

***A Guide to Fair Housing
Law for Landlords
and Property Managers***



**Housing Advocacy
Fair Housing Project**

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What is Fair Housing?

Fair housing is a person's right to equal opportunity in housing choice and the right to rent, buy, or live in a dwelling free from discrimination or harassment.



The Fair Housing Act of 1968 prohibited housing discrimination based on race, color, religion and national origin. Since 1968, the federal government has added several protected categories and individual states have the ability to add more protections.

Landlords and property managers are required to abide by state and federal fair housing law. This guidebook provides general education and background.

To learn more, visit www.cvoeo.org/fhp. For consultations or to schedule a workshop, contact the Fair Housing Project of CVOEO at 802-660-3456 x 106 or fhp@cvoeo.org.

Federally Protected Categories

Federal Fair Housing Law states that it is illegal to discriminate in the rental, sale or financing of housing based on someone's membership in a protected class:

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status (presence of minor children)
- Disability

Vermont Protected Categories

Vermont law covers all the categories covered in Federal law, plus:

- Age
- Marital Status
- Sexual Orientation
- Gender Identity
- Receipt of Public Assistance (includes Housing Choice Vouchers/Section 8, 3SquaresVT, ReachUp, etc.)
- Victims of assault, sexual abuse, or stalking*

and also... Income of Prospective Residents in Planning and Land Use Decisions

**Added in 2019, along with additional protections under Vermont landlord/tenant law.*

What is Housing Discrimination?

The following actions are discriminatory if they are taken because of a person's membership in a protected category:

- Refusal to rent or sell, refusal to consider for rental or sale, or otherwise make unavailable or deny a dwelling
- Provide different services or set different terms, conditions, or privileges
- Treat people differently or subject them to harassment
- Say a dwelling is unavailable when it is, in fact, available
- Steer toward or away from different housing
- Make print or publish a notice, statement or advertisement which indicates any preference, limitation or discrimination
- Coerce, intimidate, threaten or interfere with any person in housing or for filing or supporting a discrimination charge
- Discriminate in the making or purchasing of loans, or in the selling, brokering, or appraising or real estate
- Pressure people to sell their home because the neighborhood is “changing” (blockbusting)
- Failure to respond to a request for reasonable accommodation or modification.

Familial Status: The Presence of Minor Children

Fair Housing Law makes it illegal to discriminate in the rental, sale or financing of housing based on familial status. Housing can not be denied and different rules or terms can not be applied due to the presence of minor children.

The prohibition on familial status discrimination means that a landlord can not steer families towards (or away from) certain dwellings or locations. For example, a landlord can not tell a potential tenant that a dwelling is inappropriate for children because there is a river in the backyard or because the development consists primarily of singles. Rules and regulations must also be applied evenly. A rule stating that no children are allowed in common areas is likely a violation of the act.

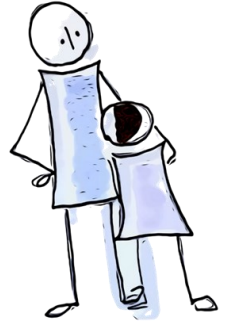
HUD generally considers local ordinances limiting occupancy to be reasonable. Landlord-generated standards are likely to face greater scrutiny.

For example, prohibitions on a family member sleeping in the living room or same-sex sibling sharing a room are violations. When determining whether or not an occupancy policy is reasonable one should consider the size of bedrooms and unit, age of the children, other physical limitations of housing, state and local law, and other relevant factors such as discriminatory rules or statements being imposed upon families, or policies that specifically limit the number of *children* per unit as opposed to the number of *people* per unit.

Familial Status, continued

Tips and best practices

- Let parents decide if they want their children to share a bedroom.
- If noise is a problem, make a rule barring everyone from making unnecessary loud noise, not just children.
- Apply all rules evenly: Do not create rules that apply only to children or provide services or privileges that only apply to adults.
- Do not advertise units as “ideal for singles” or “great place for couples” as these can be interpreted as attempting to exclude children.



Housing for Older Persons

Housing specifically designed for “older persons” may exclude families with children. In order to be considered housing for older persons, the housing must be occupied solely by those over 62 years of age or 80 percent of the occupied units must contain at least one person who is 55 years or older.

The state of Vermont also requires that housing specifically designated as “older housing” provide significant elder care services.

People with Disabilities

The Americans with Disabilities Act defines a disability as *a physical or mental impairment that substantially limits one or more major life functions.*

Under fair housing law, an individual is considered to have a disability if he or she meets any one of three criteria:

1. The individual meets the above definition
2. The individual has a record of having a substantial impairment including receipt of SSI or SSDI
3. The person is considered by others to have a disability

The law also protects people associated with people with disabilities including family, friends and aides.

Live-in Aides for People with Disabilities

A landlord can not discriminate against a person with a disability. This protection also extends to a live-in aide the person employs.

The income and assets of the live-in aide can not be counted against income guidelines for public housing assistance, nor can the live-in aide's credit or finances be used against the person with a disability.

The income of family members who serve as live-in aides can only be counted towards income guidelines if the aide is financially obligated to the person. In most cases, this is only a parent or spouse.

Reasonable Accommodations

A *reasonable accommodation* is a change, exception or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have **an equal opportunity to use and enjoy a dwelling, including public and common space.**

Any request for accommodation:

- Must demonstrate an *identifiable relationship* between the requested accommodation and the disability.
- Must be *reasonable*: Plausible, feasible.
- Must not alter the *fundamental nature of the business*
 - Providing an assigned parking space for someone with mobility impairments is probably a reasonable accommodation.
 - Providing an extra set of keys so that a live-in aide may enter the premise is probably a reasonable accommodation.
 - Allowing a person with a disability to have an assistance animal is almost certainly a reasonable accommodation.
- Must not create *undue hardship*: Substantial hardship or expense providing a specific accommodation. Undue hardship refers not only to financial difficulty but to reasonable accommodations that are unduly extensive or disruptive.

Reasonable Modifications

A *reasonable modification* is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.

Reasonable modifications can include structural changes to interiors and exteriors of dwellings and common and public use areas.

Any request for modification must:

- Demonstrate an identifiable relationship between the requested modification and the disability.
-
- Be *Reasonable*: Plausible, feasible.

Although a housing provider must permit a reasonable modification, the tenant is responsible for the cost of the modification. Generally, the tenant is also responsible for restoring the interior of a dwelling to its previous state when s/he moves out. Tenants are not responsible for restoring exterior modifications. There are two instances in which the housing provider must pay for reasonable modifications:

- A housing provider that receives federal financial assistance generally must pay expenses related to a reasonable modification.
- Multifamily dwellings built for first occupancy after March 13, 1991 must meet minimum accessibility standards. The housing provider may be responsible for structural changes to dwellings built after that date that do not meet minimum standards.

Accommodation / Modification Requests

- A person with a disability is **not required** to disclose the nature of that disability.
- A person with a disability may be required to provide a letter from a medical professional stating that the accommodation or modification is necessary. That note, however, does not need to be from a doctor.
- Landlords and property managers may have a specific form for reasonable accommodations and modifications but tenants can not be required to use it. Requests can be verbal or in writing.

Best Practices



- Respond to all requests in a timely manner.
- Landlords / Property Managers should not ask:
 - If the applicant has a disability
 - The nature or severity of the disability
 - Questions that would require disclosure of medical condition or history
 - Whether the person can live independently
- Assistance animals (support or service) are a reasonable accommodation even if you have a “no pets” policy.
- The prohibition against disability discrimination is not limited to physical disabilities. People with cognitive and emotional disabilities qualify for protection, as well as people in recovery from substance abuse.

Frequently Asked Questions

Q: Does a Housing Choice Voucher (Section 8) qualify as “receipt of public assistance” under Vermont law?

A: Yes.

Q: Can a landlord refuse to rent to a family because the children may cause noise or damage the property?

A: A landlord cannot stereotype families and assume that all children make noise or cause property damage. A landlord also can not require an additional security deposit or other different terms based on the presence of minor children.

Q: Can a landlord restrict families with children to designated areas?

A: No. A landlord may not restrict children to designated buildings or, for example, first floor units out of concern for safety. Nor may landlords generally prohibit children from using recreational areas or other services (however, there may be requirements for adults to accompany children).

Q: Can religious organizations discriminate on the basis of religion?

A: Discrimination on the basis of religion is generally prohibited under the Fair Housing Act. The act allows religious organizations to limit the sale, rental or occupancy of a dwelling to persons of the same religion if for non-commercial purposes.

Q: Is drug addiction considered to be a disability under the Fair Housing Act?

A: The Fair Housing Act explicitly excludes people who are *currently* using illegal drugs. Landlords can not, however, exclude past drug users or those in rehabilitation programs if they are not currently using. Criminal background is not a protected category and landlords can therefore chose not to rent to people with drug offenses.

F.A.Q.s, continued

Q: Do fair housing laws cover commercial properties as well as residential?

A: Fair housing laws only cover “dwellings,” defined as structures designed or occupied as residences. A “dwelling” is broadly defined and can include a homeless shelter or a summer home. Commercial property is generally covered under public accommodations law.

Q: I own a duplex and rent the other unit. Does fair housing law apply to me?

A: Vermont Fair Housing law contains an exemption from certain sections of the law for owner-occupied dwellings with no more than three units (two units within the city of Burlington).

This exemption does not apply if the owner uses a realtor to rent the dwelling or owns four or more units in another location.

*It is **always** a violation to discriminate based on race or to discriminate in advertising, statements, or financing, even if the property is exempt.*

Q: Who can be held liable for discrimination under fair housing law?

A: Anyone who engages in an act of discrimination can be held liable. This includes owners, property managers and sales managers. An employer or partner of a person who discriminates may also be held liable. This includes management companies and supervisory staff.

Q: Are there other practices that are prohibited by fair housing laws?

A: Any action that makes a dwelling unavailable or that discriminates in the terms, conditions, or privileges of sale or rental, or in the provision of services or facilities on the basis of any prohibited classification is illegal. Also, discriminatory advertising is illegal.

Even if a person is not denied housing, harassment or conduct that makes it difficult or unpleasant for a person belonging to a protected class to live in a dwelling is illegal.

Best Practices

Communications & Transactions:

- Treat all people who inquire about available housing in the same way.
- Use consistent terms, conditions, and privileges for showings.
- Use same criteria all clients (i.e. income standards, credit analyses, and application fees or requirements).
- Focus on renter/buyer stated needs and do not steer.
- Respond to all requests equally and in a timely manner.

Property Management & Maintenance:

- Service requests should be handled in the order received, except for emergencies and circumstances in which residents with disabilities are affected by a maintenance issue.
- Clearly define what constitutes an emergency - such as fire, flood, or other safety issues - and the time frame in which maintenance is expected to respond to those emergencies.
- Don't offer or provide different levels of community services, or enforce rules differently for different people (except in the case of reasonable accommodation).
- Report reasonable modification / accommodation requests to management in a timely manner and document all reasonable modification / accommodation activities.

Advertising:

- Focus on the property and the amenities — NOT what you think the potential resident would like.
- Don't make statements that exclude persons in protected classes or express preference for particular characteristics.
- Advertise to the widest audience possible and be careful when selecting targeting options in online ads.
- Use affirmative marketing, such as “families welcome” or “we accept Section 8”

Fair Housing Resources

The Fair Housing Project of CVOEO offers consultations and trainings on a variety of fair housing related topics.

**Contact us at (802) 660-3456 x 106
or email fhp@cvoeo.org.**

There are many resources about fair housing in Vermont. Below is a list of organizations and websites where you can find reliable information:

CVOEO Fair Housing Project

cvoeo.org/fhp

Definitive Guide to Renting in VT: *https://www.cvoeo.org/client_media/files/HAP/VTT_Definitive_Guide_and_Illustrated_Guide.pdf*

Vermont Human Rights Commission

(802) 828-2480 / (800) 416-2010

hrc.vermont.gov

The HRC protects people from unlawful housing discrimination by enforcing laws, mediating disputes, educating the public and providing information and referrals.

Vermont Legal Aid

(800) 889-2047

Vermont Legal Aid is a nonprofit law firm serving low income people, the elderly and people with disabilities. They enforce fair housing law through a grant from the U.S. Dept of Housing and Urban Development.

Vermont Department of Housing and Community Affairs

accd.vermont.gov/housing/plans-data-rules/fair-housing

A discussion of fair housing as it applies to Vermont communities and municipalities.

Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity

hud.gov/fairhousing

HUD resources related to enforcement of federal fair housing laws.

Text of the Federal Fair Housing Act

hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law

Text of Vermont Fair Housing & Public Accommodations Act


legislature.vermont.gov/statutes/section/09/139/04503


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The Fair Housing Project has worked to end housing discrimination in Vermont through fair housing education and outreach since 1995.



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