

# **FAIR HOUSING**

All across the United States, it is unlawful to discriminate in the rental and advertising of housing because of familial status (about to have a child or children under 18), handicap (physical or mental disability), religion, sex, national origin/ancestry, race or color. In Maine, it is also unlawful to discriminate because of an individual's sexual preference/orientation or because an individual is a recipient of public assistance.

This section summarizes what responsible Maine property owners need to know to avoid rental housing discrimination. The posted dates indicate the MAOMA newsletter in which each article appeared. You may click on any of the underlined articles for instant access, or scroll the entire page.

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## **The Maine Human Rights Commission**

(From the Summer/Fall 1998 Issue of MAOMA)

The Maine Human Rights Commission is a state agency, established in 1972, to enforce fair housing laws, specifically:

### Federal Laws

- Title VIII, Civil Rights Act, 1968
- Fair Housing Amendments Act, 1988
- HUD Rules and Regulations

### State Law

- Title 5, Maine Human Rights Act

The commission staff includes an executive director (Patricia Ryan), a compliance officer (Fran Davis), four investigators, an attorney, support staff and five commissioners. The latter are unpaid citizens, appointed by the governor, for staggered five-year terms. The Maine Human Rights Commission receives and investigates complaints of unlawful discrimination in employment, housing, education, access to public accommodations, and extension of credit. It attempts to resolve those complaints to the mutual satisfaction of all involved parties. It will pursue a civil action in Superior Court when alternative solutions have failed.

### **Special Agreement**

HUD and the Maine Human Rights Commission have an agreement whereby the Maine Human Rights Commission is the sole investigator of human rights complaints in Maine.



## **The Maine Human Rights Act**

(MAOMA Spring/Summer 2003)

*(Patricia Ryan, Executive Director of the Maine Human Rights Commission, provided this article.)*



Passed in 1971, the Maine Human Rights Act prohibits discrimination in the areas of employment, housing, public accommodations, credit extension, education and offensive names.

**In the area of housing, the Act prohibits discrimination based *on*:**

*race*

*color*

*sex*

*physical disability*

*mental disability*

*religion*

*familial status* (*having a child/children under 18, or about to have a child*),

*national origin*

*source of income* (e.g., receiving income from federal, state or local public assistance. Section 8 is public assistance.)

*ancestry* (French Canadian, etc.)

To learn more about the fair housing provisions of the Maine Human Rights Act, go to:

[www.maine.gov/mhrc/publications/fair\\_housing.html](http://www.maine.gov/mhrc/publications/fair_housing.html)

**In 2005, the Maine Legislature added another protected class. It is now also illegal to discriminate in employment, housing, credit and access to public accommodations based on *sexual preference/orientation*.**

The following actions and decisions violate the law when made because of a person's protected class status:

- Refusing to rent a unit
- Refusing to negotiate for the rental of a unit
- Misrepresenting the availability of a unit
- Misrepresenting the rental rate for a unit
- Evicting or attempting to evict
- Setting different terms and conditions of application or rental
- Setting different terms and conditions of lease or rules
- Segregating (by floor, building, neighborhood)
- Making discriminatory statements (verbally and/or in advertising)
- Refusing to allow tenant to make reasonable modifications for disability
- Any other action that denies or withholds housing

It is also illegal to:

- Retaliate against someone who files a complaint or cooperates with the Maine Human Rights Commission's investigation
- Coerce, intimidate, threaten or interfere with someone in the exercise or enjoyment of any rights granted or protected under the Maine Human Rights Act.

In summary, landlords may not discriminate against or treat people differently based on their protected class status (race, religion, sex, etc.) **But, for people with *physical or mental disabilities*, landlords are required to go a little further to level the playing field.** When *requested* by a person with a disability *and medical documentation verifies the need*, a landlord must make *reasonable* accommodations, such as:

- Modifying housing rules
- Allowing a service animal
- Allowing the person with a disability to modify their unit or to modify a common area.

Two good resources about *reasonable* accommodations are:

- ***What Fair Housing Means for People with Disabilities: A guide for consumers, Advocates and Landlords***, updated June 2006. \$4 per copy plus postage and handling from:

Publications Desk, Bazelon Center  
 1101 15<sup>th</sup> Street NW, Suite 1212  
 Washington, DC 20005-5002  
 Fax: (202) 223-0409  
 E-mail: [pubs@bazelon.org](mailto:pubs@bazelon.org)

Or, to order "**What Fair Housing Means For People With Disabilities**" online, click below:

[www.bazelon.org/issues/housing/publications/index.htm#whatfair](http://www.bazelon.org/issues/housing/publications/index.htm#whatfair)

- ***Frequently Asked Questions About Housing Protection for People with Disabilities and Their Families***

Pine Tree Legal Assistance  
[www.ptla.org/housing.htm](http://www.ptla.org/housing.htm)

For "lawful" and "unlawful" questions relating to housing, click the link below.

Maine Human Rights Commission  
[www.maine.gov/mhrc/publications/housing%20\\_applicant\\_%20inquiry\\_%20guide.html](http://www.maine.gov/mhrc/publications/housing%20_applicant_%20inquiry_%20guide.html)

### **Discrimination Complaints.**

In fiscal year 2002, the Maine Human Rights Commission received **808** new discrimination complaints.

- Employment (84%)
- Housing (4%) (22)

Of the twenty-two housing complaints in 2002:

- about 1/3 were *disability related*.
- about 1/3 were *familial status*.
- About 1/3 were *race, sex, source of income and religion*.

The following table shows housing complaints from July 1, 2002 to February 7, 2003,

### **HOUSING COMPLAINTS 7/1/02 to 2/7/03**

Actions	Familial Status	Disability	Race/Color	Sex	Religion
Refusal to rent	4	3	3		
Discriminatory advertising, statements and notices		1			
Discriminatory terms, conditions, privileges, or services and facilities (can include eviction –usually brought on by co-tenant disputes)	2	7	5	1	1
Failure to make reasonable accommodation		4			
Otherwise deny or make housing available (eviction)		1			1
Coercion, intimidation					1

For discrimination claim statistics over the last ten years, go to:

[www.maine.gov/mhrc/annual\\_report.html](http://www.maine.gov/mhrc/annual_report.html)

### **Duties, Responsibilities And Authority Of The Maine Human Rights Commission**

The Maine Human Rights Act gives the Commission the power to investigate discrimination charges and to make decisions on whether or not there are reasonable grounds to believe that unlawful discrimination occurred. The Commission can require that documents and/or individuals be produced to assist it in its investigation of charges, and if the involved parties do not provide the requested information, the Commission has **subpoena** power to require the production of documents or witnesses.

If the Commission finds **reasonable grounds** to believe that unlawful discrimination has occurred, it attempts to **conciliate** the case. If conciliation fails, the Maine Human Rights Act authorizes the Commission to file a **lawsuit** in Superior Court on behalf of the complainant.

If the Commission finds **no reasonable grounds** to believe that unlawful discrimination has occurred, it will **dismiss** the case. Any individual, regardless of the Commission's decision, has the right to file a lawsuit in Superior Court, alleging a violation of the Maine Human Rights Act.

The Commission has an **emergency procedure** that it will use when the investigator persuades the Executive Director of the Commission that serious and irreparable harm will result if there is a delay. By statute, the emergency procedures can be triggered if the housing may be sold or rented to another during the proceedings, or an unlawful eviction is about to occur.

## **Filing A Complaint**

The Maine Human Rights Commission takes complaints from persons who believe they have been illegally discriminated against. The illegal discrimination must have occurred with **six months** of the filing of the complaint. Information about filing a complaint may be obtained in person, by phone or at the Commission's Web site, [www.maine.gov/mhrc/index.shtml](http://www.maine.gov/mhrc/index.shtml).

The parties may arrive at a confidential **settlement**, either through mediation or conciliation. If the Commission has not filed a legal action, or entered into a conciliation agreement within 6 months from when the complaint was filed, the complainant can obtain a **right to sue** letter from the Commission. This means that the Commission will stop further work on the case, and the person may go to court; and unlike a person who has skipped the Commission process, **the aggrieved person with a right to sue letter has the right to recover civil penal damages, costs, and attorneys' fees.**

## **Investigation**

The complaint is assigned to an investigator (housing investigator) who notifies the housing provider of the complaint. The Commission adopted *Housing Procedural Rules* in 1999, which differ somewhat from the procedural rules used in employment cases. The biggest difference in the two is with the time frames for receipt of information from the Respondent, and conducting the investigation.

The investigator fully investigates the complaint.

- Contacts both parties to get more information about the complaint
- Prepares a list of documents for the housing provider to submit in 14 days
- Shares the information received
- Usually sets up a fact finding conference, or interviews in person or by phone
- Prepares a report, and makes a recommendation to the Commission
- Sends copy of report to each party, who may prepare a written response to the report
  - 17 days to comment
  - Comments are restricted to errors, omission of fact, or issues of law.
- Commission considers case at public meeting
  - Oral presentation allowed if written submission received in time allowed

## **Remedies For Unlawful Discrimination**

The following remedies are available from a Court if unlawful housing discrimination is found:

- **Injunctive relief.** If you are found guilty of discrimination, a court could ask you to cease and desist from discriminatory practices. This is called and injunction.
- **Actual damages.** The complainant could also get actual damages. (This covers out-of-pocket expenses. It is anything extra that it cost them. For example, if the apartment rent was \$975/month and they had to pay \$1,250 somewhere else, for the lease term being offered (usually one year) you'd have to pay the difference in rent, if they won.
- **Civil penal damages.** The complainant could also get civil penal damages. This is mostly for deterrence and could be as much as \$10,000 for the first violation of the Human Rights Act. The court will take into consideration just how mean you were and whether or not you really knew that you were discriminating under the law. So, the penalty for civil penal damages could be from nothing up to \$10,000.
- **Attorney's fees and costs.**

The Act specifically states:

- "Where any person who has been the subject to alleged unlawful housing discrimination has not acquired substitute housing, **temporary injunctions** against the sale or rental to others of the housing accommodation as to which the violation allegedly occurred and against the sale or rental of other housing accommodations controlled by the alleged violator, **shall be liberally granted** in the interests of furthering the purposes of this Act, when it appears probable that the plaintiff will succeed upon final disposition of the case."
- Remedies may include, but are not limited to:
  - An order to cease and desist from the unlawful practices;
  - An order to rent or sell a specified housing accommodation, or one substantially identical to that accommodation if controlled by the respondent, to a victim of unlawful housing discrimination;
  - An order requiring the disclosure of the locations and descriptions for all housing accommodations that the violator has the right to sell, rent, lease or manage; and forbidding the sale, rental or lease of those housing accommodations until the violator has given security to assure compliance with any order entered against the violator and with all provisions of the Act. An order may continue the court's jurisdiction until the violator has demonstrated compliance, and may defer decision on some or all relief until after a probationary period and a further hearing on the violator's conduct during that period.

### **Exemptions**

Most of the provisions of the Maine Human Rights Act do not apply to the following:

- One unit of a two-unit house, occupied by the owner, rented without professional assistance and without discriminatory advertisements. **A landlord may not make unlawful discriminatory statements, verbal or printed, when advertising or discussing any property.** For example, when renting an owner-occupied duplex, a landlord/owner may legally refuse to rent to children, but may not advertise or otherwise state that they do not want children.
- Four or fewer rooms of a house occupied by the owner, and rented without discriminatory advertisements and statements.
- Non-commercial housing by religious groups
- Qualified housing for older persons. To qualify, every resident must be 62 or over and the complex must be designated for older persons, OR at least one person in 80% of the units must be 55 or over.

## **Illegal Discriminatory Statements**

1. Even if a property is exempt from coverage under the Maine Human Rights Act (owner-occupied duplex, four or fewer rooms) the owner/landlord is still prohibited from making unlawful statements.

**A discriminatory statement alone is a violation of the Maine Human Rights Act, as well as federal fair housing laws.**

2. Courts have held that a discriminatory statement can be distressing and hurtful to the recipient, and that although a owner/landlord is free to discriminate legally if their property is exempt from the law, persons seeking housing have the right to inquire about the availability of housing from the provider without having to endure the *insult* of discriminatory statements.

## **Section 8**

The Maine Human Rights Commission has had only a few cases involving landlords refusing to rent to applicants on Section 8. In these cases, **the Commission found that the landlord's refusal to rent to someone on Section 8 was a violation of the Maine Human Rights Act.**

**The Maine Human Rights Act** prohibits discrimination on the basis of source of income. It protects people who receive public assistance. Section 8 is a form of assistance. A landlord cannot refuse to accept Section 8 vouchers because they don't want to be involved with the program. Even though federal law says that the Section 8 program is voluntary, the requirement in Maine statute not to discriminate on the basis of source of income does not conflict with that provision. Although there have been no court decisions in Maine on this issue thus far, there have been decisions by the courts in Massachusetts, Connecticut and New Jersey on similar facts and positions.

## **Design And Construction Requirements**

Buildings designated for occupancy **after March 1991 and consisting of four or more dwelling units** (all ground floor units, and upper floor units if there is an elevator), must be designed and constructed to have:

- At least one building on an accessible route, unless it is impracticable because of terrain or unusual characteristics of the site
- The public and common use areas readily accessible to and usable by persons with disabilities
- All doors designed to allow passage into and within all premises by persons using wheelchairs
- Include the following features of adaptable design:
  - Accessible route into and through the covered dwelling unit
  - Light switches, electrical outlets, thermostats and other environmental controls in accessible locations
  - Reinforcements in bathroom walls to allow later installation of grab bars around toilet, bathtub, shower stall and shower seat.

- Usable kitchens and bathrooms - such that an individual in a wheelchair can maneuver about the space.

### **For More Information**

*If you have questions relating to human rights in Maine, contact Patricia E. Ryan, Executive Director of the Maine Human Rights Commission. Tel: (207) 624-6062; Fax: (207) 624-6063; TTY: (207) 624-6064. E-mail: [Patricia.Ryan@state.me.us](mailto:Patricia.Ryan@state.me.us). The Maine Human Rights Commission's Web site is: [www.state.me.us/mhrc](http://www.state.me.us/mhrc).*



**Whenever you think that you might be on shaky ground, check with a lawyer or the Maine Human Rights Commission before acting.**



## **FAMILIAL STATUS**

(MAOMA Summer/Fall 1998)

Familial status is defined as one or more children living with a parent or legal custodian. It also covers a person who is pregnant or a person in the process of obtaining legal custody of one or more children).

It is unlawful to refuse to rent, require a larger security deposit, set special conditions, evict, segregate by floors/neighborhoods, threaten/intimidate, or otherwise discriminate because of *familial status*.



## **RELIGION, SEX, NATIONAL ORIGIN/ANCESTRY, RACE OR COLOR, , RECIPIENT OF PUBLIC ASSISTANCE, SEXUAL ORIENTATION, HANDICAP**

	<i>Examples</i>
Religion	Catholic, Jewish, Muslim
Sex	Female, Male
National Origin or Ancestry	Cambodian, Franco-American
Race or Color	Native American, Black
Recipient of Public Assistance	Federal, state or local assistance, housing subsidies (Section 8, BRAP) and medical assistance
Sexual Orientation	Bisexual, heterosexual, homosexual
Handicap	Physical or mental disability

In the rental of housing, it is unlawful to refuse to rent, set special conditions, restrict services, evict, deceive, indicate preferences, make an inquiry, retaliate, or otherwise discriminate because of a person being of one or more of the above categories.



# **HUD POLICY STATEMENT ON OCCUPANCY STANDARDS**

(MAOMA Spring/Summer 2003)

Prior to December 1998, there was no *official HUD occupancy standard* to guide landlords and property managers. Nevertheless, having a reasonable and understandable *occupancy standard* is important because many *familial status* housing discrimination complaints involve an *occupancy standard* established by a housing provider. The housing provider's standards are too-often contested.

HUD has come up with a more specific and detailed *occupancy standard* guideline. P.L. 105-276 provides that the so-called Keating memorandum, named after former HUD General Counsel Frank Keating, will be HUD's (and presumably the Maine Human Rights Commission's) only policy on occupancy standards.

The Keating memorandum provides that a property owner's use of a **two persons per bedroom occupancy is "as a general rule" reasonable for purposes of determining familial status discrimination under the Fair Housing Act. However, it is subject to modification for large or unusually configured apartment homes and other special conditions.**

In reviewing occupancy cases, HUD (in other states) and The Maine Human Rights Commission (which investigates discrimination cases in Maine), will consider the size and number of bedrooms and other special circumstances.

**The following principles and hypothetical examples should assist Maine landlords 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 are a family of five who applied to rent an apartment with two *large* bedrooms and *spacious* living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a *small* two-bedroom mobile home. Depending on the other facts, issuance of a charge *might* be warranted in the first situation (because the bedrooms were large and the living areas spacious), but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two-bedroom" home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home to just two people.

## **Age of children**

The following hypothetical scenario involving two housing providers who refused to permit three people to share a bedroom illustrate this principle. In the first, 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 were large. In the second, the complainants are a family of two

adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a discrimination finding might be warranted in the first hypothetical scenario, but not in the second.

#### **Configuration of unit**

The following imaginary situations illustrate special circumstances involving unit configuration. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a "two people per bedroom" occupancy policy. The first association manages a building in which the family of the five sought to purchase a unit consisting of two bedrooms plus a den or study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a den or study. Depending on the other facts, a discrimination 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 Maine Human Rights Commission, in following HUD guidelines, will consider limiting factors identified by housing providers, such as the capacity of the septic, sewer, or other building systems.

#### **State and local law**

If a dwelling is governed by State or local governmental occupancy requirements, and the housing provider's occupancy policies reflect those requirements, the Maine Human Rights Commission, again following HUD's guidelines, 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 supporting reasonable grounds for discriminatory conduct are based on the conclusion that the occupancy policies are pre-textual (a ploy or red herring). Supporting evidence would be that the housing provider: (1) made discriminatory statements; (2) adopted discriminatory rules governing the use of common facilities; (3) took other steps to discourage families with children from living in its housing; (4) enforced its occupancy policies only against families with children. For example, the fact that a development was previously marketed as an "adult only" development would weigh in favor of issuing a discrimination finding. This is an especially strong factor if there is other evidence suggesting that the occupancy policies are a pretext for excluding families with children.

**An occupancy policy that limits the number of *children* per unit is less likely to be reasonable than one that limits the number of *people* per unit.**

Special circumstances also may be found where the housing provider limits the total number of dwellings he or she is willing to rent to families with children. For example, assume a landlord owns a building of two-bedroom units, in which a policy of four people per unit is reasonable. If the landlord adopts a four person per unit policy, but refuses to rent to a family of two adults and two children because families with children already occupy 20 of his 30 units, a reasonable cause for a discrimination charge would be warranted.

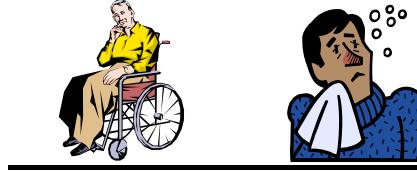
## **SUMMARY**

For an average apartment, the “two people per bedroom” occupancy guideline will usually apply. However, there are exceptions. Landlords and property managers must take into account all the special circumstances discussed above to ensure that their policy for a *specific* apartment and complex is not unreasonably restrictive. Should there be a complaint against a Maine landlord alleging discrimination on the basis of familial status, the Maine Human Rights Commission will carefully examine all the relevant factors including any landlord-imposed occupancy restriction to determine whether or not the landlord, property manager or leasing agent has operated unreasonably to limit or exclude families with children.



## **DEFINITION OF DISABILITY**

(MAOMA Spring/Summer 2003)



Discrimination against the disabled is illegal. Under federal law, a person is considered disabled if he or she "has a *physical or mental* impairment that substantially limits one or more major life activities." "Physical or mental disability" under Maine law, means any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness, and includes the physical or mental condition of a person that constitutes a substantial disability as determined by a physician or, in the case of mental disability, by a psychiatrist or psychologist, as well as any other health or sensory impairment that requires special education, vocational rehabilitation or related services. 5 M.R.S.A., Section 4553(7-A).

It is against the law to refuse to rent, impose unfavorable terms, steer away, limit services or privileges, or to inquire about disabilities because of a handicap of the renter, or a person who is/will be residing in the unit, or any person with the renter/resident.

If an applicant or resident **asks** the property owner for something special to help them cope with their disability, you may have to make what the law calls a "*reasonable*" accommodation. Before granting a reasonable accommodation (such as a change in rules, policies, practices or services, permission to install a entrance ramp, permission for a therapeutic pet or a seeing eye dog), the landlord has the right, with the resident's permission, to verify the need for the accommodation with the resident's physician, psychiatrist or psychologist.

It is against the law to refuse to permit, *at the expense of the renter*, reasonable modifications of living areas, exterior premises or common areas. (However, the landlord can require the handicapped tenant, upon vacating the property, to restore the interior of the premises to the condition that existed before the modification.) Also, the landlord can require an escrow fund to guarantee and/or pay for return modifications when a person leaves. A landlord may not condition permission to make modifications to *public and common use areas* on the renter agreeing to restore such areas to the condition existing before modification.

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In a recent case before the Maine Human Rights Commission, the manager of a large apartment complex stated that he thought that "disability" meant a physical or sight disability only. He was charged with refusing to rent to a lady with a *mental* disability who claimed that she needed a pet for mental health reasons. The woman even presented the manager with a letter from her doctor. It stated that a pet was needed to keep her calm. Even with such evidence, the manager refused to rent to her. He *wrongly* insisted that federal and state law did not cover mental disabilities. He also cited the apartment complex's strict NO PET policy. The Maine Human Rights Commission ruled that there was reasonable cause to believe discrimination had occurred because the manager refused to make a reasonable accommodation for a mental disability.

# **FAIR HOUSING LAWS PROTECT PROSPECTS AND RESIDENTS WITH MENTAL DISABILITIES**

(MAOMA Spring 2004)



Maine has de-institutionalized many mentally ill people. This has led to an increase in the number of such people looking for an apartment. Many landlords/property managers are under the misperception that mentally disabled people cannot fulfill the obligations of residency and may even become violent or dangerous. This is not usually the case. Thus, they *wrongly* believe that they may turn down prospects or evict residents simply because they have a mental disability. In fact, most disabled people abide by lease requirements and have uneventful residencies.

**Maine and federal laws prohibit housing discrimination based on a disability.** As landlords, we cannot discriminate against people with mental disabilities when renting apartments. Also, we can't treat mentally disabled people differently once they become tenants. If a mentally ill person asks for an accommodation in rules, policies, practices, or services, providers of housing are obligated to make a *reasonable* accommodation.

## **Rules To Follow When Dealing With A Mentally Disabled Person**

1. **Even If You Suspect That The Prospect Has A Disability, Never Ask The Prospect Any Questions About It.** Never inquire into the nature or severity of the disability. The applicant might become embarrassed or become upset because of your questions. And, should you turn the applicant down, he/she might claim that you did so because of the disability.
2. **Never Refuse To Rent To A Person Because Of A Mental Disability.** You cannot deny an apartment to a person solely (or even partially) on the ground that he or she has a mental disability. However, you may deny an apartment to a person who would constitute a direct threat to the health or safety of other individuals, or whose tenancy would result in substantial physical damage to the property of others. You are allowed to turn down any applicant who poses such a threat.

If you deny a mentally disabled prospect an apartment because he or she would pose a "direct threat" to others or to your property, you must be able to prove this with *unbiased* and *recent* evidence of violent or destructive behavior. An example of *reliable* proof would be a police report that the prospect recently set fire to a building *and there is no evidence to show that the prospect's behavior has changed*. To make sure that all your information is factual, it is a good ideal to allow the prospect to attempt to explain the circumstances or to correct any errors in your information.

Even if you have reliable evidence that a prospect would be a direct threat to the safety of others or would damage your property, you may still have to accept his or her application if you also have evidence that the behavior has, or can be, corrected. *For example, if the destructive behavior occurred when the applicant stopped taking his medication, but his behavior is now back under control since resuming his medication.*

3. **Always Act On Requests For Reasonable Accommodations.** Most prospects with a mental disability will not request an accommodation. However, if a prospect does ask and if the request is *reasonable*, then you must grant it. A *reasonable* accommodation is defined as one that will not impose an undue financial or administrative burden or require a fundamental change in the nature of the housing services provided.

Make sure that you have an established procedure for handling accommodation requests and always follow it. The same procedure should be used for all prospects. Most property managers ask the prospect or resident to write a letter or to fill out a form when asking for a reasonable accommodation. *After* receiving a request for a reasonable accommodation, you have the right to 1) verify that the individual has a disability; and 2) verify that the accommodation is necessary. Ask the person's doctor, counselor, or caseworker to verify in writing that the person has a need for the requested accommodation. *Examples of a reasonable accommodation might be a request for an oral reminder to pay the rent, or a request for a small pet for emotional support. (Under the federal and state fair housing laws you are allowed to offer an alternative suggestion to a reasonable accommodation – but only after you have considered the resident's request and found it to be unreasonable.)*

4. **Follow Non-Discriminatory And Established Procedures When Confronting A Tenant Regarding Complaints and Lease Violations.** The first thing you should do when there has been a lease violation or a complaint about a tenant who is acting strangely or in an unacceptable manner, is to write a letter to the resident detailing the complaint and requesting that he or she stop the unacceptable behavior. In *all* letters to residents, include the following statement:

*This apartment community (or use the name of your apartment complex) complies with the Fair Housing Act and provides reasonable accommodations to people with disabilities.*

Be sure to include the above statement in *all* correspondence to *all* residents and not just to those who you suspect might be mentally (or otherwise) disabled. If you only send the letter to people whom you think may be mentally (or otherwise) disabled, you run the risk of a discrimination complaint. Also, suggest that the resident come into your office or call you to talk about the situation. This will give the resident ample opportunity to discuss his/her disability (if there is one) and to ask for a reasonable accommodation (if one is needed and/or wanted).

**Remember, never ask about a disability and never volunteer to provide an accommodation if the resident hasn't asked for one. Always follow the same policy and procedure for *all* residents.**

The above steps (1) serve to document the problem and (2) reach out to the resident and provide the resident the opportunity to discuss his/her disability and to request a reasonable accommodation.

# **FAIR HOUSING FOR THE HANDICAPPED**

(MAOMA Winter 2000)

This article discusses some of the do's and don'ts when renting to the *handicapped*. Under federal law, a person is considered disabled or handicapped if he or she "has a physical or mental impairment that substantially limits one or more major life activities." A handicapped person must have a record of having such impairment or be regarded as having such impairment.

Strict adherence by property owners to the following recommendations will help to avoid discrimination lawsuit damages and fines.

1. Do not discuss or inquire about disabilities of the renter, or a person who is/will be residing in the unit, or any person with the renter/resident. Some people do not consider their impairment as a handicap. They have learned to work around it. Others may be self-conscious and embarrassed if the disability is mentioned. If you ask about or discuss a disability and then don't rent to that person, the applicant might conclude that you discriminated based on the disability.
2. Treat the disabled the same way you would treat those who are not disabled.
  - a) Conduct your dealings in a pleasant and courteous manner.
  - b) Do not mention or indicate any awareness or concern about the handicap.
  - c) *Unless it is requested*, do not offer any special assistance or special accommodation.
  - d) Do not steer or try to influence an applicant's decision. Show all the available apartments, not just those that might be suitable for the disabled. Do not suggest that one apartment or complex might be better for the applicant than another. Let the applicant decide.
  - e) At the time of showing, give a printed copy of your resident selection criteria (for example, your financial requirements) and your method of evaluation (for example, a point system) to all applicants.
  - f) Use the same investigation procedures (for example, credit checks) for everyone.
  - g) Use the same method of evaluating rental applications (for example, the point system) for all applicants.
  - h) Never deny prospects because of their mental or physical disability.
  - i) If you reject an applicant, give the applicant a letter stating the non-discriminatory reasons(s) for the rejection.
  - j) Keep good records and copies of all documents. You may need them to prove that you do not discriminate.
3. The Fair Housing Act states that property owners aren't required to lease to or to retain a current resident whose behavior "would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." However, based on recent case law, if you plan to deny occupancy because you believe a person would be a "direct threat" to your other tenants or to your property, make sure that you have unbiased and *recent* proof of violence or destructive behavior. Also, discuss any "red flags" with the prospect and allow prospect to explain or to correct informational errors. If there was a "justifying circumstance", make sure that it is verified, that the timing of it corresponds to the time of the destructive behavior, and that the "justifying circumstance" no longer exists.
4. If requested, do not refuse to make *reasonable* accommodations of rules, policies, practices or services. An accommodation is considered reasonable when a need is confirmed and

when it does not impose an undue financial or administrative burden or require a fundamental change in the nature of the housing services that you provide. *Remember, you must wait for the applicant or resident to ask for an accommodation before you can offer to provide it. Handicapped people have both rights and responsibilities. One of their responsibilities is to ask for special help when they need it.*

Here are some examples of reasonable accommodation:

- a) A tape recording of your rental application and other material, such as leasing selection criteria, community rules, lease and notices –for those who are visually impaired
- b) A guide dog for a sight-impaired person
- c) Forms and notices printed in larger-sized type – to help prospect and residents with significant, but not total, vision loss
- d) Improved lighting and removal of tripping hazards – for sight impaired
- e) Braille or raised lettering on elevators, kitchen equipment, thermostats, or mailboxes
- f) A companion animal for mentally disturbed person (even though you may have a strict no pet policy.)
- g) A special waiver of rules banning animals from common areas (like Laundromats or Club Rooms)
- h) A special waiver of rules restricting an animal's size or weight – required for guide dogs
- i) No pet deposit charge for disabled people who have proven their need for a service animal
- j) A ramp and/or widened doorway for wheelchair accessibility
- k) Flashing smoke alarms, written communications and other special accommodations for the hearing disabled
- l) Public areas accessible to the handicapped
- m) Stopping or restricting the use of certain chemicals if tenant cannot tolerate exposure, or arranging to use the chemical only when the tenant is away for the day.

Whether a request for a modification is reasonable depends on whether or not it is needed for the disabled tenant's full use and enjoyment of his or her dwelling.

5. When you are asked to make a special accommodation, ask the prospect or resident to either write a letter or to fill out a form stating the functional limitation and the requested accommodation. The letter or form should also ask for the name, address and phone number of the health care provider and grant you permission to verify with the resident's doctor or health care provider that: 1) the resident has a functional limitation and is disabled as defined by federal law; and 2) the requested accommodation is not just nice but *necessary*. When verifying the need for accommodation, do not ask about the nature or severity of the handicap. Instead focus on the functional limitation and the extent to which the requested accommodation can help to overcome it. Also ask if there are other alternate accommodations that would work. The resident should be asked to sign a statement authorizing release of the requested information from the health provider.
6. Once you have made your decision on whether or not to grant the accommodation, be sure to write a letter to the resident. If you decide to grant it, a simple statement saying so will suffice. If, on the other hand, you decide to deny the accommodation, you must state why. Perhaps the resident's functional limitation did not qualify under federal law as a disability; perhaps it was not necessary; or perhaps it places an undue financial or administrative burden on you or your community. Describe the facts upon which you based your decision. Again, save all correspondence.

7. You may make an alternative suggestion to an accommodation request, but only after you have investigated the resident's request and have found it to be unreasonable. Ask the resident if the alternative suggestion is acceptable.
8. It is against the law to refuse to permit, *at the expense of the renter*, reasonable modifications of living areas, exterior premises or common areas. (However, the landlord can require the handicapped tenant upon vacating the property, to restore the interior of the *rental apartment* to the condition that existed before the modification.) Also, the landlord may require an escrow fund to guarantee and/or pay for return modifications in the rental unit when a person leaves. A landlord may not condition permission to make modifications to *public and common use areas* on the renter agreeing to restore such areas to the condition existing before modification.
9. When you write a letter to a resident to discuss complaints about them and their lease violations, include the following statement: "*This community complies with the Fair Housing Act and provides reasonable accommodations to people with disabilities.*" In this way, you invite the handicapped resident to ask for an accommodation without actually offering one. It is not always easy to tell if a person has a handicap. To help avoid a discrimination complaint, include the above statement in correspondence to *all* your residents.
10. If you believe that the resident is not capable of helping him/herself, try to get the resident's permission to contact family members or an appropriate agency.
11. Those who discriminate in the rental and advertising of housing can be subject to high financial damages and fines. If you think that a decision you are going to make might put you on shaky ground, consult first with an attorney who is knowledgeable about the human rights laws, and/or with the Maine Human Rights Commission, State House Station 51, Augusta, Maine 04333. Telephone: 624-6050.

Disabled people are part of our society and part of our community. The law and common decency requires that we do not discriminate and that we make *reasonable* accommodations, when requested.



## **DON'T SAY "No Section 8"**

(MAOMA Winter 2004)

The Maine Human Rights Act prohibits discrimination based *on: race, color, sex, physical or mental disability, religion, familial status, national origin, ancestry, and source of income* (e.g., receiving income from federal, state or local public assistance). Section 8 is public assistance.

Every now and then, landlords place an apartment-for-rent ad in the paper, and use the words "No Section 8". They are wrong to do so because, in Maine, those words imply discrimination based on source of income.

Even if a property is exempt from coverage under the Maine Human Rights Act (owner-occupied duplex, four or fewer rooms), the owner/landlord is still prohibited from making unlawful discriminatory statements. Discriminatory statements alone, including "No Section 8", violate the Maine Human Rights Act. Landlords should not make them. Newspapers should not print them.

Courts have held that a discriminatory statement can be distressing and hurtful to the recipient, and that although an owner/landlord is free to discriminate legally if his/her property is exempt from the law, persons seeking housing have the right to inquire about the availability of housing from the provider without having to endure the *insult* of discriminatory statements.

Those who discriminate against protected classes subject themselves to actual damages, injunctive relief and civil penal damages, plus attorney's fees and costs.



## **TESTING FOR DISCRIMINATION**

(MAOMA Spring/Summer 2003)

Owners of rental units must offer *equal* housing opportunities to all prospects. A small percentage of owners may think that chances are good that they can discriminate without being caught. Others may unknowingly discriminate because of confusion about what national, state and local laws require and whom they protect.

Maine apartment owners and managers should be aware that many applicants today are quite knowledgeable about federal and state human rights laws. If they phone an owner in response to an apartment ad and are told any of the following: "No pets *under any circumstances*", "No children", "No Section 8", "No people from the Middle East", or if they hear any other illegal discriminatory remark, they may report these statements to the Maine Human Rights Commission, which under an agreement with HUD, is the sole agency in Maine that investigates these cases. Also, any discriminatory ad in the apartments-for-rent section of the newspaper may be reported to the Maine Human Rights Commission.

In Maine and throughout the nation, "*testers*" are used to test for and investigate fair housing violations and to make those who commit such acts pay substantial fines as a result. If an aggrieved person obtains a *right to sue* letter from the Commission, he/she has a right to recover civil penal damages, costs, and attorneys' fees. Testers might represent different races or ethnic groups, be disabled/non-disabled or they may be with/without children. Based on local laws, discriminatory remarks might even be tape-recorded or videotaped.

### **Testing is a core tool to expose and prove housing discrimination.**

Sometimes owners make up reasons to cover up their discriminatory practices. In turning down a couple from the mid-east, the owner might say that he did so because their credit was no good, even though the party he eventually rented to had similar credit. In turning down a couple with children, the owner might claim it was because of the couple's income was too low, even though he eventually rented to another couple whose income was even lower.

Such *creative* rejections are considered a "pretext" to cover up an illegal reason or motive. Anyone who accuses an owner of illegal discrimination must prove that there was *pretext*. This is usually not difficult to establish. The owner's files can be subpoenaed. If the property owner turned down a couple who had a child, has say forty rental units, and over the last 20 years, never rented to a family with children, there is a strong case of intent to discriminate against children. Likewise, in Maine, if the owner never rented to a party on Section 8, there is a strong case of intent to discriminate against people on government assistance. In addition to scrutinizing the owner's files, an investigative agency may also interview ex-employees, past residents and present residents. What these people say about the owner and his/her past and present actions can carry a lot of weight.

**Those who knowingly and willfully do not comply with fair housing laws because they believe it is difficult to prove *pretext* are wrong. It is relatively easy for testers to expose a ploy to cover up illegal practices.**

## EXAMPLES OF WHAT IS AND IS NOT LEGAL DISCRIMINATION

(MAOMA Spring/Fall 1998)

Everyone understands that discrimination is wrong. The biggest problem for most of us is that we don't know all the laws and we don't always understand what legally is discrimination and what legally is not. Here are some examples of what is not and what is legal discrimination.

- 1) You may you refuse to rent to smokers. (This is not under the jurisdiction of the Maine Human Rights Act or the Federal Fair Housing Act.)
- 2) You can get into Fair Housing trouble if you place an ad like the following: "Beautiful 2 BR *adult* apartment in *exclusive* neighborhood. Near *church* and *private* school. Perfect for *empty nesters*". The words *adult* and *empty nesters* suggest that you will not rent to children. *Church* suggests religious discrimination. *Exclusive* and *private* could be perceived as discriminatory, as well.
- 3) Another innocent mistake is to have a NO PET policy. NO PETS PERIOD. NO EXCEPTIONS! If someone has a disability, such as mental depression, and the doctor prescribes a pet, you cannot reject the applicant on the basis of having a pet. If you do, you are in violation of the Americans With Disabilities Act. You have to make reasonable accommodations. You must allow the pet. However, if you have fewer than five units and the building is owner occupied, you may be exempt.
- 4) If you charge a pet deposit for an assistive animal (such as a Seeing Eye dog), you could get a big fine.
- 5) You could be in trouble if you have an application policy like the following:  
*"Applications are accepted during office hours, 8:30 AM – 5 PM. Applications for apartments through the Voucher/Certificate program are accepted 9:30 AM – 12 noon on Wednesdays and during regular hours on Saturday. Applicants must come to the office to pick up the application".* This policy discriminates against two protected classes: people on subsidized housing and the disabled.

**The fine for a first violation of the Federal Fair Housing Act could be as much as \$10,000.**



## **DISCRIMINATION CAN BE COSTLY**

(MAOMA Summer 1999)

When property owners and managers discriminate, purposely or inadvertently, the consequences can be costly. In New York City, a person wanted to sublet his co-op apartment to an interracial couple with whom he was friendly. The couple's husband was black, his wife white. Both were lawyers. They were more than qualified, financially. The couple's application had to be reviewed by the co-ops board of directors. A board member expressed concern about feeling "uneasy" after meeting the husband. Another feared discrimination lawsuits because the couple might have problems with other building residents. After deliberating, the board decided to deny their application.

The couple sued. During the trial, it was brought out that the board discussed the husband's race; the board did not check any of the couple's references; and the couple was financially qualified. They proved that they had been treated differently from other residents who had successfully sublet apartments.

A jury found that this couple had been the subject of discrimination and rejected the co-op board's claim that the couple could not live peacefully with other residents. The jury awarded \$640,000 in damages. But that's not all. Also involved was a related claim brought by the couple's friend. After attorney fees and damages were included for both claims, the co-op's board of directors was ordered to pay close to \$1,500,000!

To help avoid discrimination charges, your rental criteria (resident qualification standards) should be on paper so that you can refer to them and apply them consistently. It is always a good idea to ask attorney to review your screening criteria to ensure compliance with all state and federal laws. Keep applications, credit reports, eviction records, rejection letters and other rental history information on all applicants. If someone files a claim, this will help you to prove that your screening and selection standards are fair and consistently applied.

Property owners, their employees and agents, should all be familiar with fair housing laws. Owners can be held responsible when a management company or an employee of the owner discriminates. Employees and agents of the owner should be trained on how to interact with people of color, disabled people, families with children, and other protected classes.



## **AVOID USING EXCLUSIONARY WORDS AND PHRASES**

(MAOMA Spring 2002)

Don't be guilty of *unintentional* discrimination. When advertising and discussing your apartments with applicants, don't use exclusionary words and phrases.

### **AVOID USING THESE EXCLUSIONARY WORDS AND PHRASES**

Able-bodied	Foreigners	Mosque	Quiet neighborhood
Active	Gays	Mother-in-law apartment	Rent calculated per person
Adult community	Gentleman's farm	Mother-daughter suite	Retarded
Adult living	Golden agers	Newlyweds	Retired persons
Adults only	Handicapped	Neighborhood, description	Restrictions
African	Healthy only	No Alcoholics	Retirement community
Agile	Hispanic	No Asian	Section 8, etc...
American	Handyman's special	No Blacks	Secure
Asian American	Heterosexual	No Children	Segregated
AFDC approved	His and hers	No Crippled	
Bachelor apartment/pad	Homosexual	No Deaf	Senior discount
Black	Immigrants	No Drinkers	Senior housing
Blind	Independent living	No impaired	Seniors welcome
Board/membership required	Indian	No Soc. Sec.	Shrine
Catholic	Integrated	No Jewish	Single person
Caucasian	Interracial	No White	Single(s) only
Chicano		Not for handicapped	Sleeps
Child	Irish	Number of people preferred	Special rate
Children	Ideal for ...	Older person	Seasonal workers
Children OK	Jewish	One child	Secluded neighborhood
Chinese	Job references required	One person- oriental	SSI
Christian	Landlord description	Parish, close to	Starter home
Churches	Latino	Parish, name of	Straights
Colored	Living along	Physically fit	Synagogues, close to
Couples only	Lesbian	Play area, no	Tenant description
Cripples	Luxurious neighborhood	Polish	Traditional neighborhood
Contemporary lifestyles	Married	Professional home	US citizen
Country club			
Retirees Deaf	Mature individual	Professional neighborhood	Unemployed
Desirable neighborhood/area	Mature couple	Protestant	Vacation rental sleeps #
Elderly	Mature persons	Puerto Rican	White only
Employed, must be	Membership approval	Perfect for ...	Working, must be
Empty-nesters	Membership required	Prefer	Welfare
English speaking	Mentally handicapped	Private community	Young
Ethnic neighborhood	Mentally ill	Professional	Youthful
Exclusive	Mexican	Prestigious	
Executive	Mexican-American	Privileged	
Family neighborhood	Middle aged	Public assistance	
Fat	Mixed community	Quality area	
First-time home buyers	Mormon	Quiet streets	

# SOME LEGAL REASONS FOR TURNING DOWN APPLICANTS

(MAOMA Summer/Fall 1998)

You may discriminate for reasons not prohibited by law:

- Because of factors unrelated to familial status, handicap, religion, sex, national origin/ancestry, race or color, source of income or sexual orientation.
- *Because someone is unable to meet the financial requirements of tenancy or ownership*
- *Because someone's tenancy would cause a direct threat to the health and safety of others*
- *Because someone's tenancy would violate reasonable health and safety standards.*

## Examples:

- 1) Incomplete rental application. Refusal to provide the missing information. Exception: Applicants do not have to state what kind of disability they have. Managers may not ask.
- 2) Too many occupants based on the size of the unit. This restriction must be consistent with applicable local, state and federal standards.
- 3) Previous evictions
- 4) Unsatisfactory rental history (including unexplained gaps in rental history, or unsatisfactory reports from previous landlords relative to lease violations, unusual wear and tear, violence or threats, allowing boarders, insufficient notice when vacating, etc.)
- 5) Criminal record
- 6) Illegal activities, including drug use, drug distribution and sales, gambling, prostitution, etc.
- 7) Inadequate income
- 8) Shaky credit report
- 9) Unable to provide full security deposit and first month's rent
- 10) Accepted previous applicant
- 11) Another applicant rated higher
- 12) Cannot satisfy your lease or rental agreement standards regarding smoking, pets (must be allowed for the disabled), noise, home-based business, etc. (Your occupancy standards must be legal.)
- 13) Applicant's age (18 years and up). Example: You can legally refuse to rent to 19 and 20 year old applicants or to applicants of any other age group 18 years and up, as long as you are consistent.
- 14) Indications of irresponsibility such as no car insurance, bald tires, messy car, unsupervised child, etc.
- 15) Inspection of their present apartment shows that it is not maintained according to reasonable cleanliness and safety standards.
- 16) Poor impression at showing, including unsatisfactory dress, unsuitable conduct, poor personal hygiene, unruly children, etc.
- 17) Illegal resident. No green card or proof of citizenship.
- 18) Applicant is planning to file for bankruptcy.
- 19) Unusual or questionable actions such as offering to pay rent 12 months in advance, or failure to adequately inspect the apartment before signing the lease (might be a drug dealer).
- 20) You may refuse to rent to smokers.
- 21) You do not need to accept less than your advertised rent.
- 22) You can refuse to rent based on the applicant having too many vehicles.
- 23) Someone using alcohol or illegal drugs is not protected by law, except if the person is in a rehabilitation program.

**Whatever standards you use, make sure that they are legal and consistent for all applicants. Whenever you think that you might be on shaky ground, check with the Maine Human Rights Commission (624-6050) before acting.**

## **FEDERAL FAIR HOUSING COURT DECISIONS**

(MAOMA Summer/Fall 1998)

- A Miami apartment community accused of discrimination against African Americans and families with children reached a ***1 million dollar settlement*** with the U.S. Department of Justice (DOJ). This is the largest settlement thus far under the DOJ's fair housing testing program ((U.S. vs. Kendall House, No. 95-2050-CIV – Kehoe (S.D. Fla. Consent order 11-19-96)).
- The managers of a California apartment community with a *No Pets* policy violated the Fair Housing Act by attempting to evict a disabled resident because he had a cat. ((HUD vs. Dultra. No. HUDALJ 09-93-1753-8 (HUD Office of Admin. Law Judges 11-26-96)). The resident's physician said the cat served a therapeutic purpose and therefore, in the eyes of the judge, the apartment managers failed to make a reasonable accommodation in not allowing the animal.
- In New York, residents became abusive when a new family, white and Jewish, moved next door. On several occasions, the residents banged on the walls in the early A.M. and yelled "Jews, move." The new family reported these acts to the owner, but the owner took no action.

The new family then moved out and sued both the residents and the owner for violating federal fair housing law. They claimed harassment discrimination against them because of race, religion and national origin. The residents who were the harassers requested that the court dismiss the case because, they argued, fair housing law applied only to discriminatory acts by owners and managers, not by residents.

A federal judge in New York ruled that the case had to proceed. The residents may have violated the fair housing laws by harassing their neighbors, as they were interfering with the neighbors' right to quiet enjoyment because of their race. The owner may have also violated fair housing law by not stopping the harassment (Ohana vs. Prospect P.I. Realty Corp.).

- In Maine, an assisted housing site, on their "health status form" asked applicants to get from their health care providers a *"brief description of your medical condition, disability and/or handicap."* This housing site was sued by a disabled applicant who argued that it was illegal for the site to request a description of his disability. The Maine court ruled that the form violated the Fair Housing Act. **Managers may ask whether applicants are disabled if it affects eligibility to live at the site, but under no circumstances may managers ask what kind of disability applicants have.** The court ordered the manager to pay a \$1,000 penalty and \$10,372 in attorney's fees to the disabled applicant. (Robards vs. Cotton Mill Associates).



## **LANGUAGE BARRIER CAN LEAD TO DISCRIMINATION CLAIMS**

(MAOMA Summer/Fall 1998)

The Civil Rights Act of 1964 outlawed discrimination on the basis of race, color or national origin. The wording in Title VI does not specify interpreter services as a requirement for complying with the law. But in 1974, in *Lau v. Nichols*, the Supreme Court held that discriminating against people because their first language is not English is, in effect discrimination based on national origin.

The Office of Civil Rights doesn't dictate how translation should be provided. Options include bilingual assistants, outside interpreters, and telephone services such as AT & T Language Line and Pacific Interpreters Inc., which offers immediate, 24-hour translating in more than 100 languages.

**Need a Translator?** People from all over the world are coming to Maine. Many do not speak English. In addition to the above named services, landlords who need interpreters for non-English speaking tenants can contact their regional hospital, their sheriff's department, or Rochelle Yanike of the Catholic Charities of Maine Refugee Resettlement Program (871-7437, X-126). The Resettlement Program has people who will translate documents, such as rental agreements, for a fee.



## **CONSISTENCY AND GOOD RECORDS HELP TO AVOID DISCRIMINATION PROBLEMS**

(MAOMA Summer/Fall 1998)

**Screening Consistency.** Have you ever hesitated to reject an applicant for fear of being accused of discrimination? If you use consistent screening procedures for all applicants, then you should have no fear. It is perfectly OK to turn down an applicant if he/she does not meet your screening standards. Reasons for rejections could be insufficient income, bad credit, bad references, incomplete application, failure to sign the application, adverse court records, smokers, etc.

Whatever the reason(s) you reject for, make sure that it is legal and that you have used the same screening standards and procedures for all. It is a good idea to make a list of your screening standards and procedures so that you can refer to them and be consistent. Uniform screening standards and procedures will help you to avoid a discrimination problem.

**Eviction Consistency.** Do not be afraid to evict families who break housing rules. If residents are destroying your property, making too much noise, have unruly children, are behind in rent, etc., and generally are not following house rules, don't back down. Fair housing laws ban owners from treating families, or other protected groups, differently from the way you treat others. They do not force you to give any protected group special privileges.

A trouble-making family that you are trying to evict might deny any wrongdoing and accuse you of discriminating against them. Protect yourself. Save complaint notices, written warnings and other records of enforcement actions for all your residents. These will show that you enforce your rules in a consistent manner, regardless of whether the residents are, or are not, a protected class.



## **FAIR HOUSING QUIZ**

(MAOMA Summer/Fall 1998)

True or False?

- 1) An aggrieved person may file housing discrimination complaints with the Maine Human Rights Commission and bring a court action in either a state or federal district court.
- 2) Housing providers must make exception to "NO PETS" policies in order to accommodate disabled or sight-impaired tenants who require guide dogs.
- 3) Testing is a form of entrapment and is not a lawful investigative technique under the Fair Housing Act. Therefore, testers and private fair housing groups do not have the legal right to file complaints of housing discrimination.
- 4) Housing that has separate "family only" and "adults only" sections is permissible under the law.
- 5) Housing providers may restrict the placement of families with small children to the ground or first floor units for health and safety reasons.
- 6) A pregnant female and an individual seeking custody are not included within the definition of families with children.
- 7) "Adult only" housing is not allowed under the law unless the housing is specifically designed and occupied by persons 62 or older.
- 8) Housing occupied by "62 and over" persons cannot accept families with children. Thus, minor children are not allowed to reside with grandparents who live in "62 and over" housing.
- 9) Any printed or published media or pictorial constitutes advertisement under the Act.
- 10) The establishment of a rule that requires that children be accompanied by an adult when using the housing complex-owned pool or weight room facilities is not discriminatory.
- 11) Housing providers may lawfully refuse housing to a person based on conduct, including behavioral manifestations of the disabled, that causes the person with the disability to fail to meet the performance standards and behavior to which other tenants are held.
- 12) Landlords may restrict the number of occupants based upon the size of the unit, but this restriction must be consistent with applicable local, state and federal restrictions.
- 13) In rental property, where it is reasonable to do so, a landlord may condition permission to make a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification.
- 14) A landlord may not condition permission to make modifications to public and common use areas on the renter agreeing to restore such areas to the condition existing before modification.

Answers:

- 1) True.
- 2) True.
- 3) False. The U.S. Supreme Court has ruled that testing is legal and is a means to corroborate evidence to prove discrimination. Testing is not a form of entrapment because it does not require landlords to do anything other than conduct normal business.
- 4) False. "Family only" and "adult only" housing sections are in violation of the law.
- 5) False. This action treats families with children differently from others. Therefore, it is a discriminatory act.
- 6) False. Familial status applies to pregnant women and anyone securing legal custody of a child under 18 years of age.
- 7) True.
- 8) True.
- 9) True.

- 10) True. A housing provider may make reasonable rules regulating the conduct of *all* tenants.
- 11) True. A property owner may also refuse housing to a person whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in a substantial physical damage to the property of others.
- 12) True.
- 13) True.
- 14) True.