



Accessible Housing Programs: The Fair Housing Act, the ADA, and Section 504

Mid-Atlantic ADA Update 2019
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Fair Housing Act Protected Classes

Title VIII of the Civil Rights Act of 1968, as amended in 1988, known as the Fair Housing Act (FHA), makes it unlawful to discriminate against individuals in housing transactions based on:

Race
Color
Religion
National Origin

Sex
Disability
Familial Status*

** Familial status means the presence of children under 18 in a household, pregnant women or anyone adopting or securing legal custody of a child.*

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Fair Housing Act Prohibited Behavior

It is against the law, because of a protected class, to:



- Refuse to rent housing
- Refuse to negotiate for housing
- Make housing unavailable or deny housing is available
- Set different terms, conditions or privileges for the sale or rental of housing
- Advertise in a discriminatory way
- Threaten, coerce, or intimidate anyone exercising their fair housing rights or assisting others in exercising those rights

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Affirmatively Furthering Fair Housing

- From its inception, the Fair Housing Act not only prohibited discrimination in housing related activities and transactions but also imposed a duty on the federal government to affirmatively further fair housing (AFFH).
- Because in practice HUD programs have historically perpetuated patterns of racial and economic segregation AFFH seeks to begin to remedy the impact of historical segregation.
- The AFFH obligation covers all activities, policies, and procedures of recipients and sub-recipients of federal housing funding including Community Development Block Grant entitlement jurisdictions and public housing authorities. These entities are responsible to hold staff accountable for complying with all Fair Housing Act requirements.

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Definition of “Dwelling”

What is a Dwelling under the Fair Housing Act?

- Defined by the law as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof”
- What factors determine if a shelter or housing program is “intended for occupancy as a residence”?
 - Length of stay
 - Intent to return each night
 - Existence and terms of occupancy agreement
 - Existence of a rent payment, fee, or in-kind exchange or requirements
 - Whether a resident has another current dwelling and whether they intend to return to that dwelling
 - Whether the primary purpose of the program is to provide housing

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Fair Housing Act Covered Transactions

Covered Transactions:

- Rental
- Sales
- Lending
- Homeowners insurance
- Appraisals
- Zoning and land use
- Housing programs offering rental assistance, housing counseling, etc.

Covered Properties:

- Apartments and condos
- Public housing
- Private housing
- Dormitories
- Nursing homes
- Homeless shelters
- Transitional housing
- Group homes
- Addiction recovery homes

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Fair Housing Act Covered Entities

Who Must Abide by Fair Housing Laws?

- Landlords
- Property Managers
- Nonprofit Housing
- Subsidized Housing
- Portfolio Managers
- Maintenance Crews and Contractors
- Housing Industry Trade Associations
- Property Owners and Sellers
- Sales Agents and Brokerage Offices
- Listing Services
- Builders and Developers
- Architects
- Condo and Homeowner Associations
- Mortgage Lenders, Appraisers, and Servicers
- Homeowners Insurance Companies
- Governmental Jurisdictions
- Employees of Housing Providers
- Other Residents or Neighbors Acting as Agents of Housing Providers
- Housing Counselors
- Basically Everyone!

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Americans with Disabilities Act

The Americans with Disabilities Act (ADA) of 1990 guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services and telecommunications.

The ADA prohibits discrimination based on disability in programs and activities provided by public entities (including housing related programs) and in goods, services, facilities, and privileges of places of public accommodation owned or operated by private entities.

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Americans with Disabilities Act, cont.

Public housing agencies are covered by the ADA as are dormitories, correctional institutions, homeless shelters, and hotels/motels.

Public and common use areas which are open to the general public or residents of a development are covered by the ADA. Rental offices are covered by the ADA and must be accessible. Community rooms are covered by the ADA if they are made available to the public.

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Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity receiving federal funding, including subsidized housing. Housing and housing programs receiving federal financial assistance must comply with Section 504.

While public housing and the administration of the Section 8 housing voucher program is covered by Section 504, private landlords who accept Section 8 housing vouchers are not covered by Section 504.

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The Fair Housing Act, the ADA, and Section 504 each require reasonable accommodations and modifications when necessary to permit equal access for individuals with disabilities to covered programs or facilities.

Important to Remember:

Programs that may not be required to comply with the Fair Housing Act (for example, emergency one-night shelters) are still covered by other laws, such as Section 504 or the ADA, which require non-discrimination, accessibility standards, and reasonable accommodations and modifications for persons with disabilities.

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DISABILITY DEFINED

A physical or mental impairment that substantially limits one or more of a person's major life activities.

Includes people having a history of an impairment and people being perceived as having an impairment.



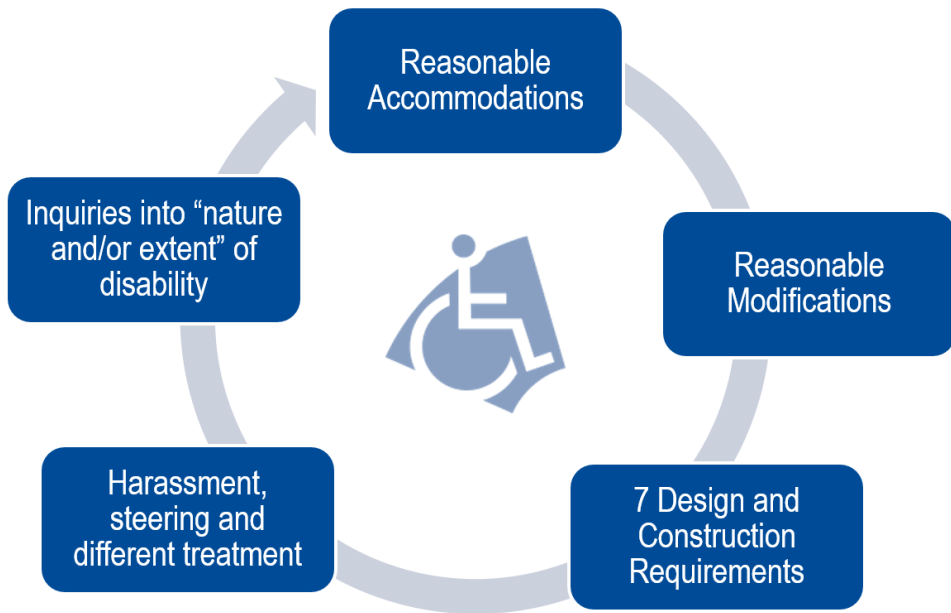
Disability Defined

Major life activities can include:

- caring for one's self
- walking
- seeing
- hearing
- speaking
- breathing
- learning
- working

Those recovering from drug addiction who have successfully completed a treatment program are covered under the law. Individuals who are current users of illegal drugs are **not** protected.

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Reasonable Accommodation and Modification Requests

A **reasonable accommodation** is a change in rules, policies, practices, or services that enables a person with a disability equal opportunity to use and enjoy a dwelling.

A **reasonable modification** is a change in the physical structure of a dwelling that enables a person with a disability equal opportunity to use and enjoy that dwelling.

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Reasonable Accommodation and Modification Requests, 2

How should a consumer request a reasonable accommodation or modification?

- A person with a disability must notify the housing provider if they need a reasonable accommodation or modification. It is **not** the responsibility of a housing provider to offer an accommodation, even if they are aware of the disability or related need.
- A reasonable accommodation or modification request can be made at any time—when applying for housing, when moving in or moving out, while living in a unit, or even during an eviction hearing.

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Reasonable Accommodation and Modification Requests, 3

Can housing providers require specific forms for reasonable accommodation and modification requests?

- Housing providers sometimes create standardized forms for reasonable accommodations, however they cannot require a certain form.
- Housing providers must consider, and may not deny, a request even if a consumer did not use their preferred form or procedure for making the request.
- Reasonable accommodation requests can be made verbally, but it is best to make the request in writing so that there is documentation of the request and it was made. A request can be made on behalf of a person with a disability.

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Reasonable Accommodation and Modification Requests, 4

When must a housing provider allow a reasonable accommodation or modification?

A housing provider must grant a request for a reasonable accommodation or modification if:

- The person making the request fits the Fair Housing Act definition of a person with a disability;
- Due to their disability, the person needs the requested accommodation or modification in order to use and enjoy their dwelling; and
- The request is “reasonable”.

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What is Reasonable?

A request for an accommodation or modification is considered reasonable if that request:

- Does not cause an undue financial and administrative burden to the housing provider;
- Does not cause a basic change in the nature of the housing program available;
- Will not cause harm or damage to others; and
- Is technologically possible.



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Negotiating Reasonable Accommodations

What if a housing provider believes a request is unreasonable?

- Each reasonable accommodation/modification request is individual and must be evaluated on a case by case basis.
- If the request proposed by a tenant is unreasonable, the housing provider **must** engage in an interactive dialogue with the tenant to determine if there is an alternative accommodation that will meet the tenant's needs.
- A housing provider may not stall or delay in responding to a request for reasonable accommodation.

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Fees for Reasonable Accommodations

Can a housing provider charge extra fees or deposits or require conditions?

- Housing providers cannot place any financial conditions upon a reasonable accommodation or modification or require some action or condition before granting a request.
- For example, a housing provider cannot require a resident with a disability to purchase insurance to protect the landlord should someone be injured by a wheelchair ramp.
- Housing providers are not permitted to charge a fee for a reasonable accommodation and must forego collecting pet deposits or pet fees for assistance animals.

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Verifying Disability and Need

If disability is obvious and need for accommodation or modification is clear – No additional documentation may be required

If disability is known, but need for accommodation or modification is not clear – Only information to evaluate disability-related need may be required

If disability and need are not known – Provider may request documentation that tenant has a disability and a disability-related need

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Verifying Disability and Need, 2

A housing provider may not ask:

- Questions about the nature or severity of a disability or about a specific diagnosis
- If an individual is able to live independently
- Questions that would require an individual to waive their rights to confidentiality regarding their medical condition or history
- To see medical records

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Who Pays for Reasonable Modifications?

Generally the expense of reasonable modifications is the responsibility of the tenant.

However, if the housing is federally subsidized (such as a Public Housing Authority, but excluding private landlords accepting Section 8 housing vouchers) physical modifications are called reasonable accommodations and the housing provider is responsible for the cost of installation.

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Reasonable Modifications

- The housing provider may require that a plan be provided, that the work will be performed in a workmanlike manner, and that necessary building permits be obtained.
- A housing provider may not require a certain type of construction, color, contractor, or type of plan.
- If a provider would like a more expensive modification to meet any aesthetic concerns, the design must still meet the tenant's needs and the provider should pay for the additional cost.
- If the resident installing the modification is going to be the only one using it, then that resident is obligated to provide the upkeep of the modification. If the modification is in common use areas, then the housing provider is obligated to provide upkeep, including insurance.

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Reasonable Modifications, 2

- A housing provider can require that the tenant restore any interior modifications to their original condition upon moving out of the unit **only** if the modification will interfere with the next tenant's use and enjoyment of the premises. For exterior modifications, restoration is generally not required.
- If the modification is in a common area and could benefit future tenants, the provider cannot require that the tenant restore the dwelling to its original condition upon moving out of the unit.
- If restorations will be necessary when a tenant moves out, a provider may request payment into an interest-bearing escrow account. Payments may be made over a reasonable period and the amount cannot exceed the cost of the restorations. The interest accrues to the benefit of the tenant.

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Direct Threat

The Fair Housing Act does **not** require that housing providers rent to anyone who constitutes a “direct threat” to the health or safety of others or a risk of substantial damage to the property of others.

However, housing providers **may not** deny housing to people with disabilities based on fear, speculation, or stereotypes about a particular disability or stereotypes about disabilities in general.

Denying an individual housing or evicting an individual because of a direct threat must be based on reliable and objective evidence.

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Direct Threat, 2

The direct threat assessment must take into account the nature and severity of the risk of injury as well as the probability that an injury will occur and whether there are any reasonable accommodations that would eliminate the direct threat.

Even in cases of tenants who **do** in fact present a “direct threat” due to their disabilities, these tenants are entitled to a determination whether any reasonable accommodation would mitigate any risk posed by their disability-related behaviors prior to denying them housing or eviction.

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Examples of Reasonable Accommodations

- Assigning a person with a disability a reserved parking spot near their unit even though tenant parking is generally on a first come, first served basis
- Allowing a person with a disability to keep an assistance animal despite a “no pets” policy
- Providing a lease application in large print
- Allowing a transfer to a first floor or a more accessible unit or community

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Examples of Reasonable Accommodations, 2

- Exception to application criteria when poor credit or rental history or negative references are due to a disability
- Extra time to remedy sanitary or fire hazards for individuals who engage in compulsive hoarding
- Revised rental due dates or waiver of late fees for individuals receiving SSDI payments mid-month
- Including a case manager or other professional support service on all correspondence
- Permitting a home health aide or live-in personal care attendant

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Examples of Reasonable Accommodations, 3

- Notice before entering an apartment or additional locks for individuals with PTSD
- Rescind a notice to quit or eviction notice for lease or program violations when an individual can demonstrate that a reasonable accommodation will mitigate the disability-related behavior that led to the violations
- Rent due date or maintenance or inspection reminders if an individual has a cognitive disability

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Examples of Reasonable Modifications

- Installing a ramp access to the entrance of the dwelling
- Installing visual or tactile alert devices
- Widened doorways in unit
- Installing grab bars in the bathroom or at the entrance into unit
- Removal of below-counter cabinets
- Installation of a fence or awning
- Replacing door handles with levers

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Common Mistakes by Housing Providers

- Always requiring forms and not accepting letters or verbal requests
- Being rigid or overly burdensome with rules, policies, and procedures
- Not responding to requests in a timely manner
- Not engaging in an interactive process
- Not training all employees who deal with tenants/prospective tenants
- Charging fees or deposits such as a transfer fee or a pet deposit

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Common Mistakes by Housing Providers, 2

- Conditioning a request by requiring some action before it is granted
- Requiring medical documentation or completion of a particular form before considering an accommodation when the disability or the need for the accommodation is obvious
- Requesting information about the nature or severity of a disability
- Requiring an annual reapplication or recertification of a reasonable accommodation request

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Assistance Animals



Assistance animals come in many species, breeds and sizes

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Assistance Animals, 2

The Fair Housing Act requirements concerning assistance animals differ from the standards required under the ADA. The Fair Housing Act applies to dwellings and has a broader definition of assistance animal.

Under the Fair Housing Act, it does not matter whether an animal is a service animal, a therapy animal, or an emotional support animal. The animal does not need to be trained to perform a specific service. The important factor is that the assistance animal serves a disability-related need and allows a person with a disability equal opportunity to use and enjoy a dwelling.

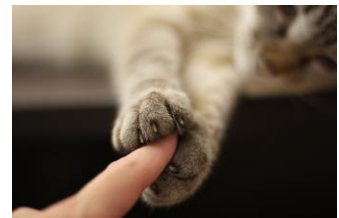
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Assistance Animals, 3

A housing provider cannot:

- Refuse to allow someone with a disability the right to an assistance animal when it's reasonable
- Deny occupancy, or evict a person with a disability because they request an assistance animal
- Charge extra fees or deposits
- Stall or delay on responding to a request
- Require training or certification for an assistance animal



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State Laws Regulating Assistance Animals

Pennsylvania Assistance and Service Animal Integrity Act

Makes it a third degree misdemeanor to:

- misrepresent an animal as an assistance or service animal
- intentionally create a document misrepresenting an animal as an assistance animal or service animal in housing
- provide a document to another falsely stating that an animal is an assistance animal or service animal for use in housing
- fit an animal that is not an assistance animal or service animal with a harness, collar, vest, or sign that indicates it is an assistance animal for use in housing

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HUD/DOJ Joint Statements

DOJ and HUD have provided joint statements

Reasonable Accommodations Under the Fair Housing Act

(https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf)

Reasonable Modifications Under the Fair Housing Act

(https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/reasonable_modifications_mar08.pdf)

- Clear Q&A format providing technical guidance on rights and obligations of persons with disabilities and housing providers under the Fair Housing Act

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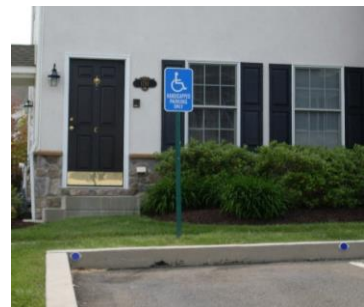


FHA Accessibility Requirements for New Construction

Applies to covered multifamily housing built after March 13, 1991, including housing for rental and for sale.

The following multifamily dwellings must comply:

- All buildings containing four or more dwelling units, if the buildings have one or more elevators
- All ground-floor units in buildings containing four or more units, without an elevator



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FHA Accessibility Requirements for New Construction, 2

Seven Design and Construction Requirements:

1. Accessible building entrance on an accessible route
2. Accessible and usable public and common use areas
3. Usable doors – allow passage by people using wheelchairs
4. Accessible route in and through covered units
5. Light switches and other environmental controls must be in accessible locations
6. Reinforcements in bathroom walls must be installed so that grab bars can be added when needed
7. Usable kitchens and bathrooms

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FHA vs. ADA Design and Construction Requirements

- The ADA covers dwelling units in limited situations (public housing agencies, community development agencies, and other housing developed or operated by States or units of local government), while the Fair Housing Act requirements apply also to privately developed covered units.
- The ADA does apply to common use areas in any residential development if the facilities are open to persons other than owners, residents, and their guests (sales/rental office, pool, reception room, etc.) and parking at these common areas.

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FHA vs. 504 Design and Construction Requirements

- The Fair Housing Act covers all covered dwelling units of new multi-family housing, regardless of whether or not a federal subsidy is involved.
- Under 504, federally funded new construction projects must ensure that 5% of the dwelling units, or at least one unit, whichever is greater, are accessible for persons with mobility impairments.
- An additional 2% of dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities.

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Resources on Accessibility Requirements for New Construction

HUD FHA Design Manual

(https://www.huduser.gov/portal/publications/PDF/FAIR_HOUSING/fairfull.pdf)

Fair Housing Accessibility First

(<https://www.fairhousingfirst.org/>)



Design and Construction Resource Center:
888-341-7781

- Information on "safe harbors" (sets of access standards that guarantee compliance with the Fair Housing Act)
- Training and other resources

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Zoning and Land Use and the Fair Housing Act

- The Fair Housing Act prohibits state and local land use and zoning laws, policies, and practices that discriminate based on membership in a protected class.
- Prohibited practices as defined in the Fair Housing Act include making unavailable or denying housing because of a protected characteristic.
- A “dwelling” under the Fair Housing Act includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

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Zoning and Land Use Reasonable Accommodations

Local governments are required to make reasonable accommodations for persons with disabilities in land use and zoning policies and procedures. An accommodation is “reasonable” if it does not impose an undue financial and administrative burden and if it does not fundamentally alter the zoning ordinance. Unless a municipality can prove that a request is unreasonable according to the above criteria, the municipality must grant the accommodation.

Examples of reasonable accommodations in zoning include:

- Waiving setback requirements for a disabled resident who must build a wheelchair ramp to access his or her home
- Refusing to make an exception to the definition of family to allow a greater number of unrelated persons to occupy a group home

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Zoning and Land Use Group Homes

A group home refers to a dwelling that is or will be occupied by unrelated persons with disabilities.

- Group homes may or may not provide support services.
- Group homes may be operated by individuals or organizations, either for profit or nonprofit.
- Group homes may or may not include supervision of residents and may or may not be licensed under a particular program.
- Group homes may include persons who are in recovery from alcohol or drug abuse.

Zoning ordinances may not contain provisions that treat uses for people with disabilities differently than other similar uses. Generally, group homes for small numbers of residents housed in single family homes should be treated as single family residences.

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Common Violations Regarding Group Homes

Local examples of violations:

- Prohibiting group homes in some or all residential districts
- Requiring group homes be spaced a certain distance from each other
- Rules that place greater procedural or other burdens on group homes than other residential uses (conditional use permits, sprinklers, inspections, etc.)
- Enforcing ordinance provisions more strictly against group homes
- Definitions of family can affect group home situations by restricting the number of unrelated individuals that can occupy a single family home—group homes for persons with disabilities are entitled to exceptions to definitions of family as a reasonable accommodation
- Licensing requirements and registration requirements
- Exclusion of addiction recovery homes

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Updated HUD/DOJ Guidance

On November 10, 2016 DOJ and HUD released updated guidance on [Local Land Use Laws and Practices and the Application of the Fair Housing Act](https://www.justice.gov/crt/page/file/909956/download) (<https://www.justice.gov/crt/page/file/909956/download>)

- Designed to help state and local governments comply with the Fair Housing Act when making zoning and land use decisions related to various types of housing, including group homes for persons with disabilities
- Clearer Q&A format outlining what could constitute housing discrimination by municipalities under the Fair Housing Act

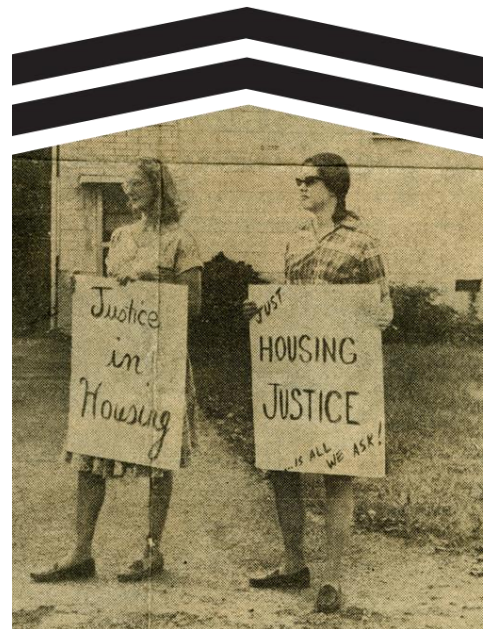
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Housing Equality Center

Founded in 1956, before state or federal fair housing legislation, the Housing Equality Center of Pennsylvania is America's oldest fair housing council.

The Housing Equality Center serves the Pennsylvania counties of Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia.



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Housing Equality Center Services

The Housing Equality Center provides:

- Counseling, testing investigations, and enforcement services to assist victims of housing discrimination.
- Education, training programs, and technical assistance for housing professionals, nonprofits, housing authorities and others to promote compliance with fair housing laws and to prevent discrimination.
- Publications, fact sheets and resources to educate the public and housing professionals about fair housing.

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Report Discrimination

(267) 419-8918

Consumers, providers, and advocates should contact the **Housing Equality Center of Pennsylvania** to report discrimination. The Housing Equality Center accepts and investigates complaints from anonymous sources.

Fair housing complaints can be filed with HUD for up to one year from the incident, or with the Pennsylvania Human Relations Commission for up to 180 days from the incident. A lawsuit may be filed in Federal Court up to two years from the incident.

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Fair Housing Questions? Technical Assistance?

Rachel Wentworth

Executive Director

267.419.8918 x5

wentworth@equalhousing.org

Carolyn Capistrano

Intake and Outreach

267.419.8918 x2

capistrano@equalhousing.org

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