act requires BOLI or HUD to bring the parties together to attempt conciliation with every complaint. The choice to conciliate the complaint is voluntary on the part of both parties.
- **Cause/No-Cause Determination:** BOLI or HUD will investigate the complaint and make a determination on whether housing discrimination has occurred. It will issue a determination and charge the HOA or other provider with violating the law if they find discrimination has occurred. An Administrative Law Judge will hear the case unless either party elects to have the case heard in federal court.
- **Hearing before an Administrative Law Judge:** If the Administrative Law Judge finds that housing discrimination has or is about to occur, the ALJ can award a civil penalty for a first offense, in addition to actual damages suffered by the complainant, an injunction or other equitable relief, and attorney's fees.



- **Hearing in a U.S. District Court:** If the court finds a discriminatory housing practice has occurred, the court can award compensatory damages to the victim, punitive damages to the provider, civil penalties and/or attorney's fees that could total thousands or even millions of dollars.

It's important to keep clear, legible, time and date stamped documentation of all activities and communications so that there is proof of legal practices if an erroneous charge is made. Avoid retaliation or actions that could be perceived as retaliation against the individual(s) who filed the complaint. Fair housing law has specific provisions that protect the right to file a complaint, making it illegal to retaliate against the person making the claim. Even if the investigation finds you innocent of discrimination, you could still be found guilty of retaliation.

### **Protect Your Organization and Community**

The best way to protect yourself is to establish a climate of civility and respect in your community and organization, ensure that staff and board members are fully versed in current fair housing laws, and practice regular review of policies and procedures. Set the tone of inclusivity, diversity, and civility in board meetings and in all communications with homeowners.

- Organize community events for families and children, not just for adults.
- Be aware that community members may have different religious traditions and keep public areas, office spaces, and events free of religious symbols.
- Choose locations for board meetings that are physically accessible and let residents know who to contact if they need an accommodation to attend meetings.
- When altering or renovating public spaces like a community center or playground, make them accessible.
- Maintain fair housing training for new staff, existing staff, and board members. Refrain from making derogatory or discriminatory statements and foster a climate that discourages community members from doing the same.
- Review your CC&Rs, bylaws, rules, resolutions, newsletters, and other communications on an annual basis. Ensure rules governing behavior and practices are clear and scrutinize language for discriminatory language and language which could have a discriminatory impact on a protected class.
- Use people first language. For example, say people with disabilities rather than disabled people.
- Use gender neutral pronouns, (they, their, theirs) when you are unaware of an individual's preference.
- Develop clear protocols for responding to harassment complaints and reasonable modification and accommodation requests. Engage individuals in a dialogue with the goal of finding mutually acceptable resolution if the original request proves the requirements to be denied.
- Form a committee to conduct regular review of community accessibility, recreation, newsletters, dispute resolution, and communication to ensure your community is in compliance with fair housing laws. Take proactive steps to increase the inclusivity of your community.
- Maintain clear, thorough files and records for at least two years.
- Homeowners should receive fair housing information as well and be familiar with your community's equal opportunity policy.

## Resources

### Fair Housing Council of Oregon (FHCO)

**Our Website** -The Fair Housing Council of Oregon provides information about a variety of fair housing topics on our website at [www.FHCO.org](http://www.FHCO.org).

**For Housing Providers with Questions Regarding Fair Housing, please call:**

800-424-3247 Ext. 5

**For Consumer Related Questions and Complaints of Discrimination please call:**

503-223-8197 Ext. 2

(Interpreters Available)

or

800-424-3247 Ext. 2

(Interpreters Available)

or

email us at [inquiries@fhco.org](mailto:inquiries@fhco.org) or find us online at [www.fhco.org](http://www.fhco.org) on the contact tab

### The Community Associations Institute (CAI)

The Community Associations Institute is a national trade organization for community associations and those who do business with community association. CAI offers education for homeowners and professional managers, a data base of information on community associations, a resource library, advocacy for homeowners and HOAs, legal advisory services in court casts, and legislative actions and networking for the three subgroups of members: Community Volunteer Leaders, Community Managers, and Business Partners. CAI supports 56 chapters in the 50 states to serve its 30,000 members. CAI Oregon, headquartered in Portland, has more than 300 members. It also sponsors a Regional Council in Bend. CAI sponsors education programs for member in both Portland and Bend.

For more information about membership, contact [www.caionline.org](http://www.caionline.org), [www.caioregon.org](http://www.caioregon.org) (Oregon Chapter), or call (503) 531-9668.

## Further Reading

The following are federal and state fair housing laws and other relevant statutes that protect home seekers and tenants. Fair housing laws are broad and inclusive. Some aspects of these laws are very clear while other aspects may not appear to have clear answers. Housing laws continue to be clarified and evolve overtime through case law. As a housing provider, it's your responsibility to be aware of the law as it evolves.

<i>The Federal Fair Housing Act of 1968 and 1988 Amendments (FHA)</i>	<i>Oregon Family Fairness Act of 2007</i>
<i>Americans with Disabilities Act of 1990 (ADA)</i>	<i>Oregon Equality Act of 2007</i>
<i>Title IV of the Civil Rights Act of 1964</i>	<i>The Violence Against Women Act (VAWA)</i>
<i>The Housing and Community Development Act of 1974</i>	<i>Oregon Domestic Violence Act</i>
<i>Executive Order 13166: Limited English Proficiency</i>	<i>The Fair Credit Reporting Act (FCRA)</i>
<i>Section 504 of the Rehabilitation Act of 1973</i>	<i>Privacy Laws – Fair and Accurate Credit Transaction Act (FACT Act) and Oregon Consumer Identity Theft Protection Act (OITPA)</i>
<i>Chapter 659A of the Oregon Revised Statutes</i>	<i>Health Insurance Portability and Accountability Act of 1996 (HIPAA)</i>
<i>2020 HUD Assistance Animal Notice FHEO-2020-01 (NC1-28-2020)</i>	

## Protected Classes in Local Jurisdictions

Local Jurisdictions throughout Oregon include other protected classes. If you operate in one of these jurisdictions, please contact us or contact local officials to learn more about the additional protected classes in your area. Those jurisdictions are:

Multnomah County	Hillsboro
Benton County	Lincoln City
Ashland	Lake Oswego
Beaverton	Portland
Bend	Salem
Corvallis	Springfield
Eugene	