

THE FAIR HOUSING PROJECT

Champlain Valley Office of Economic Opportunity



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

Table of Contents:

What is Fair Housing	1
What is Housing Discrimination	2
Protected classes	3
Exemptions	3
Familial Status	4
Tips and best practices	5
Housing for Older People	5
People with Disabilities	6
Live in Aides	6
Reasonable accommodations	7
Reasonable modifications	8
Best practices	9
Frequently Asked Questions	10
Resources	15

What is Fair Housing?

Fair housing is a person's right to choose where he or she lives, and the right to rent or buy an apartment or house free from discrimination.

Fair housing is the right to equal opportunity in housing.



The Fair Housing Act of 1968 was passed within one week of the assassination of Dr. Martin Luther King, Jr. The act prohibited housing discrimination based on race, color, religion and national origin. Since 1968, the federal government has added several protected categories and many states have added more still.

Landlords and property managers can face legal action if they violate state or federal fair housing law. This guidebook provides general education and background to assist individuals in complying with fair housing 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
- Treat people differently or subject them to harassment
- Say a dwelling is unavailable when it is, in fact, available
- 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" (block busting)

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
- Receipt of Public Assistance (including Section 8)
- Gender Identity
- Abuse, Sexual Assault, Stalking



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. 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 a service 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.

While 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.

Requests for Accommodation / Modification

- 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 / 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 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
- Service animals 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 may qualify for protection as well.

FREQUENTLY ASKED QUESTIONS

Q: Does a Section 8 voucher qualify as “receipt of public assistance” under Vermont law?

A: Supreme courts in other states have ruled that discrimination because of a Section 8 voucher violates their laws protecting source of income. The Vermont Human Rights Commission has reached the same determination.

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

A: A landlord cannot stereotype families and assume that all children make noise or cause property damage. If a family has a history of disturbances or damage caused by children, this may constitute neutral ground to exclude the family from a dwelling. 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.

F.A.Q's, continued

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 choose not to rent to people with drug offenses.

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.

F.A.Q's, continued...

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). *It remains a violation to discriminate based on race or to discriminate in advertising, statements or financing.* This exemption does not apply if the owner uses a realtor to rent the dwelling or s/he owns four or more units in another location.

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, conduct that makes it difficult or unpleasant for a person belonging to a protected class to live in a dwelling is illegal.

The CVOEO Fair Housing Project offers trainings on a host of fair-housing related topics. To schedule a training, please contact us at (802) 864-3334 x.109 or email outreach@cvoeo.org.

FAIR HOUSING RESOURCES

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

vtfairhousing.org

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

www.dhca.state.vt.us/housing/fairhousing.htm

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

www.hud.gov/offices/fheo/index.cfm

HUD resources related to enforcement of federal fair housing laws.

Text of the Federal Fair Housing Act

www.usdoj.gov/crt/housing/title8.htm

Text of Vermont Fair Housing & Public Accommodations Act

www.leg.state.vt.us/statutes/sections.cfm?title=09&chapter=139

National Fair Housing Advocates

www.nationalfairhousing.org

News, resources, cases, statutes and much more about fair housing issues.

This handbook was created by the CVOEO Fair Housing Project with funding from the US Department of Housing and Urban Development.

FHP has worked to end housing discrimination in Vermont through fair housing education and outreach since 1995



For more information, contact us:
CVOEO Fair Housing Project
255 South Champlain St.
Burlington, VT 05401
(802) 864-3334 x202
or 1-800-287-7971
vtfairhousing.org