

Fair Housing

Virginia Salesperson PLE Series

MODULE 1

Fair Housing Laws & Enforcement

LEARNING OBJECTIVES:

- Understand which classes of people do and do not receive protection under the Fair Housing Act
- Identify conduct that is illegal under the Fair Housing Act
- Understand the design and construction aspects to the Fair Housing Act
- Identify fair housing limitations on advertising

INTRODUCTION

Since 1866, federal laws have attempted to ensure that all American citizens have an equal and fair opportunity to obtain housing. This section focuses on the following primary federal Fair Housing Laws: the Civil Rights Act of 1866, the Federal Fair Housing Act of 1968, and the Fair Housing Amendments Act of 1988. In essence, these laws prohibit housing related discrimination based on race, color, religion, sex (including gender, gender identity and sexual orientation), handicap, familial status, and nationality. The Department of Housing

and Urban Development (HUD) administers federal fair housing laws, and both HUD and the Department of Justice enforce federal fair housing laws. Virginia's Real Estate Board (VREB) is the primary governmental enforcement agency of the Virginia Fair Housing Act.

Like Virginia, most states have independent fair housing laws, patterned somewhat after federal laws. State laws cannot conflict with federal laws by being more lenient, or by authorizing fewer protections. But, state laws may impose stricter requirements, or authorize greater protections than federal law.

For example, the Virginia Fair Housing Law is nearly identical to the federal law, except that it includes "elderliness" "veteran status" and "source of income" as protected classes. Elderliness describes individuals fifty-five (55) or older.

Civil Rights Act of 1866

The Civil Rights Act of 1866 prohibits any form of discrimination based on race that restricts the right to inherit, purchase, lease, sell, hold, and convey real and personal property. The Civil Rights Act of 1866 was incorporated into the 14th Amendment of the U.S.

Constitution. As a federal law, and then a constitutional amendment, only federal courts have jurisdiction to enforce it.

Federal Fair Housing Act of 1968

The Federal Fair Housing Act of 1968, also known as Title VIII of the Civil Rights Act of 1968, bans all preference, limitations, or discrimination based on race, color, religion, sex (including gender, gender identity and sexual orientation), or national origin in connection with the sale or rental of most residential dwellings and

vacant land intended for residential construction. Sex was not included as a protected class until 1974.

Fair Housing Amendments Act of 1988

The 1988 Amendments to the Fair Housing Act increased penalties for violators, established an administrative enforcement mechanism, and expanded protections to persons that are handicapped and for familial status. Fair housing laws are easily analyzed by determining:

- when the Fair Housing Act applies;
- what exemptions apply, if any; and
- what is prohibited.

The Americans with Disabilities Act (ADA)

Signed into law in 1990, the Americans with Disabilities Act (ADA) gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

PROTECTED CLASSES

Race

Among other protected classes, fair housing laws prohibit discrimination based on one's race, such as "Caucasian," "African American," and "Latino."

Color

Among other protected classes, fair housing laws prohibit discrimination based on the color of one's skin.

Religion

Among other protected classes, fair housing laws prohibit discrimination based on one's religion, such as "Islam," "Christianity," and "Buddhist."

National Origin

Among other protected classes, fair housing laws prohibit discrimination based on one's National Origin, such as "Chinese," "German," or "Brazilian".

Sex

Among other protected classes, fair housing laws prohibit discrimination based on one's sex (including gender, gender identity and sexual orientation).

Familial Status

Among other protected classes, fair housing laws prohibit discrimination based on one's familial status. Essentially, this prohibits discrimination against families with children. For the real estate professional, this means that properties or neighborhoods cannot be marketed or sold as "child free" communities unless an exemption applies (we will discuss exemptions for retirement communities below).

Specifically, familial status means one or more individuals who have not attained the age of 18 years who are domiciled with (1) a parent or another person having legal custody, or (2) the designee of such

parent or other person having custody, with the written permission of a parent or other person.

The term also includes any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of 18. Familial status is only applicable if at least one member is under 18 or pregnant, or has applied for custody of a minor. Family includes a single individual, whether male or female.

For Example: Seller A agrees to sell to Buyers B on the condition that they presently have no children and do not plan to have any in the future. That condition violates the familial status protection under the fair housing Act and is unenforceable. This condition is void, but if valid, the rest of the contract would be enforceable. If it turns out that the buyers actually have children they may ignore the condition and enforce the underlying contract.

Handicapped

The Fair Housing Act protects persons with a handicap. The term "handicap" includes those with a disability. The legal definition of a disability requires that a person have a physical or mental impairment that substantially limits one or more major life activities. Courts have interpreted this phrase to include not only outward physical impairments, but also less visible diseases like: HIV/AIDs, cancer, and alcoholism. However, "disability" does not include illegal drug use. Mental impairments are also protected handicaps.

Elderliness

Among other protected classes, the Virginia Fair Housing Act also prohibits discrimination based on one's age--the Federal Act recognizes no such class. Elderliness is defined as an individual who has reached the age of 55 or older.

ADDITIONAL PROTECTED CLASSES

Fair housing laws in Virginia saw significant changes in the 2020 legislative session with bills sponsored in both the House and Senate.

Sexual Orientation

SB868/HB696 adds discrimination based on sexual orientation to the list of protected classes for fair housing, public accommodation, and employment. HB1049 adds discrimination based on sexual orientation to the list of unlawful discriminatory practices in Virginia. Sexual orientation is defined as an individual's emotional, affectational and sexual attraction to another person. Heterosexual, homosexual, bisexual, gay, and lesbian are all terms associated with types of sexual orientation.

Gender Identity

SB868/HB696 adds discrimination based on gender identity to the list of protected classes for fair housing, public accommodation, and employment. HB1049 adds discrimination based on gender identity to the list of unlawful discriminatory practices in Virginia. Gender identity is defined as an individual's internal experience of gender, which may or may not correspond with their sex assigned at birth. Individuals may identify themselves as male, female, non-binary, or no gender at all. Gender identity is different than sexual orientation, in that it relates to how the individual sees themselves, rather than the type of attraction they may or may not have for another individual.

Veteran Status

SB868 adds discrimination based on status as a veteran to the list of protected classes for fair housing, public accommodation, and employment. According to Title 38 of the United States Code, the term “veteran” means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Source of Funds

HB6 adds discrimination on the basis of a person's source of funds to the list of unlawful discriminatory housing practices. The bill defines "source of funds" as any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

The bill creates an exemption for an owner or owner's managing agent, provided that such owner does not own more than four rental dwelling units or more than a 10 percent interest in more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice.

EXEMPTIONS

The Fair Housing Act permits otherwise discriminatory behavior in some very limited circumstances. This is accomplished through recognized exemptions. While racial discrimination is never exempted and some exemptions are not available when there is a real estate

agent involved in the transaction, the Federal Fair Housing Act of 1968 and the 1988 Amendments exempt:

The bill allows an owner or owner's managing agent to deny or limit a person's rental or occupancy of a rental dwelling unit based on the person's source of funds for that unit if such source is not approved within 15 days of the person's submission of the request for tenancy approval.

Private Individual Owners

Private individual owners of single-family housing are exempt from the non-racial protections of the Fair Housing Act, provided they:

- do not own more than three single-family houses at any one time;
- do not sell more than one single family house in any two year period;
- do not employ a real estate agent; and
- do not use discriminatory advertising

Owner Occupants

Owners who occupy their homes but sell or rent rooms or units are exempt from the non-racial aspects of the Fair Housing Act provided their home contains four (4) or fewer units. The owner must actually maintain one of the units as his legal residence. This is intended to exempt small rooming houses, people who take in boarders to make ends meet, and duplexes. Individuals in these situations are usually supplementing their income and not running a business.

Religious Organizations

Religious organizations may restrict dwellings they own to members of the same religion. However, the religious organization must be non-profit and cannot discriminate on race, color, sex, or nationality.

Private Membership Clubs

Private membership clubs that are not open to the public may restrict lodging in their own facilities to members only, provided they are non-profit clubs.

Elderly Housing

Housing for the elderly is exempt from the familial status protection if it falls into either one of the following two categories:

- Housing that requires all of its residents (excluding employees) to be 62 years of age or older; or
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- Housing that requires at least one person per unit to be 55 years of age or older, and 80% of all units are so occupied. In order to qualify for this exemption the housing must also provide services specifically designed to meet the needs of older people (such as common dining halls, bus service, and recreational facilities), and the landlord must rent any units that become available only to those who qualify under this exemption.

Occupancy Restrictions

The Fair Housing Act does not prevent states from reasonably restricting the maximum number of people permitted to occupy a dwelling. For example: you own an apartment house in Peaceful Retreat, Virginia. The dwelling contains six one bath/two bedroom units. You do not like children and do not want to rent to families

with children. However, you do not qualify for either of the all-elderly housing exemptions, so you may not discriminate against families. But because Peaceful Retreat has an ordinance that limits apartment occupancy to four people per bathroom, it will not be discrimination if you refuse to rent to a family of five.

Threat to Health or Safety

Finally, the Fair Housing Act does not require that a dwelling be made available to an otherwise protected individual whose occupancy of the dwelling would constitute a direct threat to the health or safety of others, or whose occupancy of the dwelling would result in substantial physical damage to the property of others.

PROHIBITED CONDUCT

So far, we have discussed when the Fair Housing Act applies and who is covered by defining some key terms and exemptions. Now we will discuss the type of conduct that the Federal Fair Housing Act prohibits. Unless specifically exempt, the Fair Housing Act and its amendments prohibit owners, lessors, and real estate agents from engaging in the conduct detailed in the following slides.

Steering

Steering occurs when licensees direct protected persons (often minorities) away from certain neighborhoods, or toward certain neighborhoods. If a real estate agent has a customer who makes \$40,000 per year, it is not discrimination when that agent decides not to show the customer a \$300,000 house. However, if she decides not to show a customer a particular house because the customer is a

minority, then the licensee is guilty of steering. Steering is by far the most common reason cited for fair housing lawsuits against licensees.

Blockbusting

Blockbusting is the illegal practice of inducing the sale of property or properties by overtly creating the impression that the neighborhood is about to undergo undesirable change. Examples of blockbusting include: suggesting that minorities are changing the balance of a neighborhood, suggesting that persons of other nationalities are degrading the quality of the school system serving a neighborhood, or to otherwise frighten people into selling their house for a prohibited reason.

Redlining

Redlining is the unfair denial of a mortgage loan or insurance policy, based on where the property is located rather than the economic qualifications of the person seeking the loan or policy. Redlining not only violates fair housing laws but also violates Federal Housing Finance Agency (FHFA) regulations. Lenders may not attempt to limit their risk by setting loan limits on particular geographic areas.

For Example: It would be illegal for a lender to deny a loan due to the fact that the subject property was located in a deteriorating neighborhood. Instead, the decision of whether or not to grant the loan must be based on the economic qualifications of the applicant and the appraised value of the property.

Refusal to sell, rent, finance, or insure

Refusing to sell, to rent, to finance, or to insure a person merely because of their race, color, religion, sex (including gender, gender identity and sexual orientation), familial status, national origin, or handicap violates the Federal Fair Housing Act. Refusing these basic

services to a member of a protected class is the clearest way to violate the Fair Housing Act.

Refusing to deal or negotiate with any person

Similarly, refusing to even deal or negotiate with someone due to their race, color, religion, sex (including gender, gender identity and sexual orientation), familial status, national origin, or handicap violates the Federal Fair Housing Act.

Discrimination in quoting terms or conditions of sale or rental

It is a violation of the Fair Housing Act to impose terms or conditions of sale designed to discourage a sale to someone based solely on their race, color, religion, sex (including gender, gender identity and sexual orientation), familial status, national origin, or handicap. For example: Increasing the amount required for a down payment in order to discourage a protected class of persons from purchasing property is a violation of the Federal Fair Housing Act.

Misrepresentation of availability

It is a violation of the Fair Housing Act to misrepresent that any dwelling is unavailable for inspection, sale, or rental based solely on one's race, color, religion, sex (including gender, gender identity and sexual orientation), familial status, national origin, or handicap.

Preferential Advertising

Advertising or marketing may violate the Fair Housing Act if it indicates any preference, limitation, or discrimination based on race, color, religion, sex (including gender, gender identity and sexual orientation), familial status, national origin, or handicap. In the past, HUD has previously prohibited the use of certain words such as "white," "black," "Jew," "Protestant," "disadvantaged," and "private."

Even directions to a real estate site, or pictures used to market a property, might be considered discriminatory.

For Example: “one block past the synagogue,” “next door to Martin Luther King High School,” or a picture showing 10 young white adults, all holding cold beers, to advertise an apartment project (this picture communicates that families and minorities may not be welcome).

Denying MLS Membership

Denying membership to multiple listing services (MLS) or other service organizations related to the business of selling or renting a dwelling is a violation of fair housing laws if the denial is based on race, color, religion, sex (including gender, gender identity and sexual orientation), familial status, national origin, or handicap.

PROGRESS CHECK 1.1

1. The Civil Rights Act of 1866 prohibits discrimination based on:
 - A. Religion
 - B. Race
 - C. National origin
 - D. Gender
2. The Virginia Fair Housing Act adds protected classes to the Federal Fair Housing Act. Virginia specifically prohibits discrimination on the basis of:
 - A. Marital status
 - B. Elderliness
 - C. Source of income
 - D. Both B and C

3. Under which fair housing law were handicap and family status added as protected classes?
- A. Federal Fair Housing Act of 1968
 - B. Fair Housing Amendments Act 1988
 - C. Civil Rights Act of 1866
4. If a licensee decides not to show a customer a particular house because the customer is a minority, then the licensee is guilty of _____.
- A. Redlining
 - B. Blockbusting
 - C. Steering
 - D. Nothing

DESIGN & CONSTRUCTION REQUIREMENTS

In 1988, Congress added design and construction requirements to the Fair Housing Law (FHL). These changes dramatically changed the relationship between the FHL and the architectural and building communities. The requirements that Congress added mandated that "new multifamily housing" had to be designed and constructed with certain accessible features. "New" meant anything built after March 13, 1991. "Multifamily housing" meant any project with four or more units and includes condominiums, apartments and single-story townhouses.

The design and construction requirements include the following:

1. units must have an accessible entrance and must be on an accessible route;
2. public and common-use areas must be accessible;
3. the doors within units must be usable doors;
4. there must be an accessible route into and through the unit;
5. light switches, electrical outlets and environmental controls must be accessible;
6. bathrooms must have reinforced walls; and
7. kitchens and bathrooms must be usable.

In buildings without elevators only first floor units need to comply. In buildings with elevators, every unit must comply.

Congress added design and construction requirements to the FHL to provide anyone with a mobility-related disability a better chance of finding housing that works more for them than against them. For example, someone who uses a wheelchair or walker will find it easier to enter and exit rooms that have 32" doors versus doors that are only 28 inches wide.

The Department of Housing and Urban Development (HUD) was charged with developing guidelines that detailed and described how each of the requirements could be satisfied. On March 6, 1991, HUD published guidelines that provided guidance for each of the seven requirements. These guidelines define usable doors, usable kitchens and bathrooms, etc.

In 1997, the Virginia Fair Housing Office (VFHO) began investigating how well architects and builders were complying with the design and

construction mandates. The results of that preliminary investigation indicated a certain degree of non-compliance with the law. Most of the projects that were inspected did not comply with all seven mandates.

The most common problems included not making every door that was intended for user passage wide enough. Every door intended for user passage should be 32” wide, even if they provide access into the same room.

For Example: A hallway door going into a master bedroom and a door going into the master bedroom from an attached bathroom will both need to be 32” wide because both doors are intended for user passage.

Another problem is where bathroom doors swing into the bathroom and encroach into the clear floor space. Bathroom doors should either swing out or leave enough space to allow someone to enter the bathroom, close the door, and use the facilities if the door swings inside. Similar investigations in other states also discovered varying degrees of non-compliance.

The Virginia Fair Housing Board, through the Fair Housing Office, is equally committed to educating architects and builders about what the fair housing law requires in terms of accessibility. Therefore, staff from the Fair Housing Office have met with building officials to help get the word to the architectural and building community. Failing to design and construct new multifamily buildings that are in compliance with the law may have serious consequences. At these meetings, fair housing staff have asked building officials to help spread the word about two critical points.

The first point is, if you're an architect, it can be a fatal misconception to think you're home free once your plans are approved. If you're a builder it can be a fatal misconception to think you're home free once you get a certificate of occupancy. Those are fatal misconceptions because having plans approved or a certificate of occupancy issued only means that the plans for the building meet the building code. It does not necessarily mean that the building's design or construction will withstand Fair Housing scrutiny.

Another misconception involves the belief that making 2% of the total units Type A units satisfies Fair Housing's accessible requirements. Under some circumstances, Virginia's building code requires making 2% of the total units built more accessible than what the Fair Housing Law requires. These more accessible units are referred to as Type A units, but the requirement to make a certain percentage of the total units Type A units is in addition to Fair Housing's requirements.

Even though you may have to make one or two units Type A units, the Fair Housing Law still requires making all ground floor units in non-elevator buildings accessible. In elevator buildings, all units are required to be accessible. The degree of accessibility that Fair Housing requires is less than what's found in Type A units. It approximates the degree of accessibility found in Type B units.

One way to satisfy Fair Housing's accessibility requirements is to follow HUD's guidelines. The guidelines reflect the degree of accessibility that HUD believes is consistent with the degree of accessibility that Congress intended when it passed the Fair Housing Amendments Act in 1988. These guidelines are not requirements, but they do create a safe harbor.

While you may deviate from the guidelines, you should always deviate in favor of providing more accessibility and not less than what's described in the guidelines. If you provide less accessibility and you're sued, you would have to prove that the accessibility you provided was equal to the accessibility that Congress intended to provide. In making that argument, consider that certain design features in the guidelines are based on ANSI 117.1. Therefore, attacking HUD's guidelines would also involve attacking ANSI 117.1. Given all of that makes following the guidelines sensible and cost effective.

ADVERTISING

Among housing providers, it's common knowledge that putting up a "no children" or "adults only" sign in front of an apartment building would be discriminating against families with children. Housing providers also have to be careful not to use ads that say, "perfect house for couple," or "Christian family preferred." As a general rule, ads should not contain words that express a preference based on a protected class.

A limited exception applies to renting out rooms. For example, if you're a woman and you have rooms to rent in your house, your ad for roommates may prefer females and can in fact exclude males. But, your ad may not prefer white females over black females nor may it prefer non-disabled females over disabled females. This limited exception applies only to sex and only where the owner lives in the house and wants to rent rooms to same sex roommates.

Generally, ads should describe the property and not the tenant. If the unit is close to a park the ad can say, "Two bedroom, two bath unit

with lots of closet space, close to a park and public transportation, available immediately.” The ad describes some of the unit’s features and amenities but says nothing about prospective tenants.

In addition, human models used in sales or rental ads and in brochures and other advertising material should reflect the community’s diversity. For example, if a community is 20% Asian, 40% black, and 40% white, ads and brochures should not contain only white models. To do so may invite a housing complaint. Create models, ads and brochures that reflect the increasing diversity of our population.

Finally, the Fair Housing Logo should appear in all advertisements. Using the logo creates a presumption that you're trying to follow the fair housing law. In the investigation of complaints, the Board may consider the implementation of the following fair housing policies and practices as evidence of compliance with the prohibitions against discrimination in advertising under the fair housing law.

Use of equal housing opportunity logotype, statement, or slogan. All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex (including gender, gender identity and sexual orientation), handicap, familial status, elderliness, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement.

In the investigation of complaints, the Board may consider the implementation of the following fair housing policies and practices as

evidence of compliance with the prohibitions against discrimination in advertising under the fair housing law:

Use of human models

Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex (including gender, gender identity and sexual orientation), handicap, familial status, elderliness, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes and, when appropriate, families with children.

Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex (including gender, gender identity and sexual orientation), handicap, familial status, elderliness, or national origin, and is not for the exclusive use of one such group. Human models include any depiction of a human being, paid or unpaid, resident or nonresident.

Coverage of local laws

Where the equal housing opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

Notification of fair housing policy

The following groups should be notified of the firm's fair housing policy:

Employees. All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental, or financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.

Clients. All publishers of advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

Selective Advertising

The selective use of advertising media or content when used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the fair housing law.

For Example: The use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have a discriminatory impact. Similarly, the selective use of human models in advertisements may have a discriminatory impact.

The following are examples of the selective use of advertisements that may be discriminatory:

- **Selective geographic advertisements.** Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of

limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

- **Selective use of equal opportunity slogan or logo.** When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.
- **Selective use of human models when conducting an advertising campaign.** Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs, or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

In addition, human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex (including gender, gender identity and sexual orientation), handicap, familial status, elderliness, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the community, both sexes and, when appropriate,

families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex (including gender, gender identity and sexual orientation), handicap, familial status, elderliness, or national origin, and is not for the exclusive use of one such group. Human models include any depiction of a human being, paid or unpaid, resident or nonresident.

Use of Fair Housing Posters

Except to the extent that regulation 18 VAC 135-50-110.E.2 applies, all persons subject to §36-96.3 of the Virginia Fair Housing Law, Unlawful Discriminatory Housing Practices, must post and maintain an approved fair housing poster as follows:

With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or rental of other dwellings) offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.

With respect to all other dwellings covered by the law: (i) a fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and (ii) a fair housing poster shall be posted and maintained at the dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings or at a conspicuous location instead of at each of the individual dwellings.

With respect to those dwellings to which 18 VAC 135.50-110.E.2 applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction and sale or rental.

- All persons subject to §36-96.4 of the Virginia Fair Housing Law, Discrimination in Residential Real Estate-Related Transactions, shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.
- All persons subject to regulation 2.8, Discrimination in the Provision of Brokerage Services, shall post and maintain a fair housing poster at all their places of business.

This rule does not require posting and maintaining a fair housing poster on: vacant land, or any single-family dwelling, unless such dwelling

- is being offered for sale/rental in conjunction with another property that requires the posting of a fair housing poster, or
- is being offered for sale/rental through a real estate broker, agent or salesman in which the circumstances require the posting of a fair housing poster.

Location of posters

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services.

Availability of Posters

All persons subject to this section may obtain fair housing posters from the Virginia Fair Housing Office.

Publishers' Notice

All publishers must publish a notice at the beginning of the real estate advertising section. The notice should include:

"All real estate advertised herein is subject to the Virginia and federal fair housing laws, which make it illegal to advertise 'any preference, limitation, or discrimination because of race, color, religion, sex (including gender, gender identity and sexual orientation), handicap, familial status, national origin, or elderliness, veteran status, source of income or intention to make any such preference, limitation, or discrimination."

"We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis."

FAIR HOUSING ENFORCEMENT

Federal Fair Housing Laws are administered by the Office of Fair Housing and Equal Opportunity (FHEO) under the direction of HUD. HUD may prosecute violations in its own administrative forum. The Department of Justice may prosecute complaints in federal court. Both HUD and the Department of Justice may also prosecute violations on their own motion, without receiving any formal complaint. Alternatively, individuals may litigate privately in federal court.

The burden of proof is always on the government (the complainant). An aggrieved party must file a complaint within one year with HUD, or within two years in federal district court. Missing these deadlines may extinguish an aggrieved party's right to sue. Jurisdiction for violations of the Civil Rights Act of 1866 lies exclusively in federal court.

Penalties for Federal fair housing violations range from compensatory damages for victims for actual damages suffered as a result of the violation (including pain and suffering), injunctive relief (order to correct violations), attorney fees and costs, and civil penalties. In an administrative hearing, a violator ("respondent") can be assessed a maximum civil penalty of \$23,011 for a first violation of the Fair Housing Act. Those who violated the Fair Housing Act in the previous 5 years could be fined a maximum of \$57,527, and respondents who violated the Act two or more times in the previous 7 years could be fined up to \$115,054.

Virginia's Real Estate Board (VREB) is the primary governmental enforcement agency of Virginia's Fair Housing Law. Like the Department of Justice, the Real Estate Board is committed to enforcing the fair housing law.

PROGRESS CHECK 1.2

1. All advertisements for residential real estate for sale, rent or financing should contain what?
 - A. The fair housing logo
 - B. Any additional fees (interest rate, deposits etc)
 - C. The legal property description
 - D. The exact price
2. The design and construction requirements for buildings include _____ different mandates builders must comply with.
 - A. 3
 - B. 5
 - C. 7
 - D. 10
3. Typically, the requirement to post a fair housing poster does not apply to the sale of:
 - A. Multi-family residential homes
 - B. Residential rental property
 - C. Subdivision home sales
 - D. Vacant land sales
4. If a licensee violates the fair housing act, and is a first time offender, they could face fines of:
 - A. Over \$23,000
 - B. Over \$48,000
 - C. Over \$72,000
 - D. Over \$110,000

MODULE 2

VA Landlord, Tenant, & Ownership Issues

Learning Objectives:

- Understand what actions are necessary to be taken when screening applicants for a real estate lease
- Define and know the purpose of reasonable accommodations and reasonable modifications

DRAFTING TENANT AND COMMUNITY RULES

A good rule to follow when drafting rules or regulations is to draft them so they don't single out children or members of a protected class. Rather than having a sign that says, "Children are prohibited from running in the common areas," say "No running in the common areas." Instead of saying, "Children: keep off the grass," have the sign read, "Keep off the grass." Rules and regulations that apply to "all residents" are less suspect than rules that single out children.

If you need to single out children, consider doing so on the basis of health and safety considerations. For example, if you have a workout room with exercise equipment ask the manufacturer to inform you what the age is for using the equipment without supervision. Then post a sign such as "According to the manufacturer, this equipment

may not be used by anyone under 14 years old, unless accompanied by an adult."

SCREENING APPLICANTS

If you're a housing provider, one way to reduce the probability of having a complaint filed against you is to treat everyone the same. Having written guidelines that you follow with each applicant may help you treat everyone the same. Therefore, whether you're managing hundreds of units for a large company or are an individual who owns and rents a few units, you should establish written guidelines for everything; from how you expect the rent to be paid, to your eviction process, to how you expect tenants to behave while living in your dwelling.

Part of your screening guidelines should include an applicant's ability to timely pay the rent. Therefore, you may ask the applicant to provide employment, income, and credit verification information. How much income and how long of an employment history you require depends on your housing market. You should set standards that allow you to compete for applicants, but setting standards too high may be viewed as trying to keep certain groups of people out of your rentals.

In addition to asking an applicant to verify their income and credit history, you may also ask an applicant to provide character references. Character references may indicate what type of personal history your applicant has. If the applicant has a certain criminal history, you may choose not to rent to them. These may include applicants who are convicted rapists or burglars. In fact, you may choose to exclude any

applicant who has a conviction that could present a safety issue for other residents in your complex.

Conduct Criminal Background Checks

If you are concerned about renting to certain convicted criminals, you may establish a criminal background check as part of your application criteria. In establishing a criminal background check, keep the following in mind: put your policy in writing; get the applicant's permission to conduct the background check; enforce the policy consistently; and if you reject the applicant, tell them why.

Consistently applying a criminal background check policy means that you apply the policy to everyone. You apply it to the young, the old, and to everyone in between. Even if you do not establish a criminal background check, you are not going to accept every applicant. Rejecting applicants for legitimate credit or income or character reasons should not invite a complaint if you follow certain procedures. As noted, you should establish written rental criteria that help an applicant understand how his application will be screened. Then apply your criteria consistently. If you reject an applicant, send them a letter explaining why you rejected them. Finally, keep excellent records.

DEALING WITH PROBLEM TENANTS

So you've approved an application, and the tenant moves in. However, shortly after the tenant moves in, you start getting complaints. The newest tenant is apparently harassing other tenants. You're also getting complaints that they're playing their stereo too loud. What should you do?

When tenants break the rules, you should apply the consequences fairly, consistently, and according to established procedures. What consequences you apply depend on your procedures and on the records you've kept. Some of the records that you should keep include: complaints that tenants file against other tenants; complaints that involve the police; letters that you sent to and received from the tenant about lease violations; as well as other relevant letters and information. Keeping detailed and accurate records will be important if you have to defend why you evicted the tenant. If you don't keep good records, or if you keep poor records, proving that you evicted a tenant for a non-discriminatory reason may be more difficult.

HANDLING MAINTENANCE REQUESTS

How are maintenance and repair requests handled in your complex? Does your staff process repair requests from some tenants more quickly than from others? If so, it could lead to a fair housing complaint. Generally, repairs should be done in the order that they are received (with emergency repairs taking precedence over routine repairs).

Your tenants should understand how you process repair requests and they should understand how long it will take before you get to their request. If an emergency repair takes you or your staff away from a scheduled routine repair, call the affected tenant and explain what happened. Some of the things that you can do to reduce the probability of having a housing complaint filed against you is to be professional, be consistent, communicate with your tenants, and keep excellent records. On the other hand, tenants need to understand that

routine and non-emergency repairs may take at least a few days to repair.

REQUESTS FOR REASONABLE ACCOMMODATION

In 1991, the General Assembly added handicap as an additional protected class to Virginia's fair housing law. Being handicapped includes, but is not limited to: psychological disorders; emotional and mental illnesses; learning disabilities; and recovering drug addicts and alcoholics. If someone is disabled, you cannot refuse to rent to them because of their disability.

Service Animals

If someone is disabled, you cannot refuse to rent to them because of their disability. Just as important, if you are a housing provider, the law also requires that you accommodate a person's disability by changing or modifying a rule, policy, or practice when doing so is necessary to give the disabled person equal opportunity to use and enjoy his or her unit.

Under the fair housing law, a housing provider who has established a no pet policy must allow a disabled resident to keep a service animal as a reasonable accommodation. The housing provider must allow the disabled resident to keep the service animal if three conditions are met:

1. the resident must meet the definition of handicapped, as defined in the fair housing law;
2. the housing provider must know about, or should have known about, the resident's handicap; and

3. the accommodation must be necessary to afford the disabled resident an equal opportunity to use and enjoy the dwelling.

Currently, the only requirement to be classified as a service animal under federal law is that the animal must be individually trained and must work for the benefit of the disabled individual. There is no requirement as to the amount of training that the animal must take nor is there a requirement as to the amount of work that the animal must do for the disabled resident.

The Department of Housing and Urban Development's regulations, implementing the Fair Housing Amendments Act, listed a relevant example in 24 C.F.R. § 100.204(b)(1):

A blind applicant for rental housing wants to live in a dwelling unit with a seeing eye dog. The building has a "no pets" policy. It is a violation of the law for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment without the seeing eye dog because without the seeing eye dog the blind person will not have the opportunity to use and enjoy the dwelling.

Parking Spaces

If someone disabled asks a housing provider to create or designate a parking space for them, generally the law is going to require the housing provider to create or designate the space if three conditions are met:

1. the resident must ask for a designated space;
2. creating or designating the parking space would allow the disabled resident to live in and fully enjoy the premises; and

3. creating or designating the parking space would not create an undue financial or administrative burden for the housing provider.

In processing a parking space request from someone who is disabled, you are entitled to ask for medical evidence that proves the resident has a disability. This does not give a housing provider the right to ask about the nature of the resident's disability. Acceptable proof would be: handicapped vehicle identification plates or tags; or a letter from the resident's doctor, chiropractor, or social worker. Once the resident provides proof, the housing provider has a duty to provide the parking space. If more than one disabled resident asks for a parking space, the housing provider will have a duty to accommodate each request.

The Department of Housing and Urban Development's regulations, implementing the Fair Housing Amendments Act, listed a relevant example in 24 C.F.R. § 100.204(b) (2):

Progress Gardens is a 300 unit apartment complex with 450 parking spaces, which are available to tenants and guests of Progress Gardens on a "first come first served" basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so that he will not have to walk very far to get to his apartment. It is a violation of the law for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy the dwelling. The accommodation is feasible and practical under the circumstances.

Hoarding

In 2013, the American Psychiatric Association (APA) identified hoarding as a disability that falls under protected status. Hoarding is officially characterized as persistent difficulty in discarding or parting with possessions, regardless of the value others may attribute to these possessions. Such items may accumulate to the point that living areas can no longer be used for their intended purpose, causing significant distress to the hoarder and others that are negatively affected by the compulsion. Hoarding can easily escalate into a threat to the health or safety of the tenants.

For example, excessive clutter may be a fire hazard. Accumulation of trash can lead to bug infestations, but an exterminator may not be able to navigate through the unit in order to take care of the problem. If there is a termite infestation, the issue may also be a threat to the structural integrity of the building.

If a tenant is a hoarder, or perceived as such, he may ask for reasonable accommodations in connection with the disability. For example, if the clutter violates a term in the lease, it is usually reasonable to allow extra time for the tenant to bring the unit into compliance. If there is damage to the unit, it is reasonable for the landlord to keep actual expenses from the security deposit upon termination of the lease. However, if the tenant's actions prove to be a threat to the health and safety, and an accommodation will not correct the issue, a landlord may take action to terminate the lease.

EVICTING A DISABLED TENANT

If you're a housing provider and you know or suspect that they have a disability, you may not automatically evict the tenant. Before you evict any tenant with a disability, you must first ask him/her if there is an accommodation that might alleviate or modify the behavior that caused the lease violation.

REASONABLE MODIFICATIONS

The law requires that you allow a tenant to make reasonable modifications to their unit if such modifications will allow the disabled tenant full enjoyment of the premises.

In many circumstances, a housing provider may condition approval of the modification, or have the tenant establish an escrow fund to pay to restore the unit to its original condition when the tenant moves. The housing provider can also ask for assurances that the modification will be done in a professional manner.

Example (1). A tenant with a handicap asks his or her landlord for permission to install grab bars at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab

bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

Example (2). An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

ESTABLISHING OCCUPANCY STANDARDS

Occupancy standards have to do with how many people may live in a unit. In December 1998, the Department of Housing and Urban Development (HUD) published a statement on what it would review when evaluating a housing provider's occupancy standards. The purpose was to create a guideline for determining whether actions under the provider's policies may constitute discriminatory conduct under the Fair Housing Act on the basis of familial status (i.e. on the basis of having children in the family).

Since Virginia follows the occupancy statement that HUD issued in December of 1998, it is relevant to reproduce a portion of it here. The statement reads in part: The Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act... However, the reasonableness of any occupancy policy is rebuttable... Thus in reviewing occupancy cases HUD will consider the size and number of the bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or special circumstances would make an occupancy policy unreasonable.

Size of bedrooms and unit

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a “two people per bedroom” policy. In the first, the complainants applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants want to live in a two-bedroom mobile home. Depending on the other facts, issuance of a discriminatory charge might be warranted in the first situation, but not in the second.

The size of the bedrooms can help in determining whether a "no reasonable cause" is appropriate. For example, if a mobile home is advertised as a “two-bedroom” home, but one bedroom is extremely small, it could be reasonable for the park manager to limit occupancy of the home to two people.

Age of children

The following hypothetical involving two housing providers who refused to permit three people to share a bedroom. In the first situation, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child (and both the bedroom and the apartment are large). In the second situation, the complainants are a family of two adult parents who applied to rent a one-bedroom apartment with their teenage son. Depending on the other facts, issuance of a discriminatory charge might be warranted in the first hypothetical, but not in the second. Depending on the size of the bedroom and the apartment, it may not be reasonable for the parents and teenage son to share a one-bedroom apartment.

Configuration of unit

The following imaginary situations illustrate special circumstances involving unit configurations. Two condominium associations each reject a purchase from a family of two adults and three children, based on a rule limiting sales to buyers who satisfy a “two-people per bedroom policy” occupancy policy. The first association manages a building in which the family of the five sought to purchase a two bedroom unit with a den or study. The second association manages a building in which the family of five sought to purchase a two-bedroom unit with no study or den. Depending on the other facts, a discriminatory charge might be warranted in the first situation, but not in the second.

Other physical limitations of housing

In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing

providers, such as the capacity of septic, sewer or other building systems.

State and local law

If a dwelling is governed by state or local government occupancy requirements, and the housing provider's occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider's occupancy policies are reasonable.

Other relevant factors

Other relevant factors that support a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has:

1. made discriminatory statements;
2. adopted discriminatory rules governing the use of common facilities;
3. taken other steps to discourage families with children from living in its housing; or
4. enforced its occupancy policies only against families with children.

The Building Officials and Code Administrators handbook states that for health and safety reasons you need 70 square feet of bedroom space for one occupant. If you have more than one occupant you need 50 square feet per person. If you have a unit with one-bedroom that measures 10 x 8 or 80 square feet, it would be too small for two people. But, if you have a unit with one-bedroom that measures 10 x 16, it may be big enough for three people.

Housing providers should strive to balance the requirement to implement a reasonable occupancy standard against their right to protect their property from overcrowding. Housing providers should also strive to balance the requirement to implement a reasonable occupancy standard against their right to protect their investment. Under some circumstances, a large unit with three bedrooms may reasonably accommodate seven or eight people without creating an overcrowded situation and without jeopardizing the housing provider's investment. Under other circumstances, a unit with three bedrooms may only reasonably accommodate five people. Each situation and complex has to be evaluated based on its own merit.

PROGRESS CHECK 2

1. When screening applicants for rental of real property, which of the following would not be an acceptable inquiry?
 - A. Character reference
 - B. Employment history
 - C. Credit report
 - D. Religious beliefs
2. Which of the following is not considered a disability under the handicap protected class within the fair housing laws?
 - A. Alcoholics
 - B. Hoarding
 - C. Learning disability
 - D. Illegal/illicit drug use

3. When establishing housing occupancy standards which of the following should be considered?
- A. Size of bedrooms
 - B. Age of children
 - C. Configuration of unit
 - D. All of the above
4. The law will require a housing provider to create or designate a parking space due to disability if all of the following conditions are met, except:
- A. A request by the resident
 - B. Does not cause an undue financial or administrative burden for the landlord
 - C. There are extra parking spaces available
 - D. Allows the resident to live and fully enjoy the premises

MODULE 3

Recent Fair Housing Cases

Learning Objective:

Review the recent Fair Housing cases and understand how these type violations impact parties involved and the real estate field

These cases can be found on the HUD website at:

<https://www.hud.gov/sites/dfiles/HA/documents/22-AF-0181-FH-010-Decision.pdf>

FAIR HOUSING VIOLATION - HANDICAP

RYAN M. and STEPHANIE G. v. LILY D. AND SHAHRAM D.

On September 30, 2022, the United States Department of Housing and Urban Development (“HUD” or “Charging Party”) filed a Charge of Discrimination against Lily and Shahram D. (“Respondents”). The Charge alleges that Respondents violated Sections 804(f)(1) and (f)(2) of the Fair Housing Act by discriminating against Complainants Ryan M. and Stephanie G. (“Complainants”) based on disability.

Specifically, the Charge alleges that Respondents discriminated against the Complainants by refusing to grant their request to keep assistance animals as a reasonable accommodation for her disability and denied her subtenancy in their unit.

Respondents deny that they violated the Act as alleged in the Charge. However, in order to avoid the additional cost and expense and

uncertainty of litigation, the parties agreed to settle the claims within this action by entering into an Initial Decision and Consent Order (“Consent Order”). The entry of this Consent Order is not an admission or finding of any fault or liability on the part of Respondents.

Respondents paid the Complainants by certified check \$9,500 within thirty (30) days of the issuance of the Consent Order by the Administrative Law Judge as full settlement of claims for damages arising out of the allegations presented in the Charge.

FAIR HOUSING VIOLATION - FAMILIAL STATUS

The Secretary, United States Department of Housing and Urban Development, on behalf of Francis C. and Jennifer D. v. Blossom Associates, LLC and Maryanne H.

This matter arose from a complaint of discrimination filed by Francis C. and Jennifer D. (“Complainants”), on behalf of themselves and Ms. D.’s minor children, R.D. and A.D., on November 13, 2020, with the United States Department of Housing and Urban Development (“Department” or “HUD”) pursuant to the Fair Housing Act.

On December 16, 2021, the Department issued a Charge of Discrimination against Blossom Associates, LLC and Maryanne H. (“Respondents”) alleging violations of the fair housing act, which prohibits the refusal to rent or negotiate to rent or otherwise make unavailable or deny a dwelling to any person because of familial status and making discriminatory statements regarding the rental of housing

on the basis of familial status. Respondents deny any violations of the Act and all allegations in the Charge.

Complainants, Respondents, and the Department (“parties”) have agreed to resolve this matter without the need for a hearing before a HUD Administrative Law Judge (“ALJ”). The parties have consented to the entry of this Initial Decision and Consent Order (“Consent Order”) as indicated by their signatures below.

The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed Charge. No party has been coerced or in any way forced to become a party to this Consent Order. The parties acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and their obligations as set forth below.

Within 15 days of the effective date of this Consent Order, Respondents shall pay to Complainants a total of eleven thousand dollars (\$11,000.00) in full settlement of Complainants’ claims for damages arising out of the allegations presented in the Charge. Respondents shall make such payment to Complainants by certified or cashier’s check(s) payable to “Jennifer D.”

Relief in Public Interest:

Respondents, their agents, employees, successors and assigns as well as any other person in active concert or participation with any of them are hereby enjoined from discriminating in the sale or rental of a dwelling on the basis of familial status, as prohibited by the Act.

The Respondents shall include the following statement in all future rental advertisements: “We comply with all federal and state fair housing laws and lead paint laws. Families welcome.”

Within ninety (90) days of the effective date of this Consent Order, Respondent Maryanne H. must attend one of the following online educational programs:

1. Institute of Real Estate Management’s FHS201 Fair Housing and Beyond;
2. National Center for Housing Management’s Fair Housing Essentials;
3. The Fair Housing Institute’s Fair Housing Training for Property Managers, The New Basics of Fair Housing; or
4. Fair Housing in a Flash. Respondent H. is responsible for any and all costs associated with the aforementioned training. Proof of attendance of training must be submitted.

FAMILIAL STATUS - CASE #2

The Secretary, United States Department of Housing and Urban Development on behalf of: LAWRENCE C. and his minor children v. FELDER P. ESTATE OF WARD PROTECTEE, DANIEL F. as Co-Guardian and Conservator of the Felder P. Estate of Ward Protectee, ANDREA W. as Co-Guardian and Conservator of the Felder P. Estate of Ward Protectee, and ERIC F.

On August 30, 2021, the United States Department of Housing and Urban Development (the “Charging Party”) filed a Charge of Discrimination against the Felder P. Estate of Ward Protectee (“Estate”), Daniel F. and Andrea W. as co-guardians and conservators

of Respondent Estate, and Eric F. (collectively, “Respondents”) on behalf of Lawrence C. (“Complainant”) and two of his minor children.

The Charge alleged that:

1. Respondents Eric F. and Estate refused to rent to Complainant because of his familial status;
2. Respondents Eric F. and Estate discriminated in the terms, conditions, or privileges of rental of a dwelling against Complainant because of his familial status; and
3. Respondent Eric F. made discriminatory statements relating to Complainant’s familial status on behalf of Respondent Estate by refusing to rent an apartment to Complainant based on Complainant’s familial status, in violation of the Fair Housing Act.

On January 28, 2022, the Charging Party (HUD) moved for summary judgment, and on February 16, 2022, Respondent Eric F. filed a response to the Motion for Summary Judgment. On March 1, 2022, the Court issued an order granting partial summary judgment in favor of the Charging Party, finding that Respondents Eric F. and Estate had violated sections 804(a) and (c) of the Fair Housing Act, and set the remaining issues for hearing.

On July 11, 2022, a hearing was held via videoconference regarding the remaining issues.

In accordance with the Fair Housing Act, to make a claim under section 804(b), the Charging Party must present evidence that Respondents:

1. discriminated against Complainant

2. because of familial status
3. in the terms, conditions, or privileges of rental, or in the provisions of services or facilities in connection with the rental.

Respondent Eric F. raised the affirmative defense of the “Mrs. Murphy” exemption. Section 803(b) provides for exemption from section 804 claims under specific conditions, namely, that the owner lives in one of the four or fewer units. In this case, owner Respondent Estate is a legal entity, it cannot reside in one of the units within the meaning of the act; (2) even if it could and did reside in one of the units, this Court previously found that the relevant property consists of five units; and (3) Respondents Eric F. and Estate have already been found to have violated 804(c), the "Mrs. Murphy" jurisdictional challenge fails.

Respondent Eric F. directly relayed to Complainant that he could not rent the unit because of his children—“a firm ‘No.’” were the exact words used. This is an outright refusal or denial in violation of § 3604(a), which makes it unlawful to deny a dwelling because of familial status.

The Court found Respondents Eric F. and Estate violated sections 804(a) and (c). Upon finding that a respondent has engaged in a discriminatory housing practice, the Court is authorized to issue an order providing appropriate relief.

The Charging Party alleges Respondent’s discriminatory housing practice caused actual damages in this case. Such damages include lost housing opportunity, out-of-pocket expenses, and emotional distress. The Charging Party seeks \$32,000 to compensate Complainant for out-of-pocket expenses and intangible injuries. Specifically, the

Charging Party contends that Complainant is entitled to \$18,000 for alternative housing costs, and \$14,000 in compensation for intangible injuries. HUD claims a total award of \$32,000 for actual damages is appropriate.

The Charging Party requests a civil penalty of \$21,039, the maximum allowable against a first-time offender, against both Respondent Eric F. and Respondent Estate. Respondents may also be assessed a civil penalty to “vindicate the public interest.” 42 U.S.C. § 3612(g)(3).

The Court is authorized to assess a civil penalty against Respondents in an amount not to exceed: \$21,039, if the respondent has not been adjudged in any prior discriminatory housing practice.

Within sixty (60) days of the date on which the Order is final, Respondents Eric F. and Estate must

1. Jointly and severally pay to Complainant the sum of \$10,200.00, consisting of:
 - a. \$7,200 for Complainant’s alternative housing costs;
 - b. \$3,000 for Complainant’s emotional distress;
2. Within sixty (60) days of the date on which this Order becomes final, Respondent Estate must pay to the Secretary the sum of \$5,000, consisting of a \$5,000 in civil money penalty; and
3. Within sixty (60) days of the date on which this Order becomes final, Respondent Eric F. must pay to the Secretary the sum of \$500, consisting of a \$500 civil money penalty.

FAIR HOUSING VIOLATION - GENDER IDENTITY

The following example is taken from a case which includes a complaint by Allan Finley and Alise Evans ("Complainants") against 21 Palms RV Resort Incorporated and Nathan Dykgraaf.

Background

On June 30, 2022, the United States Department of Housing and Urban Development ("Charging Party" or "HUD") filed a Charge of Discrimination ("Charge") alleging Respondents 21 Palms RV Resort, Inc. and Nathan Dykgraaf (collectively "Respondents") discriminated against Complainants Finley and Evans and her minor child ("Complainants and Other Aggrieved Persons") on the basis of sex (including gender identity) in violation of the Fair Housing Act, as amended (the "Act"), 42 U.S.C. §§ 3601-3619.

The Charge alleges that Respondents discriminated against Complainants in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of sex, in violation of Subsection 804(b) of the Act. 42 U.S.C. 3604(b); 24 C.F.R. §§ 100.50(b)(2), (4), 100.65(a), (b)(4).

In addition, the charge alleges that Respondents violated Subsection 804(c) of the Act when they gave written notice to Complainant Finley and Evans to act and dress like a man indicating a preference, limitation, or discrimination based on sex. 42 U.S.C. 3604 (c); 24 C.F.R. § 100.75(a).

The Charge further alleges that Respondents violated Section 818 of the Act by coercing, intimidating, threatening, or interfering with

Complainant Finley and Evans's exercise or enjoyment of her fair housing rights granted and protected by Section 804 of the Act. 42 U.S.C. § 3617; 24 CFR § 100.400(b), (c)(2).

Complainants Finley and Evans, Respondents 21 Palms RV Resort, Inc. and Nathan Dykgraaf, and the Charging Party have agreed to resolve this matter without the need for a hearing before a HUD Administrative Law Judge. Nothing contained in this Consent Order is deemed an admission of wrongdoing on the part of Respondents. The parties have consented to the entry of this Initial Decision and Consent Order ("Consent Order") as indicated by their signatures below.

General Provisions

1. The parties to this Consent Order are Respondents 21 Palms RV Resort, Inc. and Nathan Dykgraaf, and Complainants, Finley and Evans
2. The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed complaint. No Party has been coerced, intimidated, threatened, or in any way forced to become a Party to this Consent Order. The parties acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and agree to fully comply with their obligations hereunder.
3. Respondents are required to comply with Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

4. The parties agree that, after this Consent Order is executed by all parties, the Charging Party shall file with the Office of Hearing and Appeals the Motion for Entry of an Initial Decision and Consent Order.

5. This Consent Order is binding upon Respondents, their successors, agents, and assigns as it relates to the operation and management of 21 Palms RV Resort, Inc. a/k/a/ "21 Palms RV Resort," a multifamily apartment community located at 6951 Osceola Polk Line Road, Davenport, Florida 33896 ("Subject Property").

6. This Consent Order is binding upon Finley and Evans and their successors, agents and assigns as it relates to Finley and Evans and her minor child's tenancy in Lot ADDRESS REDACTED at the Subject Property.

7. In consideration of the execution of this Consent Order, Finley and Evans hereby forever waive, release, and covenant not to sue HUD or Respondents, their heirs, executors, successors, assigns, agents, employees, or attorneys, with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD OHA No. 22-AF-0181-FH-010, or which could have been filed in any action or suit arising from said subject matter.

8. In consideration of the execution of this Consent Order, Respondents hereby forever waive, release, and covenant not to sue HUD or Complainants and Other Aggrieved Persons, their heirs, executors, successors, assigns, agents, employees, or attorneys, with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, arising out of the subject

matter of HUD OHA No. 22-AF-0181-FH-010, or which could have been filed in any action or suit arising from said subject matter.

9. The term “effective date” means and refers to the date this Consent Order is signed by the HUD ALJ.

10. The parties and their counsel agree that if a Party to this agreement needs an extension of time in order to satisfy a deadline provided herein, such extension must be obtained in writing by mutual agreement of the parties to the Consent Order, at least five (5) business days before the deadline.

11. Time periods referred to in this Consent Order are for “calendar” days unless specifically indicated otherwise.

12. Pursuant to 24 C.F.R. § 180.680, the parties understand that this Consent Order shall be a public document.

13. The signature of the parties to this Consent Order, provided herein on separate pages attached hereto, constitute a waiver of any right to apply for additional attorney’s fees or costs beyond any previously provided for or authorized prior to the execution of this Consent Order pursuant to 24 C.F.R. § 180.705. Each Party is responsible for their own attorney’s fees and costs.

14. Each of the signatories represents and warrants that she or he is duly authorized to execute this Consent Order on behalf of the indicated Party, that no further corporate or other action is necessary to authorize such execution, and that no other entity or person is a necessary Party to this Consent Order.

Specific Relief

15. In order to resolve HUDOHA No. 22-AF-0181-FH-010, Respondents agree to provide to Complainants the amount of \$45,000 to compensate Complainants and Other Aggrieved Persons in this matter for the harm alleged in the Charge. Payment shall be made in two installments as detailed in paragraphs 16 and 17.

16. Within ten (10) calendar days of the effective date of this Consent Order, Respondents shall pay to Complainants, the sum of \$25,000.00. The payment shall be made by certified check payable to Finley and Evans. The certified check shall be sent to the attention of Finley and Evans via overnight mail (or similar method with delivery tracking and confirmation) at the following address:
REDACTED

17. Within one hundred and sixty (160) calendar days of the effective date of this Consent Order, Respondents shall pay to Complainants, the additional sum of \$20,000.00.

Action in the Public Interest

19. Injunctive Relief: Respondents, their agents, employees, successors, member and assigns, and all other persons in active concert or participation with any of them in the ownership, operation, oversight, or management of the Subject Property, are hereby enjoined from the following:

a. Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or

facilities in connection therewith, because of sex. 42 U.S.C. § 3604(b); 24 C.F.R §§ 100.50(b)(2), (4), 100.65(a), (b)(4).

b. Making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on sex or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a).

c. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of her having exercised or enjoyed any right granted or protected by Section 804 of the Act. 42 U.S.C. § 3617; 24 CFR § 100.400(b), (c)(2);
and

d. Retaliating against Complainants or any other person who participated in the investigation of this complaint, as prohibited by the Act, 42 U.S.C. § 3617.

20. Education and Training

a. Respondents 21 Palms RV Resort, Inc. and Nathan Dykgraaf, and their employees and individuals acting under their direction who receive, process, review or make determinations with regard to the rental of dwellings (“covered employee”) shall, within sixty (60) calendar days of the effective date of this Consent Order, attend a minimum of six (6) hours of training pertaining to their obligations under the Fair Housing Act, as amended and applicable state and local housing non-discrimination laws, to include training on transgender and gender non-confirming discrimination.

Respondents must seek approval of the trainer from HUD. All costs of the training shall be borne by Respondents.

b. During the term of this Consent Order, any newly hired covered employee or management agent for Respondents 21 Palms RV Resort, Inc. and Nathan Dykgraaf as of the date of the execution of this Consent Order, must receive at least six (6) hours of training pertaining to their obligations under the Fair Housing Act, as amended, within thirty (30) calendar days of starting employment. Respondents 21 Palms RV Resort, Inc. and Nathan Dykgraaf, shall maintain records of evidence of the completion of the required fair housing training, including but not limited to certifications dated and signed by the new employees and trainer(s), throughout the term of this Consent Order.

Reporting and Recordkeeping

21. Respondents 21 Palms RV Resort, Inc. and Nathan Dykgraaf shall notify HUD in writing of any formal complaint filed against them with a federal agency regarding equal opportunity or discrimination in housing within ten (10) calendar days of receipt of any such complaint. Respondents shall provide a copy of the complaint(s) with the notification to HUD. Respondents shall also promptly provide HUD with all information it may request concerning any such complaint and its actual or attempted resolution.

22. Within ten (10) calendar days after the completion of the Fair Housing Training required in Paragraph 20, Respondents shall submit a certificate of attendance signed by the trainer to HUD.

Dismissal of Charge

24. In consideration of Respondents' payment to Complainants and compliance with the terms and conditions of this Consent Order, and all orders contained herein, the Charging Party agrees to the dismissal, without any admission of liability or wrongdoing, and without a formal determination, of the allegations that Respondents injured Complainant by violating the Act. Therefore, as of the effective date of this Consent Order, the Charge against Respondents is hereby DISMISSED with prejudice. However, nothing in this paragraph should be construed to prevent any of the parties from taking action to enforce this Consent Order.

Compliance

25. During the term of this Consent Order, HUD may review compliance with this Consent Order, subject to and in accordance with HUD regulations. As part of such review, HUD may, upon providing advance notice of said inspection, inspect Respondent 21 Palms RV Resort, Inc. and Nathan Dykgraaf's property, examine witnesses, and copy pertinent records. Respondents 21 Palms RV Resort, Inc. and Nathan Dykgraaf agree to provide their full cooperation in any compliance review undertaken by HUD to ensure compliance with this Consent Order.

26. Upon a breach of any provision of this Consent Order, HUD may refer this matter to the Department of Justice to petition the United States Court of Appeals for the Eleventh Circuit to enforce the Consent Order and for any other appropriate relief in accordance with 42 U.S.C. § 3612(j).

Administration

27. This Consent Order shall remain in effect for a period of three (3) years from its effective date.

28. This Consent Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.450. This Consent Order shall become final upon the expiration of thirty (30) days from the date of its issuance, or affirmance by the Secretary of HUD within that time. 42 U.S.C. § 3612(h); 24 C.F.R. § 180.680(b)(2).

29. This Consent Order does not diminish the ability of any person or class of persons to exercise their rights under the Fair Housing Act, or any other Federal, State, or local civil rights statute or authority with respect to any past, current, ongoing, or future actions. This agreement does not create any private right of action for any person or class of persons not a Party to this Consent Order.

30. This Consent Order does not in any way limit or restrict HUD's authority to investigate any other complaints involving Respondents 21 Palms RV Resort, Inc. and Nathan Dykgraaf' made pursuant to the Act, or any other complaints within HUD's jurisdiction.

31. If applicable laws, regulations, or guidance are changed or clarified in a manner that would affect the provisions of this Consent Order, then the Parties shall confer in good faith to determine any appropriate modifications to this Agreement.

32. This Consent Order (including its Attachments) is the entire agreement between the Parties on the matters raised pursuant to the Act.

33. The original and/or electronic signatures of the parties to this Consent Order constitute a waiver of any right to withdraw their consent during the thirty (30) day Secretarial review period, and a waiver of any right to challenge the validity of the Consent Order at any time.

34. The parties and their counsel agree that in the interest of a prompt conclusion of this matter, the execution of this Consent Order may be accomplished by the parties' and their counsel's signatures on separate pages of this Consent Order, with the individual signature pages to be attached to the body of the Consent Order to constitute one document to be filed with the Office of Hearings and Appeals. Signatures of the parties to this Consent Order may be executed by way of facsimile or electronic transmission.

PROGRESS CHECK 3

1. Respondents Ryan M. and Stephanie G. were ordered to pay the complainant _____ as a penalty for refusing to allow the complainant a service animal.
 - A. \$5,000
 - B. \$9,500
 - C. \$13,750
 - D. \$18,000

2. Which member of the Department of Housing and Urban Development (HUD) represents complainants in fair housing violation proceedings ?
- A. The Director
 - B. The Chairman
 - C. The Secretary
 - D. The Vice Chairman
3. In the case involving Eric F., he brought up the _____ defense which states that if the owner lives in one of the 4 or less units on the property, the property is exempt from the Fair Housing Act.
- A. Mr. Dibbs
 - B. Miss Liable
 - C. Mr. Encanto
 - D. Mrs. Murphy
4. Which of the following can be ordered as a penalty for fair housing act violations?
- A. Education and training
 - B. An injunction to cease and desist violation actions
 - C. Monetary damage fines
 - D. All of the above