



SHELTER FOR ALL

A fair housing guide for homeless shelters, domestic violence shelters, tiny house pod villages, and other transitional housing providers.

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Why This Guide?

Fair housing laws are civil rights laws that apply to housing. Many nonprofit organizations need to be fully aware of fair housing laws, including all housing, long- and short-term housing, and shelter programs. This 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 an attorney for specific legal advice. The information in this guide is based on local, state, and federal fair housing laws, as well as evolving fair housing case law throughout the country.

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1 FAIR HOUSING BASICS

1.1 FAIR HOUSING LAW

The Fair Housing Act of 1968 is one of the most important pieces of civil rights legislation to be passed. Today, it protects people against illegal housing discrimination based on protected class and ensures equal access to housing.

Fair housing law includes federal, state, and local civil rights laws that protect against illegal discrimination in any housing transaction, including, but not limited to, rentals, sales, lending, and 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.*

**Many shelters are also covered by other anti-discrimination laws, such as the Americans with Disabilities Act (ADA). Title III of the ADA applies to most shelters, as they are considered a "place of public accommodation," so there may be overlapping protections afforded by both laws.*

All housing providers, whether in the private, public, or nonprofit housing sector, must follow fair housing laws. This includes the owners and staff of:

- Apartment communities
- Rental homes
- Mobile home parks
- Condominiums
- Transitional housing and non-temporary shelters
- Motels and vacation rentals (when functioning as primary housing rather than vacation lodging)

As a shelter provider, you have the unique opportunity to provide housing to those in precarious housing situations. All housing providers should study, review, and follow fair housing law. This supports their resident's safety and well-being and helps avoid substantial legal penalties for fair housing violations. Violations can result in administrative fines, punitive

Before You Begin...

As you review this guide, remember to address fair housing issues on a case-by-case basis. Some aspects of the law are obvious, but in many situations, the answers may depend on a close examination of all the relevant facts. We advise caution in “gray areas” of the law, and providers may want to consult with legal counsel to ensure that they are following all relevant requirements in this area.

and compensatory damages, and attorney fees. This guide provides information on fair housing law as it applies to nonprofit organizations that oversee shelters.

1.2 PROTECTED CLASSES

Fair housing law guarantees that all people have the right to find housing that fits one's needs without the influence of outside biases or stereotypes. At the federal level, the protected classes include race, color religion, national origin, sex, familial status, and disability.

Federally Protected Classes



Race



Color



Religion



National Origin



Sex



Familial Status



Disability

Oregon Protected Classes

The state of Oregon includes the additional protected classes of sexual orientation, gender identity, victims of domestic violence, marital status, and source of income.



Sexual Orientation



Gender Identity



Victims of Domestic Violence



Marital Status



Source of Income*

**The protected class of source of income includes Section 8 and agency rent payments. While not explicitly mentioned in state law, the legislative intent includes other public benefit programs, such as SSI, SSDI, TANF, etc.*



Some counties, cities, and other jurisdictions may have additional protected classes such as age over 18, occupation, housing status, etc. To learn what additional protected classes exist where you live, visit: bit.ly/ProtectedClassesOR

1.3 DWELLINGS

Fair housing law applies to all dwellings. The FHA defines “dwelling” as “any building, structure, or portion thereof which is occupied as or designed or intended for occupancy as a residence.” Dwellings typically include single-family homes, tiny homes, condominiums, apartment complexes, duplexes, long term motel rentals, mobile homes, and assisted care facilities. This is not an exhaustive list.

When considering if a place is a dwelling, ask:

- Is this a place where a person lives, temporarily or permanently, and intends to return to?
- Is this address listed as a person’s primary residence?
- Does this person receive mail only at this location and no other?
- Is there an agreement between the provider and resident, such as a written or verbal rental agreement, a residency agreement, an agreement for services, or a set of rules that a resident agrees to follow?
- Does the resident provide something in exchange for shelter, such as a rent payment, program fee, or in-kind exchange, such as performing chores or participating in specific programs?
- Is the primary purpose of the entity to provide housing?

Shelters as Dwellings

Nonprofit organizations providing shelter services occupy the unique role of being both supportive services and housing providers. These organizations often provide services to vulnerable populations more likely to experience housing discrimination; carefully following fair housing guidance will help prevent further marginalization.

Fair housing law applies to longer-term shelters (including many homeless shelters*), transitional housing, domestic violence shelters, and tiny house pod villages. 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. Most shelters are also considered “places of public accommodation” for which other anti-discrimination laws apply, such as Title II of the Civil Rights Act of 1964 and Title III of the Americans with Disabilities Act.

**According to the U.S. Department of Housing and Urban Development, “The Fair Housing Act covers most housing. In very limited circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family houses sold or rented by the owner without the use of an agent, and housing operated by religious organizations and private clubs that limit occupancy to members.” To read more, go to:*

https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview

We recommend all shelter providers assume their housing qualifies as a dwelling and operate in compliance with fair housing law to protect against fair housing liability. However, there are some exceptions. An investigation to determine whether a shelter is considered a dwelling will consider factors such as the provider’s mission, length of stay, relevant licensing, funding sources, the amount of time and resources the provider allocates to housing services, and the qualifications of the staff.

Fair housing law applies to any other person or entity whose actions could “make housing unavailable.” This includes organizations that operate rental assistance or shelter voucher programs, long-stay motels providing emergency shelter, etc.

All shelter providers should be 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 about fair housing or files a fair housing complaint. One way to ensure fair housing consistency is for every housing provider to appoint a staff person as the fair housing specialist.

What Laws Apply to Your Shelter?		
Federally Funded Shelters	Emergency Overnight Shelters	Day Shelters/Warming Shelters
<ul style="list-style-type: none"> • Fair Housing Laws • Section 504 • Executive Order 13166: LEP • Public Accommodation Laws 	<ul style="list-style-type: none"> • Fair Housing Laws* • Public Accommodation Laws 	<ul style="list-style-type: none"> • Public Accommodation Laws
<p><i>*Emergency shelters should review their legal responsibilities on a case-by-case basis. For example, accommodation laws would apply if a resident only stays at a shelter for several nights. However, fair housing law may begin to apply if a guest consistently stays at an emergency shelter every day for a longer period of time. If you are unsure whether fair housing law would apply in a situation or with a specific resident, consult a fair housing attorney.</i></p>		

1.4 DISCRIMINATION AND ILLEGAL HOUSING TRANSACTIONS

Fair Housing law protects applicants and tenants from discrimination during all stages of the housing process. This includes the initial inquiry, application, selection, residency, termination, move-out, and beyond. Discrimination that occurs during any housing transaction is illegal.

Discrimination during the application process may look like doing any of the following based on someone's protected class:

- Outright denying an application;
- Providing false or inconsistent information;
- Steering applicants to alternative housing or shelters;
- Discriminatory advertising or marketing of the housing;
- Applying inconsistent criteria when reviewing or screening applications.

Discrimination during tenancy may look like:

- Treating residents differently in terms of procedures, rules, repairs, access to shared facilities, or other aspects of daily life;
- Applying inconsistent consequences among residents who violate community rules, guidelines, or expectations;
- Imposing additional program requirements on participants based on protected class, such as requiring all mothers to attend parenting classes or persons with disabilities to attend support groups;
- Harassment, intimidation, threats, or coercion.

Discrimination at move-out:

Involuntary exits, trespass notices, program termination notices, and evictions not based on objective, fact-based behavior may be discriminatory. It is illegal to retaliate against tenants who report fair housing complaints, violations, or discrimination by subjecting them to termination notices, evictions, intimidation, threats, or coercion. Other forms of retaliation may include making verbal threats, terminating a resident's stay, or placing the resident on a do-not-serve list unless they drop the complaint.

Are your policies causing a disparate impact?

A policy or practice can be discriminatory even if the housing provider does not intend it to be. **When a policy that appears to be neutral is put into practice and impacts a specific protected class more harshly, this policy is causing a "disparate impact."**

An example is if a shelter policy prohibits toys in the common areas but permits other items to be left there. This policy, when enforced, would have a harsher impact on families with children and thus disparately impact those within the protected class of familial status.

2 POLICIES AND PROCEDURES

2.1 ADMISSION SCREENING

Developing Criteria

Shelter programs must accept applicants based on clear, objective, and consistent admissions criteria based on facts, not subjective assumptions. If a provider is authorized to make an exception to standard criteria, clear policies must explain when these exceptions could occur.

Below are some examples highlighting the difference between fact-based criteria and subjective assumptions:

Fact-based criteria

- Rental history: Information can include stays in shelters, and other alternative housing arrangements.
- Criminal history*: Housing providers cannot make blanket denials of applicants with a criminal record. Providers must consider how long ago the crime occurred, the seriousness of the crime, and rehabilitation or restitution. Applicants with a recent history of crimes that threaten the safety of other residents or that threaten the property can be restricted residency. *To learn more, go to: bit.ly/3MMUVKF*
- Observable behavior: For example, a housing provider can reject an applicant for threatening to harm or physically harming the person conducting the screening/intake.
- Letters of recommendation from referral agencies or community programs (as long as those organizations also use fact-based criteria).

**Domestic violence victims may have items on their criminal record that are directly related to domestic violence incidences where they were victims of crime. To learn more about the housing rights for domestic violence, sexual assault, and stalking victims, visit: bit.ly/DVHousingRights*

Cultural & Disability Competency

Discrimination may occur when housing providers misinterpret residents' behaviors due to differences in values, life experiences, and cultural norms. For example, staff may reject an applicant at intake for appearing "shady," citing how the applicant repeatedly avoided eye contact during the intake session. However, perhaps the applicant is part of a community and culture where eye contact is considered rude, disrespectful, or aggressive. Or, perhaps the applicant is a person with autism with a natural tendency to avoid eye contact. In both cases, assessing the applicant as "shady" is a subjective assumption and discriminatory. **Even how a housing provider advertises or markets their programs may create a "chilling effect.** A shelter's "No curry in the kitchen" policy may convey that residents from nationalities or cultures who commonly eat curry are not welcome. **All housing providers should provide cultural competency trainings to raise employee awareness around unconscious bias and diversity.**

Subjective assumptions

- “Odd” behaviors (as opposed to behaviors that present a verifiable threat to others).
- An “intuitive sense” of an applicant’s willingness to commit to a program, get along with others, etc.
- Rejecting an applicant who seems “shady” or having a “gut feeling” that the person might threaten a staff person or someone else.
- Rejecting an applicant due to stereotypes associated with that person’s identity.
- Assuming a person with a particular disability or gender identity will cause a problem with other residents. If a problem does develop after the person moves in, it should be addressed at that time and in a way that complies with fair housing laws. It is recognized that some residents may have their own opinions or biases, and these should not be allowed to create an unsafe environment for others.

Discriminatory Criteria and Policies

Shelter providers can create screening criteria if it is not discriminatory and is applied consistently. For example, a shelter provider can prioritize clients of specific social services programs if those programs include all protected classes. However, if not carefully crafted, a housing provider’s admission criteria, policies, and procedures may have disproportionately negative impacts on certain protected classes. As such, housing providers must review their policies to ensure equal and equitable procedures.

Some examples of policies that may affect specific populations in discriminatory ways:

First come, first served selection

- Providers who use a “first come, first served” approach should be very cautious to make sure the procedure does not discriminate against people with disabilities by requiring them to appear at a certain location or a certain time.
- The best approach may be to provide ample times for all residents to enter the lottery, including consideration of disabilities, and then to select participants using a lottery.
- Lottery result notification procedures should be mindful of accessibility considerations for persons with disabilities, such as announcing lottery “winners” in an inaccessible way or posting it to an inaccessible location for persons with disabilities.

Sobriety time requirements

- Requiring residents to be in recovery or clean and sober for a specified time is problematic. Shelters should be flexible and take individual circumstances into account. While people who are “current users of illegal drugs” are not protected by fair housing law, participation in a formal drug rehabilitation program and abstinence from drugs is

adequate to show that a person is no longer a “current user,” even if the last incidence of use was only weeks in the past.

Targeting programs specific to ethnic or religious groups

- Shelters cannot deny applicants seeking shelter who are not members of the target group.
- Shelters should be extremely careful about targeting programs to a particular ethnic or religious group. If a program is going to do this, they should have a clear programmatic reason for marketing to this group which should be backed up by community needs assessments and data.

Evaluation

Shelter providers should screen, evaluate, and select applicants using consistent intake procedures. Providers should accept the first applicant who meets their criteria or prioritization policy and, if possible, through a random selection review process. To ensure consistency, shelter providers should:

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

Coordinated Entry

Coordinated Entry is a HUD initiative to support those who may be at risk of losing their housing or who are homeless and match them with the appropriate shelter and housing resources. 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 use standardized assessment tools, such as the VI-SPDAT or the Safety and Stabilization Assessment, to gather information about service gaps to help communities plan their assistance and identify needed resources.

Fair housing law does not generally consider Coordinated Entry a discriminatory process. However, housing discrimination could occur if the standardized assessment tool selectively rules out particular protected classes such as race or national origin. There may also be privacy

Paperwork and Recordkeeping

Applicant records should be kept on file for at least two years (Note: many federal funders require three years), and should include the information collected in the screening, reasons for any rejection of applicants, and the dates on which applications were received and processed.

The FHCO suggests that housing providers keep records for two years because **applicants can file a fair housing complaint against a provider up to two years** after an incident of possible discrimination has occurred. Maintaining complete and legible records can be a shelter’s best defense in the event of a complaint.

concerns regarding the information gathered through this screening method, how it is used and stored, and who has access to it.

As with any screening policy, a housing provider must ensure their screening processes comply with fair housing law. Using Coordinated Entry processes during intake screenings is legal as long as the data it obtains is not used to discriminate.

2.2 RULES AND REGULATIONS

Rules, regulations, and community guidelines must be non-discriminatory. Housing providers should review rules for disparate impact (*see page 8*) and to ensure equal access for all protected classes. As a general guidance, all rules and regulations should be administered and applied consistently to all residents.

Shelters must enforce community or house rules consistently among all residents. Shelters should be careful not to show favoritism among residents, which can be perceived as discrimination, whether or not that is the intent. With that said, fair housing law does at times require you to apply certain rules, policies, or practices differently for persons with disabilities, which does not entitle other residents without disabilities to that same treatment.

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. *To read more about reasonable accommodation requests, go to page 21*).

Required Programming

Suppose the primary purpose of the housing provider is to provide a specific service that is not housing, such as a residential drug rehabilitation program. In that case, requiring resident participation in specific programming is legal. However, if housing is the primary service provided, then there are some policies housing providers should be cautious of:

Religious services

- It is illegal for providers receiving federal funds to provide housing/shelter contingent on attending religious services.
- Some providers that do not receive federal funding may require residents to attend religious services. However, 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.

- Shelters that offer religious services can promote attendance but are discouraged from requiring participant attendance. 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 tasks instead of attending the services.

Recovery groups

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

Case management

- Shelters should be cautious about requiring all residents to enroll in case management, support groups, etc.
- Shelters committed to such requirements should match services to the resident's individual needs. For example, you should not put a resident at risk of losing their job by requiring them to attend a support group at the same time they are scheduled to work. It is similarly unacceptable to require a resident living on a disability income to attend job search classes or spend time searching for employment.

Illegal Substance Use Policies

Fair housing law protects people with a history of addiction or illegal substance use. However, this protection does not extend to current users of controlled substances. When crafting policies related to substance use, housing providers should consider the following:

Drug testing

- Under fair housing law, it is legal for shelters to administer drug testing, provided the shelter tests every applicant.
- Random testing is acceptable but cannot be used to target any protected class. Providers doing random testing should be highly 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

- Housing providers that do not receive federal funding may determine whether to permit the use of medical marijuana in their facilities.
- Federally funded providers may be required to prohibit marijuana use under certain federal regulations.
- If the shelter turns down a reasonable accommodation request for medical marijuana use, the provider must go through an interactive process with the resident to determine possible reasonable alternatives. *For more about reasonable accommodations, go to page 21.*

Drug and alcohol-free programs

- 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. Under Oregon’s landlord tenant law drug and alcohol-free housing must follow a number of strict rules. *For more information about what standards a program must meet to be considered drug and alcohol-free housing, refer to [Oregon Revised Statute 90.243](#).*
- Qualified drug and alcohol-free housing programs may legally enforce no-drinking rules, as abstinence is essential for their recovery programs to succeed.

Pet Policies

Shelters may create policies that restrict pets. Shelters may regulate the type of species allowed and the number of pets a resident may have. These policies must be consistently applied and enforced.

However, all shelters must abide by public accommodation laws related to service animals. Additionally, if the shelter is considered a dwelling, it must comply with fair housing guidance on must comply with fair housing guidance on assistance animals, including the allowance for companion or emotional support animals in addition to service animals. *To read more about assistance animals, go to page 26.*

2.3 HARASSMENT

Harassment based on protected class is illegal under the Fair Housing Act (Section 818) and state housing anti-discrimination laws such as OAR 839-005-0206(5). It is illegal for a staff member, volunteer, or resident at a shelter to “harass, intimidate, threaten or coerce” a resident because of their disability, religion, race, national origin, sex, gender identity or any other protected class.

Harassment can be physical, verbal, or written, including the use of social media. It can also involve deliberately interfering with a tool or product that a disabled resident needs for their daily activities. People have different levels of tolerance and what one person may think is a harmless joke could be experienced as harassment by someone else. It is advisable for shelters to develop and enforce “No Tolerance” policies.

Liability

In 2016, The United States Department of Housing and Urban Development (HUD) issued a ruling that reinforced the conclusion that harassment is a violation of the Fair Housing Act. Housing providers must investigate and act when harassment, including resident-on-resident harassment, occurs. What happens if housing providers do not take immediate corrective action to respond and end resident-on-resident harassment/intimidation based on protected class? In that case, they will have violated fair housing law. Shelters that fail to address harassment by their staff, volunteers, or other residents have been found liable under fair housing law for creating or perpetuating a hostile housing environment.

We strongly recommend that shelters ensure all staff and volunteers receive fair housing training, including awareness of the prohibition against harassment and techniques for addressing resident-on-resident harassment. This training should be done periodically and not only when someone is hired or brought onboard.

Providers should inform all residents that if staff, a volunteer, or another resident harasses them, they should notify shelter staff immediately, as well as what the procedures are. Additionally, staff, volunteers, and residents who are found to be harassing others are at risk of termination. We recommend that providers incorporate policies into the shelter’s grievance procedures prohibiting harassment and insuring prompt and effective responses to violations. *See Appendix A for a Sample Harassment Policy for Shelters.*

Investigation

Once a shelter learns a resident is experiencing harassment, the shelter is legally required to promptly investigate. It should be clear to all staff and volunteers which employee is responsible for conducting the investigation.

The investigation process should include the following:



Consider this:

Shelters without strong, obvious, no-tolerance harassment policies create a barrier for LGBTQIA+ and BIPOC (Black, Indigenous, and People of Color) applicants needing housing; these applicants are more likely to opt-out of traditional shelters to avoid possible harassment, slurs, or other traumatic experiences. Creating, communicating, and enforcing strong anti-harassment policies is critical in cultivating more inclusive housing options for all.

- Interviewing the person who alleges harassment and determining what protected class may be involved;
- Interviewing the alleged harasser and any possible witnesses;
- Reviewing any camera footage, documents, and other evidence regarding the harassment.

If the housing provider confirms harassment, they must take immediate action to remedy the situation. After action is taken, staff must check in with the person who experienced the harassment to ensure the shelter has stopped the harassment and resolved the problem. Shelters should keep records to verify how they investigated, addressed the harassment, and what was the outcome.

2.4 TERMINATION

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

Objective reasons for termination 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 excessive noise, weapons, pets, curfew, etc.;
- Not having been truthful with essential eligibility information;
- Becoming ineligible for housing based on a change in circumstances (i.e., income increases to a level above the eligibility limit).

Reasonable Accommodations for Termination Notices

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. They might show evidence they are making changes to medications or treatment which help to control dangerous behaviors and they have a verification letter from a medical or mental health provider who can attest that the medication should mitigate the behavior that caused the violation of the agreement. *To read more about reasonable accommodations, go to page 21.*

A shelter should not terminate a resident for behavior that is “odd” or outside the social norm for that area. Shelters should not terminate residents for vague reasons such as “conflict with

staff;" instead, specific behaviors must be referenced, such as "threats of violence." *See pages 9 & 10 for more information on the difference between objective and subjective criteria.*

Similarly, if the staff of a shelter has a list of people they will not serve in the future (sometimes referred to as a "do not serve list"), this must be based on objective criteria and should be based on written guidelines. Usually, this is limited to violent behavior or threatened violent behavior. The length of time a shelter refuses a resident for re-entry should also be determined in a consistent and nondiscriminatory manner and reasonable in length of time.

3 THE PROTECTED CLASS OF DISABILITY

3.1 DEFINITION OF DISABILITY

Disability under fair housing law is broadly defined as any physical or mental condition that substantially impairs a major life activity, including but not limited to the ability to walk, see, hear, breathe, think, learn, or care for oneself.

Disability protection includes, but is not limited to:

- Physical, mental, and emotional disabilities;
- Developmental and learning disabilities
- Cognitive impairment;
- Long-term conditions such as cancer, HIV/AIDS, Autism, Asthma, Cerebral Palsy, Multiple Sclerosis, Muscular Dystrophy, Diabetes, and heart disease;
- Alcoholism or previous substance addiction (provided there is no "current use" of alcohol or illegal drugs).

Defining Disability

Note that 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**, as many as **54 million people are protected under Fair Housing Law against discrimination based on disability**. A broader definition of disability protects those who may not have access to SSI but still need reasonable accommodations or modifications to ensure equal access and enjoyment of housing.

The protected class of disability also prohibits discrimination against:

- Those with a history of a disability, such as mental illness, cancer, or past addiction;
- Those 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 who are assumed to have one.*

3.2 DISABILITY PREFERENCES

Shelter providers cannot refuse to house people because they have a particular disability. For example, a provider cannot:

- Refuse to house a person who is living with HIV;
- Refuse to house a person who is in recovery from addiction;
- Refuse to house a person who needs to take medication during the night;
- Refuse to house someone with a disability that prevents them from using a top bunk bed;
- Refuse to house a person who uses an oxygen tank.*

**Providers concerned about fire risk can prohibit smoking in any areas where an oxygen tank is located*

Section 504 of the Rehabilitation Act of 1973 states that a provider who receives federal funding cannot prefer one disability over another *unless* such a preference is specifically authorized by a federal statute or executive order signed by the President. The only programs with 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 allow such a preference does not provide a sufficient legal reason to limit the admission or show a bias in admission for people with specific disabilities.

Living Independently Requirements

Providers generally **cannot require residents to be able to live independently**. While the law does not expect housing providers to offer 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 with disabilities may be able to secure caregivers or use other agencies to assist with these activities. **Housing providers cannot deny a reasonable accommodation for a caregiver or refuse to house/shelter a caregiver**. However, housing providers are permitted to conduct a criminal background check for caregivers. In addition, **housing providers cannot make a 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.

3.3 CONFIDENTIALITY

Shelter providers may not inquire about the existence or the severity of an applicant's or resident's disability. They may not require applicants or residents to waive the confidentiality of medical records. Shelter providers cannot require applicants or residents to disclose information about the nature or extent of a disability. Any information an applicant shares with a provider regarding the applicant's disability must be voluntary and not as a condition for acceptance into the program.

Screening Considerations

A provider should never share information about a resident's disability, medical, or other confidential information with other residents. Providers should screen or interview all applicants and residents privately to protect a person's disclosure of a disability.

It is best practice during a screening interview for a provider to share information with all residents about any disability-related programs/services offered to avoid discrimination based on the assumption of a person's disability status. It is important to note that some federal funds stipulate that only people with disabilities, or people with a specific disability, can be served. In these situations, providers may ask all applicants if they meet that definition of disability. However, they cannot require specific information about the nature and/or extent of the disability.

What happens if a shelter offers medical or mental health services directly or through a partner agency? In that case, they can preface intake questions related to disability by using language 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, then they should not ask these questions at all.*

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 at the time of intake, such as:

"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?"

Shelters may ask applicants and residents for the names of other service providers they are working with if they ask all residents this question. The client must clearly understand that providing this information is voluntary and not required.

Overall, a shelter provider needs to be conscientious about asking questions in a non-discriminatory way that protects an applicant or tenant’s right to privacy and autonomy.

Referrals and Release of Information

It is illegal to share information about a resident’s medical history or disability without permission from the resident. A shelter provider’s staff must have the resident’s written authorization to share information about residents with third parties. This is true even in cases where staff is worried that a person may self-harm. We recommend that the shelter ask the resident to approve a release of information (ROI) each time the resident agrees that the shelter can disclose information about their medical needs or disability. The shelter cannot require the resident to sign this form, and any release of information must be voluntary.

If a shelter uses a centralized database, any resident information related to a medical condition or disability should be accessible only to relevant clinical/service staff. A provider must always use a release of information form before sharing such information outside the organization.

Medication

Shelters that are not primarily treatment facilities should not require residents to share information about their medications, as this could identify the nature or extent of a person’s disability. In addition, if a resident has medication, it is not the provider’s responsibility to oversee or ensure a resident’s responsible use of medication. Shelters cannot create policies or procedures that prohibit people’s access to medication.

Storage requirements

- While housing providers can require residents to keep medications in a central storage area, the contents within the medication storage area must remain confidential (i.e., not visible to unauthorized staff) and easily accessible by the residents when needed.
- To preserve confidentiality, shelter providers could provide individual locked or sealed containers, drawers, or lockers where the labeling is not visible.
- If the storage is kept locked by the staff, there must be staff on hand to help residents access their medication whenever the resident needs access.

3.4 REASONABLE ACCOMMODATIONS

Definition of a Reasonable Accommodation

While the general fair housing guideline is to treat all applicants and residents consistently, the law also addresses the right of people to have equal access to housing. To ensure equal access, people with disabilities have the right to request reasonable accommodations to allow them to

live in shelters. A reasonable accommodation is when an applicant or resident requests that a housing provider make an exception to a standard rule, policy, practice, procedure, or eligibility criteria due to circumstances related to the person’s disability.

Some examples of reasonable accommodations include:

At application

- An applicant with a history of evictions and behavioral problems in housing may request a shelter provider to overlook this history in their application because the behavior resulted from 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 religious leaders—to confirm that the problem was, in fact, related to the disability and has since been corrected.
- An applicant who is unable to read or write may request assistance with filling out forms.
- An applicant who is Deaf may request interpretation if questions or information is being provided audibly.

During tenancy

- A person with a disability requests permission for a part-time or live-in caregiver to help them with bathing, eating, and other daily tasks.
- A person with a disability who cannot 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.
- A person with a 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.
- A person with a disability that prevents them from doing a required chore at a shelter requests an alternative or reduced chore requirement.
- A person 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.
- A person with a disability requests that their shelter provider contact a family member or social service agency to support the resident in addressing problems during residency.
- A person with a disability requests an exception to a shelter’s “no pet policy” for their assistance animal.

During move-out

- A resident faced with termination from a shelter requests a reasonable accommodation because the problem behavior was the result of their disability.
 - The resident’s 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. What happens if the provider discovers the resident is no longer attending the therapeutic program? Lack of attendance cannot, in and of itself, be a cause of termination. However, if the resident begins to exhibit the same behaviors again that could lead to a new notice or reinitiating the termination process.
- What happens if a provider places a person on a shelter’s “do not serve” list? That person has the right to request a reasonable accommodation to be removed from the list if a disability caused the behavior *and* the person has since corrected the behavior. The provider can require verification from reputable sources that the behavior has changed.
 - We recommend that providers notify residents of their right to reasonable accommodation when they give a notice of termination or exclusion.

Third-Party Verification of Disability

Shelter providers can require residents and applicants to verify that their request is needed because of their disability and is necessary for them to use the shelter or follow the shelter's rules. This verification can be a letter or verification form from a medical provider, therapist, social worker, or other professional familiar with their disability-related needs. *See Appendix D for a Sample Third-Party Verification Form.*

Qualified third-party verifiers can include:

- Physicians
- Nurse practitioners
- Clinicians
- Psychiatrists
- Psychologists
- Counselors
- Social workers
- Rehabilitation centers
- Social service agencies and case managers

Fair housing laws permit a range of third-party verifiers, including any qualified individual assisting the resident or applicant with their disability. A person with no medical or therapeutic provider to verify can be referred to a local public health or behavioral health service provider.

A person 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 law's general spirit requires removing barriers that create excessive verification standards for people with disabilities. 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 and cannot require the applicant to see a new provider in the area.

There is no time limit for 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 when a letter that is very old is still valid, or when a landlord may request an updated verification letter.

Reasons to Deny Reasonable Accommodation Requests

Shelter providers are required to consider all requests and to grant them unless the request is “unreasonable.” Determining reasonableness does not mean the provider can second-guess the person with a disability or the qualified individual verifying the need for the accommodation (though a provider may contact that individual to verify their identity or to confirm that the accommodation is, in fact, necessary). Reasonableness is determined by the impact of the request on the housing provider.

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

- 1. Granting the request would be too costly and an undue burden on the provider (based on verifiable facts)**

Whether a request is an undue burden is a determination that must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide the requester, and the availability of alternative accommodations that would effectively meet their needs.

- 2. Granting the request would be outside the housing provider’s job description or cause a fundamental alteration to the provider’s area of work or program**

An accommodation may be denied if it would require the program to do something well outside the services they provide. 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 to prepare meals, help with showers, or administer insulin injections if those are not services provided to other residents or within the scope of staff expertise.

3. Granting the request would be a direct threat (danger) to other residents and/or staff (again, based on verifiable facts)

A determination of threat must be based on factual evidence from past behavior, not assumptions (*see p.9*). For example, if an applicant requests a provider overlook a criminal history that includes violent crimes or sexual predator offenses, the provider could seek verification from a third-party professional familiar with their disability that the applicant has taken steps to mitigate future risks.

A housing provider must consider all reasonable accommodation requests. Shelter providers must 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 possibly rejecting a request comes into play, the provider should consult with the person making the request to attempt to find a reasonable alternative accommodation that effectively addresses the person’s disability-related needs.

Reviewing Reasonable Accommodation Requests

We recommend that providers tell all new residents that they have the right to request reasonable accommodations either verbally or in writing (*for questions regarding Limited English Proficiency Plans, go to page 35*). While a resident or applicant should put their reasonable accommodation request in writing, it is not legally required. There may be individuals with disabilities who cannot compose such a letter. Providers must be receptive to all verbal reasonable accommodation requests because it does not need to be in writing. Residents are also not required to use the exact phrase “reasonable accommodation” in explaining their request.

Shelters should review reasonable accommodation requests on a case-by-case basis. We recommend that providers establish clear policies for addressing reasonable accommodations in a timely fashion. These policies should include the following:

- How staff members are to record and document receipts of the request;
- Which staff member reviews the request and what steps are taken next;
- When verification is requested and how it is validated;
- In instances when a request is “unreasonable,” how the shelter will conduct an interactive process with the requesting person to try to find a reasonable alternative;

- 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.

It is best practice to include a grievance procedure in the shelter’s policies. This could include when the shelter must notify participants of their rights to file a grievance such as when a reasonable accommodation is denied or not handled properly. *See Appendix C for a Sample Reasonable Accommodation/Modification Policy.*

3.5 ASSISTANCE ANIMALS

A reasonable accommodation request may involve asking the provider to make an exception to a no-pet policy to permit assistance animals. Under fair housing law, assistance animals include service animals trained to perform specific tasks and companion or emotional support animals for mental and emotional disabilities. *See Appendix E for a Sample Assistance/Companion Animal Policy.*

Providers cannot:

- Restrict an assistance animal’s size, weight, or breed;
- Require pet deposits or pet rent to be charged for assistance animals.

Providers can:

- Require assistance animals to be vaccinated or licensed and comply with other governmental requirements;
- Refuse exotic animals prohibited by local health departments.

Rejecting Requests

If there is evidence that an applicant has failed to control the animal in the past, which led to excessive noise, property damage violations, etc., the housing provider can turn down the request on this basis. The person could, however, verify that they have corrected the animal's behavior through training, in which case the shelter would need to allow the animal.



What is a Pet and what is an Assistance Animal?

Assistance animals are protected under fair housing law. **Assistance animals are not pets**; they are a tool used by people with disabilities to access and enjoy equal housing. People may submit a reasonable accommodation request for assistance animals while dwelling in a shelter with a no-pet policy. It is important to understand that assistance animals are not the same as service animals. Instead, **assistance animal is an umbrella term used in fair housing that includes trained service animals, emotional support animals, and companion animals** as verified by a third-party medical or mental health provider.

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 housing provider cannot reject a request for an animal on the assumption that the animal will be problematic for other residents. Suppose another resident has a disability that is aggravated by the presence of the animal – such as debilitating allergies or PTSD – and makes a reasonable accommodation request not to be near the assistance animal. In that case, the provider should see if there is a way to accommodate the needs of both individuals with disabilities if possible. Providers should have a policy for resolving a situation where two residents with disabilities have conflicting reasonable accommodation requests.

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

3.6 ACCESSIBILITY REQUIREMENTS

Shelter providers have an affirmative responsibility to help their residents with disabilities overcome barriers to obtaining or maintaining housing. A part of this affirmative responsibility includes constructing shelters that are physically accessible. The Fair Housing Amendments Act (FHAA) contains accessibility requirements for multifamily housing (i.e., housing, including shelters with 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 or who want help making modifications to bring a shelter up to date may visit the HUD Fair Housing First website at www.fairhousingfirst.org or contact The Northwest ADA center for free advice and consultation <https://nwadacenter.org/>.

Funders of housing providers should be aware that a fair housing complaint could be lodged against them for providing funds to a building that is not accessible, especially if the shelter

receives any federal funds. This includes motels used as emergency housing. Funders should consider helping providers to make shelter accessible or, at the very least, to ensure alternative accessible options are available.

Reasonable Modifications

Fair housing law permits residents with disabilities to modify their dwellings physically. The right to reasonable modifications applies to all dwellings, including a multifamily complex, 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 be too costly (taking into account the provider's entire budget) *or* would require a fundamental change to the provider's program.

Providers that do not receive federal funding are not required to pay for such modifications. Those providers are required to permit residents with disabilities to make or pay for the modifications.

If the multifamily units were constructed before 1991 and are not accessible, or if the building is a converted home or other structure, then 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 to accommodate the person. For example, a shelter that operates out of 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. In addition, it would be illegal for a provider to deny a resident a shelter bed if the resident cannot use a top bunkbed due to a mobility disability.

Suppose a shelter has one vacant room without accessible features and another with accessible features. A resident who needs a room with accessible features applies to the shelter. However, a resident who does not require accessible features is currently occupying the only room with accessible features. Instead of turning away the applicant with a disability, the program should move the resident occupying the accessible room to the other vacant space. In order to preclude conflict with the other resident, shelters should indicate in residence agreements or rules that residents may be required to transfer to another unit, if a person with disability requires that unit. Other acceptable options may include offering a motel voucher for that applicant to stay in an accessible room or arranging a placement in a nearby accessible shelter.

4 COMMON FAIR HOUSING ISSUES

4.1 MARITAL STATUS

In Oregon, it is illegal for a housing provider to discriminate based on marital status, such as if a person is widowed, single, or partnered. 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.

Furthermore, shelters must not discriminate against any type of partnership, including Lesbian, Gay, Bisexual, Queer, Gender Non-Binary, Gender Non-Conforming, and Transgender couples.

4.2 SEX, SEXUAL ORIENTATION, AND GENDER IDENTITY

Sexual orientation and gender identity are protected classes in housing and employment in Oregon under the 2007 Oregon Equality Act. Furthermore, in 2021, the Biden Administration issued a HUD Directive for the Fair Housing Act to interpret and bar discrimination based on sexual orientation and gender identity. Due to this update, HUD will now accept and investigate all complaints of sex discrimination, including discrimination of gender identity or sexual orientation. HUD will also enforce the Fair Housing Act against instances of such discrimination.

State and local agencies like the Oregon Bureau of Labor and Industries are also authorized to enforce laws that prohibit discrimination because of gender identity and sexual orientation. Furthermore, any organization or agency that receives federal funding or grants through the Department's Fair Housing Initiative Program (FHIP) must ensure its programs and activities prevent and combat discrimination based on sexual orientation and gender identity.

Gender-Specific Housing

All people, 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. Shelters defined as dwellings under Fair Housing Law are not permitted to segregate residents by gender or to exclude an otherwise qualified applicant from housing because of gender. *See Appendix B for a sample Transitioning Our Shelters Model Policy.*

Transgender persons shall not be turned away at intake or referred to another shelter because they are transgender, the length or extent of their gender transition, or gender appearance. 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).

A shelter that is not a dormitory cannot only house women or only women and children. Shelters can specify that they serve "parents with children" and must include male parents and their children. It is a violation of fair housing laws for a shelter (including domestic violence shelters) to prohibit male minor children from staying with their parent(s).

Male and transgender domestic violence survivors are entitled to equal shelter and services. To deny a male or transgender survivor equal access to a shelter and instead house them in a motel (where they may be isolated and not in a safe, secure environment) may violate fair housing laws.

Self-Identification

Shelter providers should consider applicants or residents to be the gender they self-identify as and use the pronouns the applicant or resident identifies (he/him, she/her, they/them, ze/hir, Mr./Ms./Mx. etc.). A best practice is to ask program participants what their preferred pronouns are.

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. As with any resident, staff should not ask about a transgender person's medical history, including sex-reassignment surgery or hormone treatment. A provider may not deny access to shelter or services based on an applicant's appearance, ability to "pass," or legal documentation.

Single-Gender Housing

According to HUD, 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." A housing provider wishing to implement single-gender housing must be able to present HUD with proof that such objective and verifiable reasons exist and that the provider's

Unique Barriers for Trans and Gender Nonconforming Persons

Experiences of poverty and homelessness may pose unique barriers to trans and gender nonconforming persons in obtaining identification and accessing gender-affirming medical care. Additionally, it is not always safe for people to express their gender identity publicly, and some individuals may present differently than their gender to avoid street harassment or violence. Therefore, **housing providers should practice empathy** and recognize that some people may not have updated identification. **Housing providers must accept and accommodate all residents according to their self-identified gender.**

concerns are not based on assumptions or stereotypes (we recommend that any provider seeking to segregate residents based on gender consult first with legal counsel).

HUD considers privacy concerns to be solid reasons for the basis of gender-specific or gender-segregated housing. These 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, this privacy interest would be less compelling if the shelter has more than one bathroom or if the bathroom can be locked.

In general, shelters should strive to respect all residents' privacy rights. Providers with concerns related to gender can often address these concerns through policy adjustments to avoid discrimination against residents based on gender.

2016 HUD Equal Access Rule

The National Center for Transgender Equality and National Gay and Lesbian Task Force reported that **55% of transgender or gender nonconforming people attempting to access a homeless shelter were harassed by shelter staff or residents, 29% were turned away altogether, and 22% were sexually assaulted by residents or staff.** HUD recognizes how such violence and harassment are barriers for transgender and gender-nonconforming people from accessing housing. The 2016 Equal Access Rule, released by HUD, effectively outlines housing providers' responsibilities to prevent gender discrimination and inclusive policies for shelter and housing providers.



To read HUD's 2016 Equal Access guidance for shelters, go to:

<https://files.hudexchange.info/resources/documents/Equal-Access-for-Transgender-People-Supporting-Inclusive-Housing-and-Shelters.pdf>

Protection of Privacy

Shelter staff should respect all residents' right to privacy. A provider can address concerns related to gender through policy adjustments, such as the use of schedules that provide equal access to bathing facilities, as well as modifications to facilities, such as the use of privacy screens and, where feasible, the installation of single occupant restrooms and bathing facilities. Providing options for privacy in the bathroom or shower will also benefit a range of residents with medical conditions or personal needs that require privacy.

Other policy suggestions to ensure greater privacy for all residents include:

- Offer at least one gender-neutral bathroom for all guests to use;
- Have at least one single-stall restroom with a door that locks;
- If there are multi-stall restrooms, make sure each individual stall has a door that locks;
 - If only multiple-stall bathrooms exist and doors are not available, install a lock (with a key) on the entry door to the restroom;

- Install multiple private showering and dressing areas;
- Ensure that at least one shower facility has total privacy;
- If the shelter cannot install a physical barrier in a group shower area, residents should be given an option to reserve an alternate time to shower with the ability to lock the bathroom to ensure privacy.

4.3 RELIGIOUS PROVIDERS

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 such members unless the religion restricts membership based on race, color, or national origin.

If the housing provider receives federal funding of any kind, the housing provider must follow HUD's 2016 Equal Access Rule, which prohibits discrimination on the basis of sexual orientation and gender identity. *To learn more about the fair housing expectations of religious providers, visit HUD's Frequently Asked Questions (FAQs) on Equal Treatment and the Faith-Based and Community Initiative: https://www.hud.gov/program_offices/faith_based/faq*

For further guidance on religious programming requirements and shelters, go to p.20.

4.4 FAMILIAL STATUS

Shelters defined as dwellings under fair housing law cannot deny families with children or show a preference for households without children. However, limiting housing to families with children or showing a preference for families with children is legal. Family status includes any household in which a child under the age of 18 lives with a parent, legal custodian, or designee. Familial status also protects people in the process of adopting or gaining custody of a child/children, children within the foster system, and pregnant people.

Housing Provider Exemptions

In some cases, housing providers may deny families with children. These exemptions include the following:

Senior housing

- In some cases, senior housing providers can legally exclude families with children. Communities that house people exclusively aged 62 years or older may exclude applicants who do not meet that age requirement.
- Additionally, communities where 80% of the units have at least one resident who is 55 or older can legally exclude families with children.

- Specific funding requirements of various HUD programs may be relevant here as well. HUD programs for 62+ communities permit those who qualify and have legal custody of children to live in this housing.

SRO programs

- HUD’s Single Room Occupancy (SRO) program restricts units to one resident, although they should not exclude children under two.

Shelters for sexual offenders

- In general, providers of shelters designated for sexual offenders may prohibit families with children for safety reasons. However, providers should keep in mind that it is usually illegal for shelters to have different rules for children than adults or to have supervision requirements. Housing providers who house sex offenders and wish to exclude children should therefore check with their legal counsel.

Rules & Regulations Related to Families with Children

Rules directed at children are just as illegal as those that target any other protected class. Policies should be the same for all residents and address specific behaviors rather than identities. In addition, shelter staff should be careful to avoid making decisions that belong to parents, such as determining children’s bedtimes, recreational activities, etc. A shelter provider cannot mandate these types of rules. *See the chart below for examples of the difference between discriminatory and behavior-based rules:*

Examples of Behavior-Based Rules	
Rules that Violate Protected Class	Behavior-Based Rules
“No children in the laundry room.”	“No loitering in the laundry room.”
“Children cannot play loudly after 9pm.”	“All residents must abide by a 9pm noise curfew.”
“Children cannot use the computer room without adult supervision.”	“The computer room must be used for work or business only.”

Safety

- Shelters can have safety-related rules specifically for children if those rules are developed by state/local governments or product 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.

- A shelter can require all residents to 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.

Supervision

- Instead of stating, "Parents must supervise their children at all times," a better rule may be: "Parents are responsible for their children's behavior."
- As a rule of caution, we generally advise against shelters having rules specifying supervision for children; for example, policies mandating the child stays in the parent's "line of sight" or which requires the child to be in the same room as the parent may be discriminatory.
- If a shelter believes they have strong justification for supervision requirements, they should consult their attorney about writing up their justification and having it on file.

Childcare

- Teenagers commonly babysit, and it is unreasonable for shelters to require childcare providers to be over 18. However, it probably is reasonable for a shelter provider to use a policy similar to Child Welfare's policy with foster families and require that the childcare provider be 14 or older.
- Some federal funders require licensed childcare providers. The shelter can offer informational handouts on selecting a babysitter or childcare provider. However, the parents must ultimately choose which childcare or school provider they will use. Shelter providers cannot, for example, force parents to enroll children in special schools provided for homeless children instead of the schools of their choice.

Abuse

- If staff suspects child neglect or other abuse, consult the shelter's policies around mandatory reporting and follow the rules applicable to facility licensing requirements.

Other policies

- Shelter staff should not make decisions that belong to parents, such as determining children's bedtimes, recreational activities, etc. A shelter provider cannot mandate rules or policies related to these decisions.

4.5 NATIONAL ORIGIN AND CITIZENSHIP

While immigration status is not a protected class per se, fair housing law protects every person in the United States from discrimination based on national origin. In other words, a provider who denies housing to an immigrant because they are from another country or have 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 person because such a policy would have a disparate impact based on national origin (however, there is an exception in that some HUD-funded programs require at least one household member be a U.S. citizen).

The prohibition against discrimination based on a person's national origin or ethnicity affects shelter providers in two main ways: First, providers should be sensitive to issues surrounding the citizenship and immigration status of their residents. Secondly, providers should be aware of the potential language barriers that applicants and residents might face due to not speaking English as their first language. Providers may have to take additional steps to ensure these applicants and residents have equal access to shelter.

Executive Order 13166 & Limited English Proficiency Plans

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

Nationality/Language-Specific Housing

A shelter may target their services to a particular national origin or speakers of a specific 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 people outside of the targeted national origin/language group – this would fall under discrimination based on national origin.

Alternative Screening Documents

If housing providers routinely use Social Security numbers in screening, **they must be prepared to accept alternative documents that establish identity and history.** These can be utilized to screen immigrant populations. **Alternative screening documents that establish identity include:**

- Citizenship Card, Consulate Cards
- INS Form I-864 Sponsorship verification
- Certificate of Naturalization (INS I-550)
- Voter's registration card
- U.S. Passport
- Certificate of U.S. Citizenship (N-550 or N-561)
- Unexpired foreign passport, with 1-555 stamp or INS form 1-94 indicating unexpired employment authorization
- Alien registration receipt card with photograph (I-151 or I-551)
- Unexpired temporary resident card (I-688)
- Unexpired employment authorization card (I-688A or I-688B)
- Unexpired reentry permit (I327)
- Unexpired refugee travel document (I-571)
- Driver's license or ID card
- Military card or draft record or military depend card
- School ID card with photograph
- Hospital records
- Day care or nursery school records



To see alternative documents that can establish past rental history, and documents that can establish credit or ability to pay rent, visit: bit.ly/AltScreeningDocs

5 FAIR HOUSING ENFORCEMENT

5.1 PREVENTATIVE PRACTICES

Housing is a human right, and in recognition of such a right, fair housing aims to eliminate barriers to housing to ensure equal access and enjoyment of housing. Shelters for unhoused people or victims of domestic violence provide vital services that prevent people and families from falling between the gaps. When shelters follow fair housing guidance, they protect vulnerable populations from experiencing further marginalization and their organization from potential legal action.

The best ways to proactively follow fair housing guidance are to:

- ✓ Review all policies, procedures, rules, and application criteria for unintended discrimination.
- ✓ Ensure policies address why and when exceptions may be made to application criteria or rules.
- ✓ Develop new policies and procedures as needed. We recommend providers maintain a transparent 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 which staff will be involved in this process.
- ✓ Develop a clear process for handling reasonable accommodation requests and identify which staff will be involved in this process.
- ✓ Develop a protocol for assisting people with limited English (While this is a requirement for federally funded providers, it is a best practice for all providers). Within such policies, ensure how confidentiality will be maintained for those who may use translation services.
- ✓ Documentation should be clear and legible. Ensure staff know how to document fair housing issues and the time spent addressing them. People can file fair housing complaints up to two years after an alleged act of discrimination, so thorough documentation is crucial for potential investigations.
- ✓ 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 an organizational strategy to train all new staff and volunteers in fair housing requirements and maintain regular refresher training. We recommend annual training for board members as well.

Support for shelter providers

The FHCO hotline staff is available to answer questions from shelter providers. Please email us at: information@fhco.org, or visit our website www.fhco.org and click *Contact Us*. 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 can provide fair housing trainings 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. You can contact the education specialist in your region to learn more by visiting our website.

Browse our virtual library of fair housing resources at: www.fhco.org/resources.

5.2 REPORTING DISCRIMINATION

Filing a complaint

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.

An applicant, resident, or former resident who believes they have experienced discrimination can file a complaint with HUD or BOLI up to one year after the incident.

There are also Legal Aid, civil rights, and other attorneys who specialize in fair housing cases. A person can file a lawsuit up to two years after the initial discrimination.

Fair Housing Council of Oregon

People who believe they have experienced discrimination most often initially contact the Fair Housing Council of Oregon (FHCO) discrimination hotline via email at enforcement@fhco.org or through our website, www.fhco.org, by clicking [REPORT HOUSING DISCRIMINATION](#). Please include your name, contact information, race, ethnicity, city, zip code, and as much detail as possible, including dates and nature of the incident(s). Providing this information will help us to assist you better.

If it appears discrimination has occurred, FHCO can offer several types of assistance:

- Individual advocacy;
- Filing and submitting a complaint form;
- Referring a person to the most appropriate enforcement agency, such as HUD or BOLI.

FHCO may also become involved in aspects of the complaint investigation, including reviewing paperwork, interviewing witnesses, or testing possible discriminatory housing providers.

Testing for discrimination

“Testing” is a process to determine if a housing or shelter provider engages in illegal discrimination in its ordinary practices. Testers may pose as applicants 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.

Enforcement

The enforcement process in fair housing cases varies depending upon which enforcement agency or attorney is involved. 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 or punitive damages, as well as actions such as submitting monitoring reports and training all staff. For example, there have been cases against shelters that refused to allow assistance animals and refused to accept boys over 11 in family shelters. These cases settled for thousands of dollars and required training for shelter staff, positive advertising, and quarterly reporting for two to three years.

6 RESOURCES

DISABILITY

Fair Housing Guide for People Living with Disabilities



This guide can help people living with disabilities understand their fair housing rights. This guide discusses the rights for people living with disabilities related to: assistance animals, applying to housing, living in housing, moving out of housing (including termination and eviction notices).

<https://fhco.org/slug/fair-housing-guide-for-people-living-with-disabilities/>

Frequently Asked Questions about Service Animals and the ADA



A resource by the U.S. Department of Justice that answers questions about how the Americans with Disabilities Act (ADA) applies to service animals.

<https://www.ada.gov/resources/service-animals-fags/>

HUD Assistance Animal Guidance



HUD guidance on assessing a person's request to have an animal as a reasonable accommodation under the Fair Housing Act.

<https://fhco.org/wp-content/uploads/2022/03/HUDAsstAnimalNC1-28-2020-1.pdf>

LGBTQIA+

Gender Diversity Inclusion Brochure



A brochure designed to be distributed to all residents upon move-in or intake. This resource outlines fair housing rights and good neighbor practices.

<https://fhco.org/slug/gender-diversity-inclusion-brochure-20>

Equal Access Decision Tree



A decision tree published by HUD that outlines how simple choices and policies can impact and promote LGBTQ-inclusion in shelters.

<http://www.transequality.org/sites/default/files/docs/resources/Equal-Access-Decision-Tree.pdf>

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



The Network/La Red, a survivor-led, social justice organization, created this guide to teach domestic violence programs how to be more LGBTQ-inclusive.

http://www.ncdsv.org/images/TheNetworkLaRed_OpenMindsOpenDoors_2010.pdf

Shelter for All Genders



A guide for shelters providers in Massachusetts that outlines best practices in serving transgender adults and gender non-conforming guests.

<https://www.masstpc.org/wp-content/uploads/Shelter-for-All-Genders-Best-Practices.pdf>

Transitioning Our Shelters



A guide to making homeless shelters safe for transgender people.

<https://srhp.org/wp-content/uploads/2012/08/TransitioningOurShelters.pdf>

Dealing with Conflict and Bias in Gender-Integrated Shelters



A tip-sheet that explores how to deal with conflict and bias in gender-integrated shelters.

<https://forge-forward.org/resource/shelter-tipsheet-8/>

APPENDIX A:

Sample Harassment Policy for Shelters

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 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.

APPENDIX B:

Transitioning our Shelters Model Policy

Respect

At this shelter, we have a policy of respect for all people regardless of one's race, national origin, religion, disability, gender, marital status, familial status (presence of children), source of income, sexual orientation, and gender identity. 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 are non-binary, genderqueer, or identify with no gender should 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 and non binary residents, and others with increased safety needs, if wanted, should be offered bed space closest to the night staff so 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 or non binary person, staff must make sure that it stops. All incoming residents are to be told that:

- This shelter respects people of all genders
- 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
- No harassment of other residents is allowed

If a resident reveals to staff that they are transgender and or non binary/gender non confirming, the intake conversation should include the following additional topics:

- Housing placement and sleeping arrangements, including the availability of beds close to night staff if the resident prefers
- Shower and bathroom placement, including the availability of private showers and bathrooms that the resident may use if they prefer
- What pronouns and name the residents uses. (If a person explains that he identifies as a man and uses he/him pronouns, or if they identify as non-binary and use they/them pronouns the shelter should not question that identification). That person's identity should be honored. Failure to honor a person's self-identification creates an unwelcoming and unsafe shelter.

Questions

Questions about this policy should be addressed to your immediate supervisor and if they are not available, contact the director of the shelter.

APPENDIX C:

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 (insert time frame for a response here) 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.

APPENDIX D:

Sample Third-Party Verification 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 they have 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; intellectual disability, 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: Do not reveal an individual's specific diagnosis, as revealing such information may put an individual at risk of discrimination.

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

I recommend that the request for _____ be approved.

I certify that the information above is true and correct.

Signature: _____ Date: _____

Printed Name: _____ Professional Title: _____

Name of Clinic, Hospital, etc.: _____

Address: _____

Phone Number: _____ Fax Number: _____

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

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APPENDIX E:

Sample Assistance Animal Policy



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

DATE _____ PROPERTY NAME / NUMBER _____

RESIDENT NAME(S) _____

UNIT NUMBER _____ STREET ADDRESS _____

CITY _____ STATE _____ ZIP _____

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

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

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

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

I certify that my pet has no history of aggressive, threatening or violent behavior.
I agree to the above provisions.

X _____ DATE _____
RESIDENT

X _____ DATE _____
RESIDENT

X _____ DATE _____
OWNER / AGENT

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