

HOUSING IOWA CONFERENCE FAIR HOUSING BOOT CAMP 2016

Presented by:
Kathi Williams
Fair Housing Institute, Inc
770-840-7005



Balancing Fair Housing Issues

- Sensitivity of staff to potential fair housing issues through education and experience
- Understanding the applicable legal requirements
- Understanding policies of company/property
- Following proper procedures and documentation of each step
- Risk management determination of whether action is worth the risk of a fair housing challenge



Agenda

- Federal Laws and Regulations
- Language Assistance Plan for LEP
- Victims of Domestic Violence – VAWA
- Your Role in Avoiding Fair Housing Problems
- Testing
- Familial Status
- Criminal History Screening
- Reasonable Accommodations Process and Examples
- Second Hand Smoke Complaints
- Reasonable Modifications

Non-Discrimination Laws

- Laws:

- **Fair Housing Act**

- 7 Protected Categories:

- Race, Color, National Origin, Religion, Sex, Familial Status, and Disability

- Persons with disabilities have the “extra” rights, meaning they may require reasonable accommodations

- **Iowa** = Creed, Sexual Orientation, Gender Identity

Non Discrimination Laws

- **Section 504** of the Rehabilitation Act = federally funded properties
- **ADA** - Americans with Disabilities Act = leasing offices and office parking
- Violence Against Women Act (**VAWA**) = federally funded and tax credit properties
- **LEP** – Limited English Proficiency – Must Develop Language Assistance Plan
- **HUD's Equal Access Regulations** – Prohibits discrimination against persons on basis of sexual orientation, gender identity or marital status

Language Assistance Plan

- **Title VI of the Civil Rights Act of 1964** protects national origin
- Limited English Proficiency
 - Oral translations for all languages
 - Written translations of “essential documents” if number or percent of LEP persons with that particular language meets safe harbor formula
- Use regs safe harbor =
 - 5% or 1,000 whichever is less property should translate essential documents
 - If 5% is triggered by less than 50 people, can use oral translation of written documents
- All properties are required to prepare a LAP for LEP

LAP Format

1. Introduction
2. Goals of LAP
3. LEP Persons who need Language Assistance
 - Use chart with census data
 - Experience of property with LEP persons
4. Types of Assistance Needed
 - “I Speak Cards”
 - <http://www.lep.gov/ISpeakCards2004.pdf>

Two Types of Translations

5. Competent oral translations

- Who will perform translations, i.e., staff, contractor
- How you ensure translations will be competent

6. Written translation of essential documents

- List documents (beware of “free” internet services)
- Lease – Always use English Lease as primary document
- Application
- Notice to contact the property management office
- Lease Violation Notices
- Lease Termination Notices

LAP Format cont.

7. If translating many documents is a financial burden include this information in LAP and describe how you will adjust process to accommodate cost

- i.e., only translate most documents as needed

8. Staff Training and Coordination

9. Providing Notice to LEP Persons

10. Monitoring and Updating the LAP

- Keep track of contact by LEP persons
- Keep track of changes in target data

11. Print it, make sure someone is aware of that your office has a LAP, train staff, and periodically review performance to ensure LAP is being followed

VAWA 2013 Authorization Act

- Expands VAWA to all subsidized properties and HOME properties
- RD and LIHTC properties also covered
- Includes coverage of sexual assault added to domestic violence, dating violence, and stalking
- Protects women and men and “affiliated individuals” = household members, family members
- RD has published Notice 4747 with Emergency Transfer model
- Requires expanded time to establish eligibility for remaining members of divided households
- Requires o/a to provide extreme confidentiality for VAWA victims

VAWA

- Provide notice of occupancy rights under VAWA and self certification form (Form 50066 with 2017 date)
 - Time application is denied
 - Time of admission
 - Notice of termination or eviction
- Provide notice and certification form in language(s) as required by LEP regs
- Victim identifies VAWA situation
- Management provides resident with 14 days to provide self certification or 3d party verification

Notice of VAWA Rights for Residents

Tenants cannot be denied tenancy based upon a previous incident of violence. Victims have a right to privacy. All information provided by the tenant must be kept confidential. Incidents of threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a “serious or repeated lease violation” by the victim, or “good cause” to terminate the tenancy rights of the victim. The tenant can also request a transfer if they believe that they are threatened with imminent harm from further violence if they remain in the same unit. For household receiving rental assistance, if a household member engages in a criminal act(s) of violence against another household member, VAWA allows for lease bifurcation. This means that the owner/manager may evict or remove the person responsible for the violent act(s) without evicting or removing the victim(s) from the lease agreement. If the victim participates in a housing program and cannot establish eligibility for the housing program, the owner/manager must give a reasonable amount of time for the victim to find new housing or establish eligibility under another covered housing program

VAWA Remedies

1. Lease bifurcation and removal of household member for criminal activity
 - Must comply with State Landlord Tenant Act and Occupancy Handbook when terminating a resident
 - May be easier to terminate lease and offer victim new lease
 - Landlord Tenant law does not permit “lock outs” even for criminal acts
2. Provide victim with time to establish eligibility or find a new home
3. Do not harm victim’s landlord or credit history

VAWA Remedies

- Resident will have to rely upon police to prevent abuser from returning by obtaining restraining order
- Permit victim and other affiliated individual a reasonable time (60 days) to establish eligibility assistance
- And another 30 days to find alternative housing
- Emergency transfer to a different unit or property for a resident who is in imminent danger or if victim of sexual assault on property within 90 days
- HUD is to develop a model emergency transfer plan

VAWA Limitations

- Housing providers must comply with court orders concerning access to personal property and child custody
- Can terminate assistance or evict if resident commits violation not premised on domestic violence, etc. but cannot apply a more demanding standard to a victim
 - Example – drug violation
- If housing provider can demonstrate an actual and imminent threat to other tenants or employees
- Housing provider should notify victims that status will not be granted repeatedly if victim fails to take reasonable actions to protect herself

Your Role by Position in Fair Housing Situations

- **Supervisors** – Uncover mistakes before HUD does
 - Make sure policies and procedures exist to direct employees to properly process and document procedures
 - Audit compliance to uncover mistakes
 - Review use of email, texts and tweets
- **Managers and Administrators**
- Know applicable policies and follow them
- Document your procedures
- Process each request for reasonable accommodation, do not prejudge them
- Document file with all forms, meetings used during incidents, complaints and reasonable accommodation requests

Your Role by Position in Fair Housing Situations

- **Supervisors** – Know HUD requirements
 - Uncover through supervision mistakes before HUD
 - Make sure policies and procedures exist that direct employees to properly process and document procedures
 - Audit compliance to uncover mistakes
 - Review use of email, texts and tweets
- **Managers**
 - Know applicable company policies and follow them
 - Document your procedures
 - Process each request for reasonable accommodation, do not prejudge them
 - Document file with all forms, meetings used during incidents, complaints and reasonable accommodation requests

Maintenance Employees' Role

- You are often the reason residents are happy and satisfied with the property
 - You have a responsibility to respect the confidentiality of residents while balancing your obligations to protect the building
 - You have a duty to report incidents to your supervisor - you should not try to avoid involvement by failing to report unusual or potentially problematic situations
 - You should report any conversations that might indicate a resident's need for a reasonable accommodation or modification
 - Be clear on policy about performing favors or after hours work for residents

Testing – Being Used More Today than Ever

- How does it work?
- How do you know you've been tested?
- What are testers looking for?
 - Availability
 - Difference in process - length of discussion, offer of property tour, offer application, difference of rental rates or application fees
 - Accessibility
 - Animal questions

Families with Children

- Enforcement emphasis and increased cases by HUD and private enforcement agencies
- Rules
 - Avoid curfews for children
 - Can reasonably require supervision but use reasonable ages for each amenity
 - Must not unreasonable restrict use of amenities by children
 - Can enforce rules against a particular family if child violates rules, but do not restrict all children
 - “Bad kid cases” requires documentation and witnesses

Familial Status and Occupancy

- Increasing cases due to disparate impact analysis
- Advocates do not consider Keating memo a “safe harbor
- Consider more than 2 persons per bedroom
 - 2 + 1
 - Do not transfer resident for at least one year after birth or adoption
 - If unit includes “extra” room expand occupancy by 2 people
- Review all state and local ordinances that include occupancy limitations
- If your occupancy policy is different, be prepared to explain why
- Be prepared to support occupancy limitations with analysis of cost to company for increased financial burdens for parking, sewer, water, electrical loads and use of amenities

Criminal History Screening

- HUD Notice 2015-10 prohibits screening for arrests
- April 2016 General Counsel's Guidance
- **Disparate Impact** issues with criminal history screening
- Importance of developing and applying a nuanced criminal history screening policy that can be explained and is not based on emotional stereotypes
- Consider seriousness of crime and length of look back period
- Apply good faith appeals process to examine mitigating circumstances
- If HUD funded, must continue to apply HUD screening requirements
- Importance of having a clearly stated credit and criminal policy that screening company applies accurately

Policy Considerations

- Whether to ban convictions of most heinous offenses
- Offenses of drug manufacture and distribution apply different standard to use and possession
- Include ban or longest look back period for multiple violent felonies
- Long look back period for conviction for violent felonies
Murder, kidnapping, sexual offenses, assault and/or battery, burglary, crimes against children,
- Shorter look back period for conviction of nonviolent felonies, multiple felonies
- Violent misdemeanors
- Other crimes you may want to include
- Time since exit from incarceration – can screening company obtain data?

Reasonable Accommodations Steps

1. Resident makes request
2. Staff “hears” request
3. Resident fills out form
4. Verification only if necessary



Verification

- Verify only if the disability status and/or the connection between the disability and the requested accommodation is not readily apparent (visually obvious)
- If a verification is needed, resident identifies verifier and signs the authorization on a Verification Form
- Staff sends out the verification form
- If not returned, staff follows up with the verifier at least once
- If verifier does not respond notify resident

Reasonable Accommodation Steps

6. If management is unable or unwilling to provide the resident with the accommodation requested, or if management is unclear how the requested accommodation is connected to the resident's disability request **interactive meeting**. Document meeting content.
7. Management notifies the resident of the determination
8. Take necessary steps to achieve the accommodation as agreed
 - Document file when accommodation achieved
9. In some instances it will be necessary to reverify periodically the need
10. Keep reasonable accommodations log

Assist Animals

- 2 types of assist animals may be a reasonable accommodation to a pet policy
- **Service animals**
 - Animals who are trained to provide specific service to a disabled person
- **Emotional Support Animals**
 - Also known as comfort, therapy, companion animals
 - Animals who are not trained and provide a therapeutic benefit to a person with a disability, often a mental disability

HUD's Definition of An Assist Animal

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.

Verification of Need for Assist Animal

- Clarify which member of household needs an assist animal
- If other animals live in the household, clarify why those animals do not meet need of resident with disability
- If request is for multiple animals ask verifier to explain need
- Certification of animal is not necessary and often bogus
- Verification by online company is usually not reliable and therefore does not meet requirement to provide verification
- Is animal needed when resident is in common areas? Obtain verification of need to explain what service or benefit animal provides outside of unit

Assist Animal Policy

- Can require assist animal owners to sign an assist animal agreement that includes meeting county requirements for the care and ownership of an animal
- Can require that the resident pick up after animal
- Can require that the animal is quiet and doesn't disrupt property
- Cannot charge a pet deposit or pet fees
- Cannot apply size or breed limits
- Can enforce rules against an assist animal, but need to make sure documentation is thorough
- Can limit where animal is taken on property unless animal is actively providing a service at that time and place
- Ask about where animal will need to be taken on request form

Neighbors Complain about Second Hand Smoke



Second Hand Smoke Issues

- Differentiate between complaint by resident who just does not like smoke vs. a resident who is disabled and is asking for a reasonable accommodation
- If disability related process as reasonable accommodation
- Do everything you can: replace filter, add door guards, fill in electrical and light boxes in wall, have both residents get air filter, offer transfer, permit resident to terminate lease
- Document efforts

Reasonable Modifications

- Separate and unrelated from accessibility standards
- Structural change to unit or common areas
- Usually does not require verification
- If private market or Section 8 Voucher (resident based) tenant pays = FHA
- If federal subsidy HUD or RD then management pays = Section 504
 - Unless cost would result in an administrative and financial burden
 - Management is responsibility to prove that cost would be a burden
 - Management must provide cost up to point it becomes a financial burden
- Management should describe options for modification as residents are limited in knowing possible modifications
- Requests for bathtub modification – management needs to understand resident's disability related issue for request

HOUSING IOWA CONFERENCE FAIR HOUSING BOOT CAMP 2016

Presented by:
Kathi Williams
Fair Housing Institute, Inc
770-840-7005

