

**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 orders followed by a review quiz..

*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**

### **If pigs are flying, should landlords prepare for pig stys?**

[blog.aaronline.com/2019/04/12/pigs-flying-landlords-prepare-pig-stys/](http://blog.aaronline.com/2019/04/12/pigs-flying-landlords-prepare-pig-stys/)

More than 80 million Americans own a pet. Many of us consider them a part of our family, but for some their value goes far beyond companionship. While service animals provide legitimate assistance to those with disabilities, the controversy related to emotional support animals (ESA) continues to generate headlines as people seek a “prescription” that includes everything from hamsters to peacocks and yes... Pigs.

Where does that leave property owners who find themselves in a situation where a tenant is seeking an exception to the “no-pets” policy?

Title 42 of the United States Code requires that landlords “make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” Simply put, property owners may be required to waive a “no pets” policy if the tenant meets the criteria under the Fair Housing Act.

The U.S. Department of Housing and Urban Development issued FHEO-2013-01 which states:

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

- Does the person seeking to use and live with the animal have a disability – ie., a physical or mental impairment that substantially limits one or more major life activities?
- 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 answer to question (1) or (2) is “no” then the FH Act and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

When faced with such an accommodation request, it’s important to know that the tenant must show their need is connected to their disability and the request is reasonable. According to the FHA, an accommodation is reasonable if it doesn’t impose an undue financial or administrative burden. Making the wrong decision could violate the law and potentially require the landlord to have to pay damages to the disabled renter.

# HUD's new 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>