Pasadena Fair Housing Workshop



- Fair Housing
- Equal Access to Housing



Presented by the Housing Rights Center

HRC
HOUSING RIGHTS CENTER
WORKING FOR JUSTICE AND EQUALITY IN HOUSING

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Agenda:

1. What is Fair Housing?
    a. Federal & State Fair Housing Laws
    b. Protected Classes
    c. Disability Discrimination & Reasonable Accommodations
2. Practicing Fair Housing
    a. Tenant Selection Criteria
    b. Prohibited Practices
3. Equal Access & LGBTQIA+ Protections

About the Housing Rights Center

HOUSING RIGHTS CENTER

WORKING FOR JUSTICE AND EQUALITY IN HOUSING

- Founded in 1968, when Congress passed the **Fair Housing Act**
  - Civil Rights Movement and Rev. Dr. Martin Luther King, Jr.
  - Titles VIII through IX of Civil Rights Act of 1968

- Nation’s largest non-profit civil rights organization dedicated to fair housing

- Serve Los Angeles County and Ventura County

- Free services in many languages available!



HRC Services

FREE

Housing Counseling

- Legal information, resources, and referrals on housing issues for tenants and landlords
- Private and confidential

Discrimination Investigation & Enforcement

- Reasonable Accommodation Requests
- Mediation, HUD complaints, litigation

Get in contact with a counselor

- Housing Rights Hotline: 1 (800) 477-5977
  - Leave a message with callback info
- Email: info@housingrightscenter.org



What is Fair Housing?

Fair Housing Laws Apply to....

Housing Transactions

- Renting
- Buying
- Lending
- Prospective (applicants) or current residents

Exemptions

- Limited exemptions for senior housing, owner occupied SFR, religious org. housing

Residential Dwellings

- Apartments
- Condos
- Houses
- Duplexes
- Residential Motels
- Transitional Shelters
- Mobile Home Parks
- Vacant Lots
- Short Term Rentals

Responsible Parties

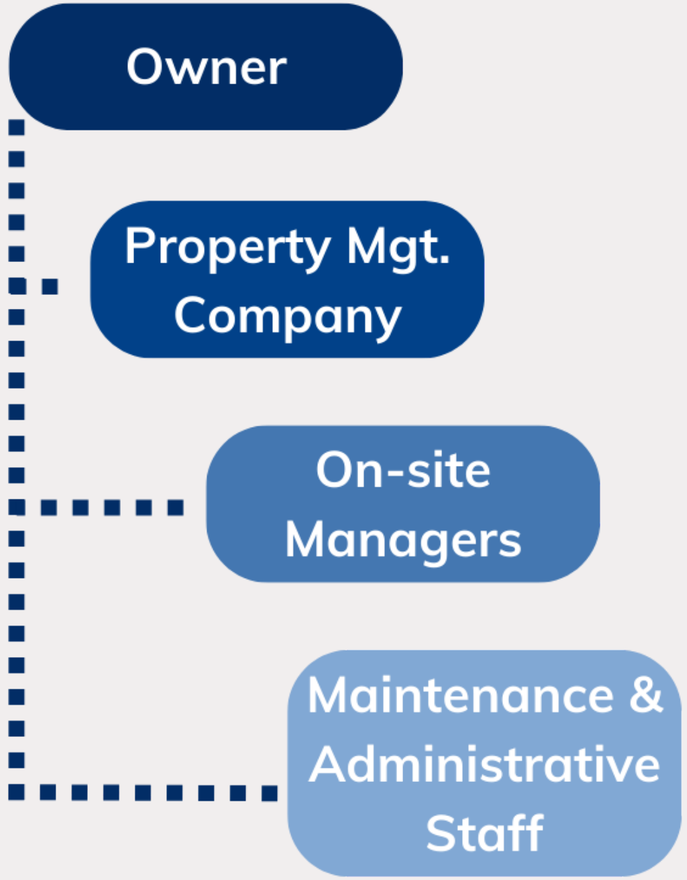
Housing Providers

- Liability flows upward from maintenance, property managers, etc. to property owners

Responsible Parties

Include but are not limited to:

- Property owners (individual & corporate)
- Property managers
- Administrative staff
- Real estate agents & brokers
- Homeowner/condominium associations



Protected Classes

Federal, State, and Local Housing Protections

Law prohibits discrimination based on:

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

- Ancestry
- Marital Status
- Sexual Orientation
- Gender Identity/Expression
- Source of Income
- Medical Condition
- Military/Veteran Status

- Immigration Status/Citizenship
- Age
- Arbitrary Physical Characteristics
- Student Status
- HIV/AIDS

Additional Protections

Other California Laws

- Domestic violence and violent crime

  Civil Code 1946.7

  - Change locks with little notice
  - Break lease with lower penalties



- Immigration / citizenship status

  Immigrant Tenant Protection Act
  (Civil Code 1161.4)



- Age (over 40 years)

  Unruh Civil Rights Act (Civil Code 51)

- Arbitrary reasons (occupation, etc)

  Unruh Civil Rights Act (Civil Code 51)

- Hate Crimes

  Ralph Civil Rights Act (Civil Code 51.7)

- Primary language

  Civil Code 1632



  - Negotiate in: Spanish, Chinese, Tagalog, Vietnamese, or Korean
  - Bring an interpreter or request a translated lease (no cost)

Familial Status

U.S. Fair Housing Act and CA Fair Employment & Housing Act

- What does it mean?
  - Households with one or more minors living with a parent, legal guardian, or designee with written permission
  - Households *expecting* the arrival of one or more minors (e.g. adoption, pregnancy)

- Examples of discrimination:
  - Locating families in a certain part of a property
  - Unreasonable occupancy restrictions
  - Restrictive rules or limited access to services/facilities
  - Ads saying "no children" or "adults preferred"

"Children are not permitted in the common area"

National Origin

U.S. Fair Housing Act and CA Fair Employment & Housing Act

- What does it mean?
  - Country of birth *and/or* ethnicity (e.g. "Latino," "Asian")
  - Physical or cultural traits (clothing, hair styles, etc.)
  - Immigration/citizenship status
  - Primary language / accent

- Examples of discrimination:
  - Denying a rental application based on tenant's language or accent
  - Charging a higher security deposit because a client is undocumented
  - Harassing a tenant with ethnic slurs

Source of Income



California Fair Employment & Housing Act and SB 329

- What does it mean?
  - All lawful sources of income, including:
    - Public benefits, e.g. Section 8, (SSI, SDI, GR), rental assistance
    - Non-work income, e.g. child support, alimony
    - Rapid Re-Housing, homeless prevention, security deposit assistance

"No Section 8"

- Examples:
  - Advertisements stating "No Section 8"
  - Refusing to accept or approve applications from tenants with Section 8 vouchers
  - Refusing to accept a new Section 8 voucher from a current tenant
  - Applying income standards incorrectly

Source of Income



California Fair Employment & Housing Act and SB 329

- Income standards must be applied to the *tenant's portion of the rent only*

- Example scenario:
  - Joey makes $300/month at their part-time job.
  - Joey has a Housing Choice Voucher that pays $900/month.
  - Joey applies for an apartment where the rent is $1,000.
  - The application says tenants must have income of "3x the rent."
  - Does Joey meet the income requirement?

Immigrant Tenant Protection Act

Civil Code 1161.4 (AB 291)

- Prohibits landlords from:
  - Reporting or threatening to report tenants to immigration authorities
  - Disclosing information related to tenants' immigration status
- Prohibits attorneys from:
  - Reporting or threatening to report the immigration status of individuals involved in housing cases
- Provides tenants with recourse:
  - Legal defense against eviction
  - Right to sue the landlord ("private right of action")

Disability



U.S. Fair Housing Act

DEFINED BY IMPACT

A physical or mental impairment which limits any major life activities:

- Seeing
- Hearing
- Walking
- Breathing
- Performing manual tasks
- Caring for oneself
- Learning
- Speaking



EXAMPLES

- *Orthopedic*
- *Visual, speech, hearing impairments*
- *Cerebral palsy*
- *Autism*
- *Cancer*
- *Heart disease*
- *HIV or related conditions*
- *Mental/emotional illness (e.g. bipolar disorder; anxiety depression)*
- *Substance Use Disorders*
- *COVID-19*

Reasonable Accommodations & Modifications

- Tenants or applicants with disabilities can request ***accommodations*** (exceptions to rules, changes to services) or structural ***modifications*** related to their disability.

- This ensures that tenants with disabilities can get **equal use and enjoyment** out of their housing.



Reasonable Accommodations & Modifications

Does the request have to be granted?

NECESSARY FOR THE TENANT

- Directly related to tenant's disability, AND
- Improves accessibility, safety, quality of life, etc., OR
- Enables them to live there at all

If the disability is not apparent, a landlord can request **verification** that the request is necessary. It should not include a diagnosis and can be provided by a reliable third party familiar with the tenant's disability.

REASONABLE TO GRANT

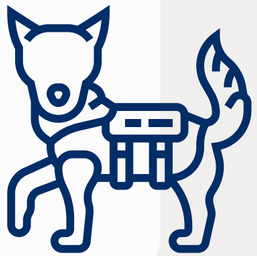
- Does not create an excessive burden
- Generally within the scope of housing services
- Eliminate the housing services

If a landlord *cannot* reasonably fulfill the request, they must engage in a good-faith dialogue with the tenant to find a reasonable **alternative.**

Reasonable Accommodations & Modifications

Accommodations

- Change to service/policy
- Landlord pays any costs
- Examples:
  - Change rent due date
  - Service/support animal
  - Parking space
  - *Transfer units
  - *Live-in caregiver
  - End lease early
  - Extend time to vacate



Modifications

- Change to unit/building
- Tenant pays costs and *may* have to reverse changes when moving out
  - **Except in federally funded housing**
- Examples:
  - Wheelchair ramp
  - Grab bars
  - Low countertops
  - Visual doorbell



Additional Regulations

Section 504 of the Rehabilitation Act of 1973

WHO IS REQUIRED TO FOLLOW?

1. Entities receiving federal money
    a. Housing authorities, private developers who receive HUD subsidies in exchange for providing low income housing, and the federal government itself
2. Private sector housing constructed after March 1991

REQUIREMENTS

General Requirements (not exhaustive)

- No exclusion of people with disabilities or denial of benefits, services, programs or activities
- Housing provider required to **provide and pay for structural modifications** as a reasonable accommodation
    - Unless it amounts to an undue financial and administrative burden or a fundamental alteration of the program

Practicing Fair Housing

General Guidelines for Providers

Practicing Fair Housing Opportunity

- **Never:**
  - Base a rental decision or provision of service to a potential or existing tenant on the protected class of the individual in question
  - Use a blanket policy against renting to persons with criminal records
  - Advertise in a manner that states or suggests a preference
- **Always:**
  - Apply all standards in an equal manner
  - If you use a waiting list, have an established procedure to rent available units. Do not vary from your procedure

Allowable Tenant Selection Criteria

Legitimate Business Considerations

- Income Level
  - *Can they pay the rent?*
- Credit Scores
  - *Have they paid bills on time?*
- References from past landlords
  - *Have they been good tenants?*
- Smoking status
  - *No smoking policy*
- Pets
  - *No pets policy*
  - Exceptions for disability accommodations
- Criminal history
  - *Is there actual cause for concern about safety or property damage?*
  - Must be evaluated on an individual, case-by-case basis



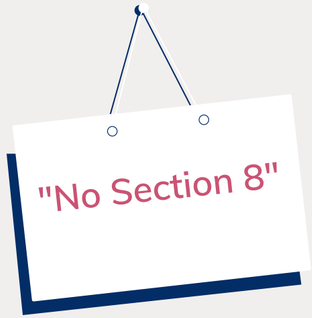
Prohibited Practices

Unlawful Discrimination

- Refuse to sell or rent housing
- Saying that housing is unavailable when it is available
- Different terms or rules
- Discriminatory statements or advertising
- Steering
- Discrimination based on association
- Threats, intimidation, harassment, retaliation
- Denying a reasonable accommodation or modification
- Otherwise make housing unavailable

"Children are not permitted outside or in common areas."

"I don't believe in your trans friend's 'lifstyle.' Don't invite them here anymore."



"Wouldn't you prefer to look in a more kid-friendly neighborhood?"

Theories of Liability

- **Disparate Treatment**
  - Intentional form of discrimination (ex: refusing to rent to applicant because they use wheelchair)
- **Disparate Impact**
  - Policies, procedures, and practices that adversely impact people belonging to a protected group (discriminatory intent does not need to be proved)
- **Direct Liability**
- **Vicarious Liability**
  - Neighbor harassment

Equal Access & LGBTQIA+ Protections

Inclusive Language

Common Terms:

- Assigned Sex
- Chosen Name or Common-Use Name
- Gender Identity (legal definition)
- Gender Transition
- Nonbinary
- Transgender
- LGBTQIA+
  - evolving acronym that stands for lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual/ally

Don't Ask Questions Like:

Have you had "the surgery"?

What was your name before?

What is your real name?

When did you feel like a boy?

When did you feel like a woman?

LGBTQIA+ Protections

- President Obama and HUD announce Equal Access Rule (2012, 2016)
- In *Bostock v. Clayton County (590 U.S. (2020)*, the Supreme Court held that Title VII of the Civil Rights Act of 1964's prohibition on discrimination on the basis of sex covers discrimination on the basis of gender identity and sexual orientation
- President Biden issued Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (2021)
- HUD issued memorandum entitled, "Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act (Feb.11, 2021)," which announced new LGBTQIA+ protections under the Fair Housing Act

LGBTQIA+ Protections

- Persons who identify as LGBTQIA+ who believe they have experienced housing discrimination because of their sexual orientation and/or gender identity, can now assert their rights under the Fair Housing Act by filing a complaint with HUD
- HUD will investigate the complaint and where reasonable cause exists to believe that discrimination because of sexual orientation or gender identity has occurred, HUD will refer a “determination of cause” for charge by HUD’s Office of General Counsel

Examples of LGBTQIA+ Discrimination



- A landlord refuses to rent a house to a same sex couple but rents to couples of the opposite sex
- A transgender tenant reported to their housing provider that a maintenance worker was harassing them because of their gender identity and the housing provider did not take action to protect the tenant from such harassment
- A transgender female tenant is asked by the owner of her apartment building not to dress in clothing traditionally identified as female or other gender nonconforming clothing in the common areas of the property
- A bisexual tenant is evicted after the housing provider meets the tenant's same sex partner

HUD Equal Access Rules

Laws, Regulations, and Federal Register Notices

Equal Access to Housing Final Rule

Print

Date Published: September 2016

Description

On September 21, 2016, HUD published a final rule in the Federal Register entitled "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs." Through this final rule, HUD ensures equal access to individuals in accordance with their gender identity in programs and shelter funded under programs administered by HUD's Office of Community Planning and Development (CPD). This rule builds upon HUD's February 2012 final rule entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity" (2012 Equal Access Rule), which aimed to ensure that HUD's housing programs would be open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. The final rule requires that recipients and subrecipients of CPD funding, as well as owners, operators, and managers of shelters, and other buildings and facilities and providers of services funded in whole or in part by any CPD program to grant equal access to such facilities, and other buildings and facilities, benefits, accommodations and services to individuals in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family.

HUD Equal Access Rules

- HUD's 2012 and 2016 Equal Access Rule requires equal access to HUD programs without regard to a person's actual or perceived:
  - sexual orientation,
  - gender identity, or
  - marital status
- Housing providers that receive HUD funding or have HUD-insured loans are subject to this regulation

HUD Equal Access Rules

Code of Federal Regulations § 5.106

Applicability:

- Applies to assistance provided under Community Planning and Development (CPD) programs, including Continuum of Care programs

Equal access in accordance with gender identity

Placement and accommodation in temporary, emergency shelters and other buildings and facilities with shared sleeping quarters or shared bathing facilities

HUD Equal Access Rules

Code of Federal Regulations § 5.106

Equal access in accordance with gender identity

- Policies and procedures shall be established or amended to ensure that:
  - Equal access is provided in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family;
  - An individual is placed, served, and accommodated in accordance with the gender identity of the individual;
  - An individual is not subjected to **intrusive questioning** or asked to provide anatomical information or documentary, physical, or medical evidence of the individual's gender identity

HUD Equal Access Rules

Code of Federal Regulations § 5.106

Placement and accommodation in temporary, emergency shelters and other buildings and facilities with shared sleeping quarters or shared bathing facilities —

- In temporary, emergency shelters that require and are permitted to have shared sleeping quarters or shared bathing facilities, placement should be made **in accordance with the individual's gender identity**

Examples of Discrimination

Under HUD Equal Access Rule

- A transgender woman sought housing at a HUD-funded women's homeless shelter and during the intake process the shelter staff refused to address her as female, misgendered her, and made other statements to discredit her gender identity.

- The shelter staff refused to shelter the transgender woman at the facility but offered to place her in a man's shelter or in isolation.

Enforcing LGBTQIA+ Protections

Under the Fair Housing Act and HUD's Equal Access Rule

It is prohibited for any housing provider to discriminate against LGBTQIA+ persons because of their real or perceived sexual orientation or gender identity or any other reason that constitutes sex-based discrimination

Additionally:

- It is unlawful sex discrimination for any landlord or housing provider to deny housing because of someone's **actual or perceived HIV/AIDS status** if based on a housing provider's stereotyping of LGBTQIA+ individuals
- It is unlawful for HUD-assisted homeless facilities to **segregate or isolate** transgender individuals based on their gender assigned at birth.

Inclusive Standards

Transgender and Gender Non-Conforming Individuals' Access to Projects

- Is the project or service permitted by statute or regulation to segregate services based on gender?
- If the provider is permitted to segregate services based on gender, the provider must create policies that ensure housing and services to all eligible individuals identifying with that gender, including those individuals whose gender identity does not match the sex assigned at their birth.
- If the provider is not permitted to segregate services based on gender, then the provider must serve all individuals who are eligible for the project.
- Transgender and gender non-conforming clients have access to projects according to their gender identity.

Resources

- **California Civil Rights Department (CRD)**
  - Website
  - Resources for Housing Providers
    - Harassment Prevention Guide for California Providers
- **HUD Guide:** Equal Access for Transgender People: Supporting Inclusive Shelters
- **HUD** Equal Access Agency Assessment Tool

HUD Equal Access Assessment Tool

Item #	Equal Access Goal	Agency/Project has a Written Policy	Staff, Volunteers and Vendors are Trained to Comply with the Written Policy	All Clients are Aware of the Agency/Project Policy
1	Agency is committed and intends to comply with HUD's Equal Access Rule **(if your agency receives HUD funding for shelter or services, your agency is required to meet these standards)** and State and municipal laws.			
2	For an agency or project **legally permitted** to segregate services based on gender, the agency serves all eligible clients who identify with that gender or whose gender identity aligns most closely with that gender.			
3	For an agency or project **legally permitted** to segregate services based on gender, the agency will not deny access because the client identification documents have a different gender marker than the client or potential client presenting for service.			
4	Agency or project will not consider a client or potential client ineligible because their appearance or behavior does not conform to gender stereotypes.			
5	Agency or project does not ask questions or seek information concerning a person's anatomy or medical history beyond elements necessary for the purpose of providing services.			
6	For an agency or project prohibited from to segregate services based on gender, the agency will serve all individuals who are eligible for the project.			
7	If the Agency operates a family shelter, the Agency does not expel or decline a client of any gender if they are otherwise eligible for services.			
8	If the Agency operates a family shelter, the Agency does not expel or decline clients based on their male gender identity, regardless of age.			
9	Agency uses appropriate, inclusive language in communications, publications, trainings, personnel handbooks and other policy documents that affirms the agency's commitment to serving all eligible clients in adherence with the Equal Access Rule.			
10	Agency makes Equal Access Rule policies and procedures publicly available on the agency's website and through other commonly used public notification processes.			
11	Agency ensures staff, volunteers and contractors are provided a copy of the Agency's policies and practices regarding Equal Access requirements.			
12	Agency includes "gender identity" and "gender expression" to the list of attributes that are protected from discrimination in the Agency's Policies and Procedures.			
	Harassment Policy			
13	Agency includes transgender and nonbinary in the list of groups vulnerable to harassment and/or list of protected groups.			
14	Agency identifies harassment as a range of behaviors that are experienced as offensive, aggressive, or intimidating regardless of physical location or proximity to the project. For LGBTQ clients, this can include: consistently or maliciously not using the client's preferred name or affirmed gender pronoun, asking any questions about a client's body or appearance, disclosing that a client is transgender or gender non-			

Q & A

Contact HRC



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TTY: 1 (213) 201-0867



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