

FAIR AND JUST
Fair Housing

3.0 Hours Fair Housing

Course Objective: The course provides a brief overview of Fair Housing laws enactment with a primary focus on top issues affecting the purchase and lease of residential properties; impact on brokerages and agents; case studies reviewing violations and court rulings.

your guide to . . .

**Federal & Arizona Fair Housing Act; Issues; and
Case Studies.**

- I. Fair Housing Act
 - A. Federal
 - a. Regulatory Agency
 - b. Protected Classes
 - B. Arizona
 - a. Regulatory Agency
 - b. Protected Classes
- II. Prohibited Acts
 - A. Protected Classes
 - B. Leasing
 - C. ADA
 - a. Handicapped
 - b. Assistive Animals
 - D. Agent Culpability
- III. Common Issues - Case Studies
 - A. Statistics
 - B. Case Studies
 - a. Management Misconduct
 - b. Familial Status
 - c. Disabled
 - d. Assistive Animals
 - e. Group Homes
- IV. Review - Q&A

Assistance Animals Under the Fair Housing Act

Similar to the ADA, the FHA prevents housing providers from discriminating against tenants with physical or mental disabilities. Even if a lease prohibits or restricts pets in a “dwelling,” landlords must make “reasonable accommodations” for “assistance animals.”

It is important to note the FHA’s use of the term “assistance animal,” which is different than the ADA’s “service animal.” Although it is clear that assistance animals are not pets, the definition of assistance animal under the FHA extends beyond dogs and also removes the specific training requirement.

A U.S. Department of Housing & Urban Development memorandum offers guidance to housing providers who encounter requests for a reasonable accommodation involving an assistance animal. In those situations, the landlord should determine:

1. Does the person seeking to use and live with the animal have a disability – i.e., a physical or mental impairment that substantially limits one or more major life activities?
2. Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

If the answers to both questions are yes, the FHA requires the housing provider to alter or create an exception to any “no pets” policy that would then allow the disabled person to occupy the premises with his or her assistance animal – regardless of breed, size, or weight. The landlord may still deny the request if, among other things, the assistance animal would directly threaten the health or safety of others or would cause substantial physical damage to others’ property that could not be reduced or eliminated by another reasonable accommodation.

Additional Considerations

Despite differences in the definitions and legal protections relating to service animals and assistance animals, the following are some additional points that businesses, landlords, and employers should keep in mind regarding what they can and cannot do:

- Service and assistance animals are not required to wear a vest, identification tag, or specific gear or harnesses.
- Proof of the animal’s training, certification, or licensure is not required when evaluating a request for reasonable accommodation.
- People with disabilities may train their animals themselves – use of a professional training program is not required; and
- Absent damage caused by the animal; no additional fees can be charged for the animal’s presence on the property.

HUD's Criminal Screening Guidelines

Overview

As most property managers are aware, on April 4th, 2016 HUD published new guidelines related to the use of criminal background checks during the applicant screening process, and the new steps that must be taken to conform to Fair Housing Laws. These new guidelines apply to all property managers, and all categories of multi-family housing.

Within the guidance, HUD warns that in order to comply with Fair Housing Laws, any owner/manager that performs a criminal background check or in any way considers criminal history as part of their approval criteria must ensure that the criteria has no "disparate impact on individuals of a particular race, national origin, or other protected class".

Disparate impact theory is based on evidence that while policies aren't explicitly discriminatory, statistical disparities between different races can show that a policy has a negative discriminatory effect, even if unintentional. While this new guidance doesn't carry the force of law like formal agency rules it should still be taken seriously.

Three-Step Burden Shifting Process for Disparate Impact Claims

The HUD guidance provides a three-step, burden shifting framework for any applicant's that feel that they have been unfairly denied based upon disparate impact.

Step 1: Any plaintiff (Applicant) must prove the policy has a disparate impact.

Step 2: The defendant (Housing Provider) must then prove that the policy is justified, and cannot be achieved by a different, nondiscriminatory method. Types of cases that specifically cannot be proven include: -- Prior Arrests -- Prior convictions that have no specificity to type, level, or timeframe.

Step 3: If the defendant can successfully prove Step 2, the plaintiff must prove that a less discriminatory policy could achieve the same result.

Recommended Best Practices

The HUD guidance is very clear that broad criteria that excludes a candidate based simply upon the level of a criminal record, regardless of the nature or timeframe since the offense occurred will be challenged and unable to satisfy the burden of Step 2. As a result, this type of criteria should be eliminated and replaced with more granularly defined criteria that take both type of crime and timeframe into consideration.

The best recommended practice is to carefully consider what types of crimes pose the greatest threat to the interests of a housing provider.

For example, the most obvious types of crimes that could be considered relevant to a housing provider might include:

- Crimes against people or property;
- Crimes involving drugs or weapons
- Crimes involving sex

The justifications in support of these types of concerning convictions should be written down within the policy that includes how many years must have passed, and the types of crimes that will pose the highest amount of concern. Another component of the HUD guideline discusses the use of arrest record date vs. conviction records. It is essential that you do not have a policy that factors the existence of a prior arrest into consideration for denying an applicant. While most screening providers don't even report arrest data, some still do.

<https://www.rentalhistoryreports.com/wp-content/uploads/sites/3/2016/07/How-to-Comply-with-HUD-Guidance-on-Criminal-Screening.pdf>