

FAIR HOUSING LAWS- WHAT THEY MEAN FOR YOUR CO-OP

Presented by:
CSI Support & Development
www.csi.coop
www.facebook.com/csissupport

Nancy Evans, General Manager
Anne Sackrison, National Operations Manager

Fair Housing Laws

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Historically and statistically, particular groups of people have received unfavorable treatment (they have been denied, harassed, given less favorable terms and conditions, or experienced a lower level of service than other groups) in attempting to own, sell, purchase, rent housing etc. As a result, the Fair Housing Act (FHA) was adopted to protect against illegal housing discrimination based on protected class status.

Federal protected classes:

The Federal Fair Acts prohibit discrimination in housing because of:

Race

Sex

Color

Familial Status

National Origin

Disability

Religion



State protected classes:

Most states also have their own laws protecting these seven characteristics. However, in many cases, state fair housing laws include additional protected classes, such as age, creed, sexual orientation, marital status, weight, height, and source of income.

The fair housing laws affect co-ops in a number of ways as they cover every stage of the rental process (advertising, screening, leasing) as well as tenancy.

Protected Classes

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- **AGE:** This applied to all members of the household. Note that your co-op may have a regulatory agreement that mandates the age of household members.
- **COLOR:** This is the general appearance of the skin and skin complexion.
- **DISABILITY:** This refers to a physical or mental impairment that limits the ability to perform the daily functions of living.
- **FAMILIAL STATUS:** This can refer to children under the age of 18, whether they are birth or adopted children. It also refers to having legal custody or anyone in the process of securing legal custody. This also applies to pregnant women and foster parents.
- **MARITAL STATUS:** This refers to single, married, widowed, separated, divorced, or unmarried couples that wish to live together.
- **NATIONAL ORIGIN:** This refers to the belonging to a particular nation, whether by birth or naturalization.
- **RACE:** This refers to groups of populations which constitute humanity. Differences are essentially biological and are marked by the hereditary transmission of physical characteristics.
- **RELIGION:** This means you cannot discriminate because of a person's beliefs or lack of beliefs. Religion does not always denote an organized philosophy.
- **SEX:** This refers to males or females, collectively.

What is Prohibited in our Co-ops?

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What is discrimination?

- Any action in which an individual or class of individuals in a specific protected class is treated differently than others who are not in that protected class, when the result of that action denies that individual or class of individuals equal access to or benefit of housing opportunity.

What is inadvertent discrimination?

Doing something for someone that you are not always willing or able to do for someone else.

Remember that in the rental of housing, no one may take any of the following actions based on race, color, national origin, religion, sex, familial status, disability or any other protected class:

- Refuse to rent housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is unavailable for inspection or rental

Do protected classes get “special” rights?

No. The intention of federal and state fair housing laws is to require that *all* individuals be given the same treatment, the same services, and offered an equal opportunity to live in a home of their choice. In other words, the same rights as everyone else. Realize that all of us fall within one or more protected classes and are all, therefore, protected under the law!

Remember, what we do for one, we do for all. What we don't do for one, we don't do for all.

Disability as a Protected Class and Reasonable Accommodations and Modifications

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Section 504 of the Rehabilitation Act: “No otherwise qualified individual with disabilities in the United States...shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial...”

Where necessary, we are required to make reasonable exceptions to rules, policies, and practices to make the building, common areas, apartments and programs accessible to people with disabilities. These reasonable exceptions are for the purpose of enabling everyone to gain full use and enjoyment of their housing. This comes in the form of a “reasonable accommodation” or a “reasonable modification” request.

Can a person with a disability move into a co-op that doesn't have apartments with the special features for the mobility impaired? Yes. It is the applicant's right to determine if the apartment is suitable for their needs with or without reasonable modifications.

Examples of Reasonable Accommodations and Modifications

- Needs an apartment close to the elevator
- Requires grab bars, raised toilet seat, equipment for the hearing impaired, adjustable/handheld shower or other modifications
- Requires a parking space close to the entrance
- Every request is evaluated

Obvious Reasonable Accommodations

Obvious reasonable accommodations and modification requests do not need be verified Examples would be: a blind applicant who comes in with a guide dog and a cane and requests an exemption from the pet rules; an amputee who requests a unit with special design features for the mobility impaired.

All requests must be considered and your co-op needs a written policy to handle the requests.

National Origin as a Protected Class and Limited English Proficiency

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- Federally funded properties may be required to provide translated documents and/or a translator in foreign languages under the HUD's Limited English Proficiency (LEP) regulations.
- Who is a “limited English proficient” individual? Persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English can be limited English proficient (LEP) and may be entitled to language assistance. If someone asks for language assistance, or if we identify an applicant who needs assistance, we should make reasonable efforts to provide free language assistance.
- We are required to annually review our co-ops and the demographics of the communities they are in to maintain a Language Assistance Plan (LAP).
- This affects not only our need to translate documents (lease, etc.) but also helps guide us in our marketing plans.

Sex as a Protected Class and the Violence Against Women Act

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- Violence Against Women and Justice Department Reauthorization Act
 - All owners participating in the Section 8 voucher and project based programs must comply with this law.
 - The act was promoted for a noble cause to make the lives of abused women easier and prevent homelessness.

Some key points brought up by the industry are as follows:

- An applicant who certifies that they were the victim of domestic violence would be allowed to be admitted, even with poor credit and poor landlord evaluations- if they can show the cause of these negative factors was domestic violence, dating violence, sexual assault or stalking.
- It assures that victims of domestic violence, dating violence, sexual assault or stalking can have access to the criminal justice system without facing eviction.
- Where someone is abusive to other members of the household, only the abuser may be evicted. Furthermore, the standards for eviction due to imminent threat have been strengthened.
- Residents in assisted housing facing threat of domestic violence, sexual assault or stalking or threat of such violence can be allowed early lease termination for a matter of safety.

Sensitivity

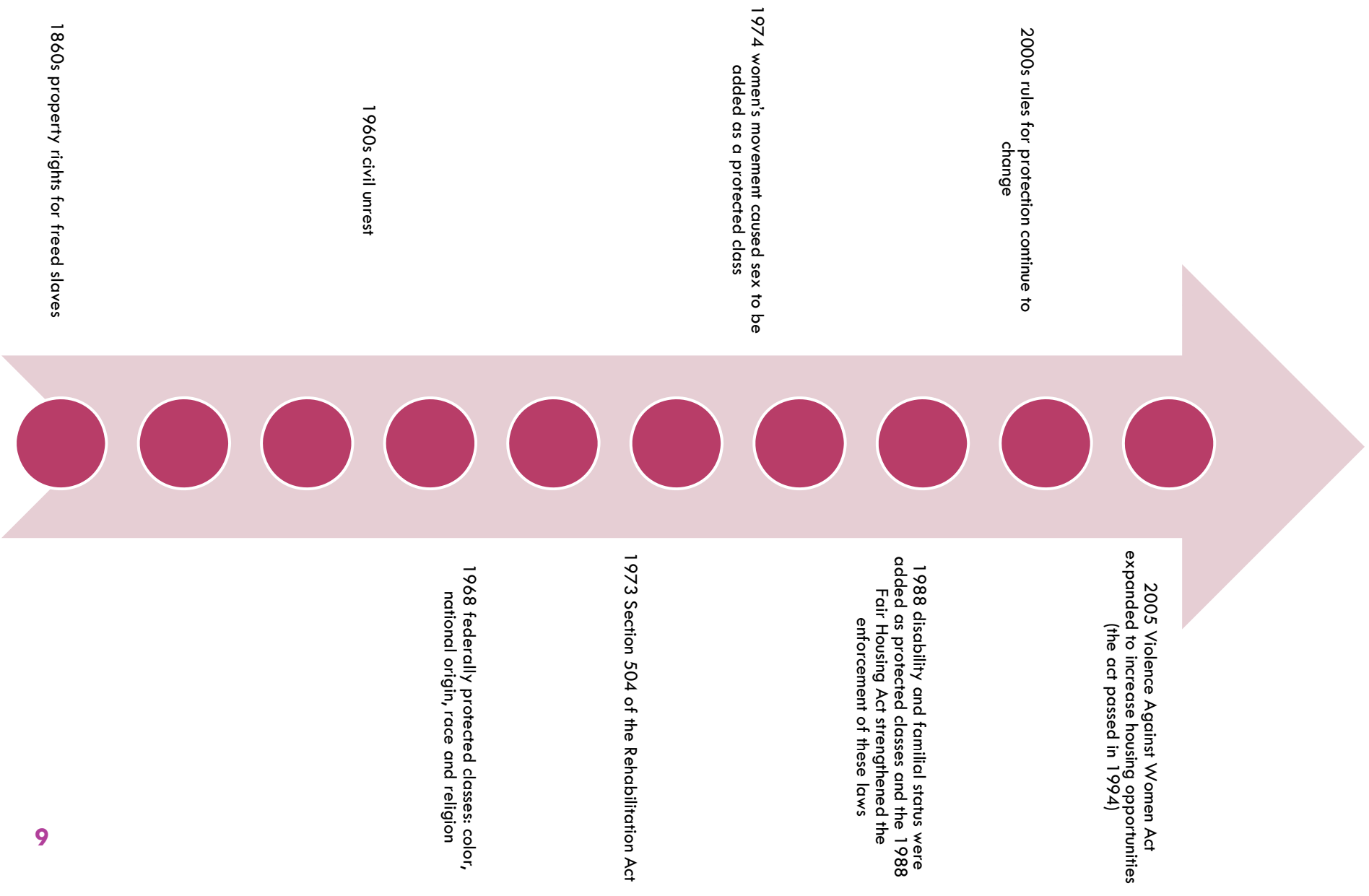
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Members' comments and statements reflect the spirit of their co-op. They can help new members get acquainted or they can cause new members to have doubts about you and your co-op. Shared remarks are often overheard and remarks that seem to some as light banter can often hurt the feelings of others.

- Race or color: "You won't feel comfortable in this neighborhood."
- National Origin: "How does he think he is going to get by in this building without English?"
- Religion: "People who have no religion have no morals."
- Sex: "Where's your husband?" "We need more men in this co-op."
- Familial Status (children): "This is a senior building."
- Disability: "How did she qualify for an accessible unit when she doesn't even use a wheelchair?"
- Age: "She is too old to live here."
- Marital Status: "We don't rent to unmarried couples."
- Weight: "He can't live here, he is too heavy to use the elevator."

We are molded by our culture. Such things as our history, religion, where we grew up, educational background, environment, marriages and family structures make all of us delightfully different.

Fair Housing History



What is a Tenant Selection Plan?

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- A landlord may decide not to rent to an applicant, as long as the same eligibility requirements are applied to everyone.
- Every co-op should have a tenant selection plan. This is a document that explains the eligibility requirements for applicants applying to your co-op and certain policy guidelines for members that currently reside there.
- Some of the information in the tenant selection plan is governed by HUD, while some of the information is building specific, or falls under your policies.
- Tenant selection plans can change. However, they are fair and consistent (what we do for one, we do for all).
- Tenant selection plans are very important to all members because the plans tell us what we can and cannot do.
- Tenant selection plans should be kept in the leasing office and offered to applicants during their interview.

What Should the Tenant Selection Plan Cover?

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- **General Policies-** Purpose, discrimination and fair housing information, reasonable accommodation information, LEP information.
- **Eligibility-** Project: based on what type of building it is, and Program: based on section 8 assistance.
- **Occupancy-** Such as 2 persons per studio or bedroom.
- **Income Targeting (if applicable)-** You are required to lease not less than 40% of the Section 8 units that become available for occupancy during the fiscal year to extremely low income applicants.
- **HUD Regulatory Preferences (if applicable)-** Preference may be given to applicants who have been displaced by government action or a presidential-declared disaster.
- **Section 8 Waitlist (if applicable)-** The building may be limited to a certain number of Section 8 units. An internal waitlist is maintained for those wishing to receive Section 8 when it becomes available.
- **Enterprise Income Verification System (EIV)-** Used for both applicants and current residents. EIV provides information about HUD assistance recipients and is a database used to verify certain types of reported income with records maintained in the Social Security Administration databases and the Department of Health and Human Services databases.
- **Application-** Outlines procedures on how to apply.
- **Waiting List-** Rules for the waitlist.
- **Unit Transfer Policies-** Basic transfer guidelines including reasonable accommodations.
- **Screening Criteria-** Covers what background checks are required for all applicants: interview, criminal, landlord, credit checks, EIV, adult children, interview information, etc.

Applicant Eligibility and Screening Process

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How do we determine eligibility?

- Project eligibility: establishes whether applicants are eligible to reside in the specific project to which they have applied
- Program eligibility: determines whether applicants are eligible for assistance (remaining family member, citizenship/legal immigrants)
- Screening prior and current landlord references
- Credit checks
- Criminal record checks
- Financial certification
- Leasing committee interview

On the basis of screening, we can reject an application for the following reasons if covered in our tenant selection plan:

Poor history of rent payments

History of interfering with rights and enjoyment of other residents

History of damaging unit and/or common areas

History of drug use, criminal activity or a registered sexual offender

Inability to care for self and/or unit and without confirmed arrangements for adequate assistance

Failure to abide by house rules and regulations

*We must always follow these procedures for each applicant.
However, the final step to determine eligibility is the interview.*

The Interview

The interviewers have a very important job. When you interview, you are representing your co-op and all applicants must be treated equally with the greatest possible respect and courtesy.

What is the purpose of the interview?

- To review information on the application
- To determine if the applicant will meet all obligations of tenancy with or without assistance from outside the building
- To find out if the applicant is willing to comply with building rules, lease provisions and health and safety codes
- To create a desire to become part of the co-op
- It is an opportunity for members to ensure that people admitted will care for their apartments and the building
- Provide a warm, friendly, welcoming atmosphere.
- Be careful with your tone - you are not an investigative reporter
- Give information about both the building and our co-op management system
- Be knowledgeable about house rules and lease regulations
- Create enthusiasm for joining in the co-op system
- Be good listeners
- Be fair and consistent in the way you treat all applicants
- Leave personal feelings and opinions out of the interview

What should the interviewers do?

- Have Fair Housing posters prominently displayed in the area of the interview
- Screen applicants but do not ask personal questions not related to meeting the eligibility requirements
- Answer questions applicants may have but do not imply that they are accepted
- Offer the Tenant Selection Plan for the applicant to review
- Observe strict confidentiality on every interview

Case Studies

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A woman comes in for an interview and you believe she might be homeless. You have seen her on the streets and she always carries several bags with her. Sometimes she even pulls a small cart behind her. When you and the other interviewers review her application, you see that she has listed previous landlords and you have been given the go ahead that she has passed her landlord checks. The interview goes well and the woman answers all of your questions. During the interview she tells you that she has been staying with friends over the years and she is trying to get back on her feet again.

What should the interviewers do?

- A. Reject her application because you and the other interviewers believe she is homeless.
- B. Accept the applicant because the interview went well and there were not find any problems with her landlord history.
- C. Check second interview on the interview report forms because you still have concerns about this woman and you are thinking that a problem may arise on the second interview. You trust your instincts.

A man is being interviewed and during the interview he begins telling the interviewers all about the medications he is taking. He tells you that he has been hospitalized twice in the last few months for diabetes. He also says he has high blood pressure. He states that he can live independently and he does have assistance in place. On his application he wrote in the names of caregivers that would be assisting him. The rest of the interview goes fine and the man answers all of the interviewer's questions correctly.

What should the interviewers do?

- A. Verify that the care is in place for him and then accept his application. Since the man stated that he could live independently, we have to trust him.
- B. Ask about which types of medications he is taking. The interviewers are very knowledgeable about medications and they will be able to determine how severe his problem is based on the medications he is taking. Then they can decide if they should reject or not.
- C. Reject his application because he has diabetes and high blood pressure. There would be no way for him to live in the building by himself.

Case Studies

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Mr. Smith stopped by the leasing office today looking for an apartment for his mother. He really needs to find her a place to live before he moves out-of-town next month. He is such a nice man and his mother is a very respected member of the community but your co-op has a wait list of applicants. She would be a great volunteer in your co-op.

What should the leasing committee do?

- A. Put his mother's name at the top of the wait list because he really needs to move her ASAP.
- B. Tell him that she can move in next week and schedule a lease signing date.
- C. Place his mother's name at the bottom of the waitlist, give him a co-op brochure and follow your written selection plan.

True or False?

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- According to the 2011 Fair Housing Trends Report published by the Fair Housing Alliance, people with disabilities reported the most claims of discrimination in 2010.
- A disabled individual in a wheelchair wants to rent an apartment. You have an available first floor handicapped-accessible apartment and a third floor apartment. The individual may only rent the first floor, accessible apartment because it fits his needs and is available with no renovations required.
- When asked by a prospect, “What kind of people live here?” the best answer is to say “Qualified people live here. We ask everyone to meet the same tenant selection requirements as I have shared with you.”
- It is against the law to discriminate.
- When asked by a prospective resident, “How safe is it to live here?” the appropriate answer is, “Under the Fair Housing Act, I can not answer that question.”
- If a member needs a service animal to assist him/her due to a disability, management must waive pet deposits, fees and some rules for the service animal.
- If a resident requests a reasonable accommodation modification due to a disability, you have the right to ask for details of the disability.
- Marketing efforts are not subject to fair housing laws.