

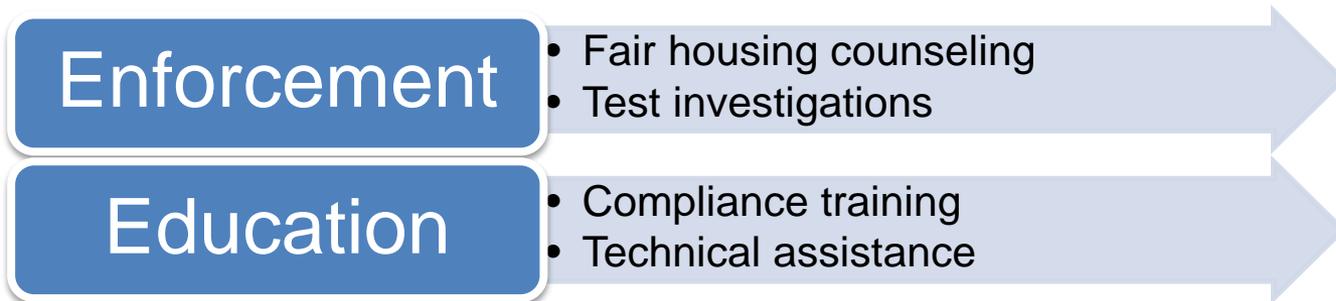
Fighting Housing Discrimination: The Fair Housing Act and Fair Housing Testing

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Fair Housing Test Coordinator





- NJCA is a HUD designated Fair Housing agency working to ensure that New Jersey residents have access to housing and understand their rights under fair housing laws.
- We counsel housing discrimination victims and conduct testing investigations.



- Testing, investigation and enforcement services available in Hudson, Essex, Union, Middlesex, Monmouth and Ocean counties
- Education and training programs are provided for housing professionals and nonprofits throughout NJ, promoting compliance with fair housing laws and discrimination prevention.

Federal Fair Housing Act

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

Sex

Color

Disability

Religion

Familial Status*

National Origin

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

Federal Fair Housing Act

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

Protected classes:

Race
Color
Religion
National Origin
Sex
Disability
Familial Status

Who Must Abide by Fair Housing Laws?

Landlords
Property Managers
Owners
Non Profit 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
Condo and Homeowner
Associations
Mortgage Lenders and
Appraisers

Home Insurance
Companies
Long Term Care Facilities
Governmental Jurisdictions
Employees of housing
providers
Neighbors
Basically Everyone!

Federal Fair Housing Act

Penalties for Violating the FHA

- Administrative complaint or federal lawsuit
 - Actual damages
- Non-economic and punitive damages
 - Civil penalties
 - Government monitoring
 - Attorneys fees
 - Injunctions
 - Loss of tax credits

Fair Housing Act Exemptions

- Owner occupied buildings with four or less rental units
- For Sale By Owner - single family housing sold or rented without the use of a broker if the private individual owner does not own more than three such single family homes at one time
- Housing operated by religious organizations and private clubs may limit occupancy to members
- No exemption for discriminatory statements and/or advertising

Fair Housing is Good Business

Advertising is Never Exempt

Advertisements should describe property NOT occupants

craigslist



Real Cases: Discriminatory Advertising

- 3 BR apt. \$1450/mo. w/d, heat/hw included. **Mature adults** preferred.
- Large second floor 1BR unit in a 6 unit complex. \$750/mo + utilities. **Not ideal for families with kids** due to the stairs.
- 1 BR third floor apartment in quiet complex near shopping and transportation. \$750 a month, utilities separate. **Prefer single female.**
- 1BR, 2BA Bi-level Unit. Kitchen, Dining/Living Rm, Large Bedroom, Extra room/office/den/ or guest room. **Great for retired couple or young professional.** \$1600/mo +utils



Many protected classes experience housing discrimination through

STEERING

Directing a resident for whatever reason, to a specific area of the property or community:

Ex. Only allowing only families with children in first floor units

Ex. Grouping people by “type”

Two ways home providers unlawfully steer people:

1. Advising customers to purchase homes in particular neighborhoods on the basis of their protected class
2. Failing, on the basis of their protected class, to show, or to inform buyers of homes that meet their specifications

Best Practices to Avoid STEERING

- Show all available properties to prospects
- Have a list of available units so everyone given the same information
- Let the prospect decide what to see and what to skip
- Present only facts about the property and the community, not about other residents or neighbors

DIFFERENT TERMS AND CONDITIONS

Establishing or enforcing different rules, terms, or conditions based on a protected class is unlawful.

Best Practices to Avoid a Fair Housing Complaint

- Rules should be written so they are applicable to all residents and not just specific groups of residents
- Use general terms such as “Residents or guests” – keep the rules unbiased, fair and applicable to all residents
- Enforce rules uniformly
- Maintain detailed records regarding rule violations and actions taken

Race Discrimination

Subtle differences in treatment based on race and national origin are often undetectable to consumers. Fair housing testing can document when white prospective homeseekers are treated more favorably than minority prospective homeseekers:

- Different terms and conditions (deposits, application process, fees, rent)
- Availability of housing (unit no longer available, steering)
- Level of service (discouraging statements, non responsive)

National Origin and Immigration Status

Immigration status does not affect fair housing rights

Housing discrimination is illegal regardless of the victim's immigration status.

HUD does not ask about immigration status when people file fair housing complaints.

· Best Practices to Avoid a Fair Housing Complaint

Landlords are allowed to request immigration documentation and conduct inquiries to determine whether a potential renter meets the criteria for rental, so long as the same procedure is applied to ALL potential renters



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 Related Differences in Treatment

- Refusal to rent/sell to persons with disabilities
- Different terms and conditions
- Steering
- Harassment
- Asking applicants or tenants if they have a disability or about the nature and/or extent of their disability
- Disclosure of tenant's disability to another resident.

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. Example accommodations include:

- Assistance animal with no fees, lease application in large print, permitting live-in personal care attendant, transfer to a more accessible unit/community, reserved marked handicapped parking space

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. Example modifications include:

- Widened doorways in unit, grab bars in bathroom or at entrance into unit, removal of below-counter cabinets, installation of wheelchair ramp at entrance to building/unit, installation of fence or awning, replacing door handles with levers, installation of visual and tactile alert devices

WHAT IS REASONABLE?

A request for an accommodation or modification is reasonable if the 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
- Is technologically possible

Assistance Animals for People with Disabilities

A landlord, property manager, condominium board, or any other 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

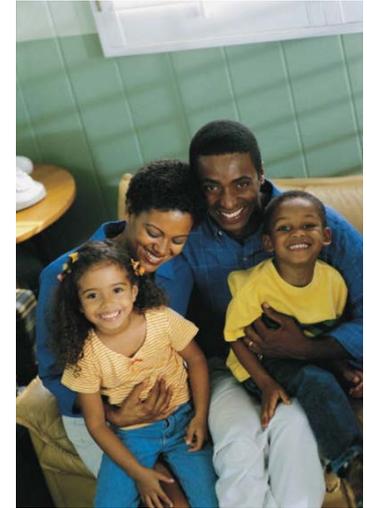


Familial Status

- Children under age of 18 living in the household
- Pregnant women
- Any adult in the process of adopting or securing legal custody of a child under the age of 18

Families with Children

- Denied housing outright – “no kids” “adults only” (only senior housing under the Housing for Older Person Act can legally restrict families with children)
- Per capita charges (per person fees) and occupancy restrictions can have a disparate impact on families with children
- Gender specific occupancy rules are challengeable
- Fair Housing Act prohibits rules and regulations that treat children under 18 differently from adults in the use of housing facilities



Familial Status

- Segregating housing so that families with children are only allowed in certain sections/floors
- Restricting children because of “unsafe conditions”
- Rules that prohibit parents and children or male and female children from sharing a bedroom
- Charging families with children higher rent or security deposit than tenants without children.



New Jersey Protected Classes

- Race
- Creed
- Color
- National Origin
- Sex
- Gender Identity
- Marital Status or Civil Union Status
- Affectional or Sexual Orientation
- Familial Status
- Actual or perceived physical or mental disability
- Ancestry
- Nationality
- Domestic partner status
- Source of lawful income used for mortgage or rental payments

NJ Fair Housing News & Trends

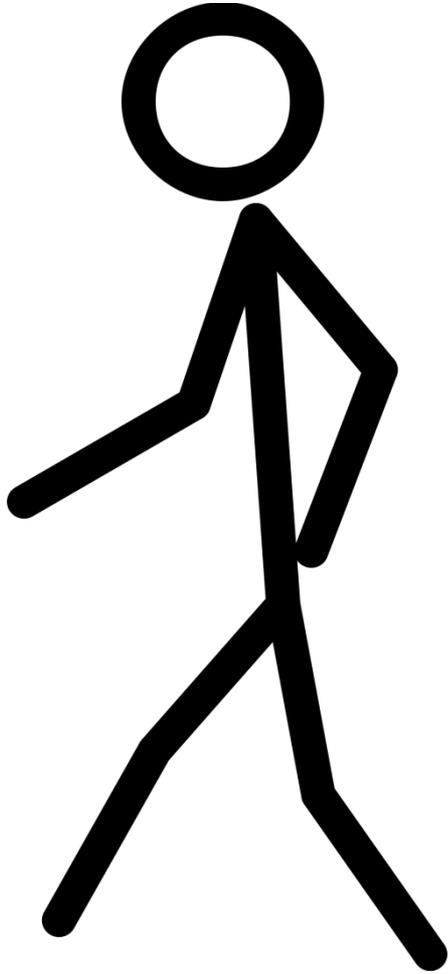
On April 26, 2017, the NJ Division on Civil Rights sent more than 30 “Cease and Desist” letters to New Jersey landlords and property managers advertising on Craigslist.com, saying they “ran afoul of housing discrimination laws” by telling those who receive federal assistance they need not apply

Fair Housing Testing

Conducting a testing investigation will strengthen your complaint to HUD by providing documented evidence of discrimination.

In February 1982 the U.S. Supreme Court confirmed the importance and validity of fair housing testing, unanimously, by reaffirming the role of the tester.

Fair Housing Testing



Control Tester



Protected Class Tester



Who May File a Complaint of Housing Discrimination?

- Aggrieved Person
 - Claims to have been injured by a discriminatory act
 - Believes that such person will be injured by an act about to occur
 - Person includes government entities, corporations, fair housing organizations



Filing a Complaint

- A complainant has one (1) year from the date of the *last* alleged act of discrimination to file an administrative complaint with HUD
- A complainant has two (2) years from the date of the *last* alleged act of discrimination to file a civil lawsuit suit (private right of action) in federal or state court



Educate Your Staff

- Any person involved in a housing transaction is responsible for following and upholding the fair housing laws.
- Train employees to follow the procedures your office establishes and to obey the fair housing laws. Provide all employees with a written non-discrimination policy.
- Make sure employees and the public are aware of the apartment's non-discrimination policy. – Use Equal Housing Opportunity Logo on all rental applications, and brochures and in all advertising.*
- Regular fair housing training for all your staff. – assure that they follow the same process and obey fair housing laws
- Display a fair housing poster in a visible location

Report Discrimination

(732) 246-4772

Consumers, providers and advocates should contact **New Jersey Citizen Action** to report discrimination. We accept and investigate complaints from anonymous sources.

Fair housing complaints can be filed with HUD for up to one year from the incident, or with the New Jersey Division for Civil Rights for up to 180 days from the incident. A lawsuit may be filed in Federal Court up to two years from the incident.

"The civil-rights movement didn't begin in Montgomery and it didn't end in the 1960s. It continues on to this very minute."
—Julian Bond

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