

Non-discriminatory Rental Practices in Piqua Ohio

Developed for Department of
Development, City of Piqua by the Miami
Valley Fair Housing Center



Introduction

Title VIII of the Civil Rights Act of 1968, as amended, is known as the Fair Housing Act. The Fair Housing Act makes it illegal to discriminate in any type of housing related transaction on the basis of race, gender, religion, national origin, color, familial status, and disability. The state of Ohio protects these classes plus ancestry and military status. Piqua also has its own fair housing code and adds yet more classes: marital status, age, creed and has greater specificity to religion by wording it is "religious belief".

Fair Housing Laws prohibits discrimination in the sale, rental, lease, insurance, and financing of all types of housing except the following in limited circumstances: **Exceptions:**

- "Mrs. Murphy's exemption": If the dwelling has four or less units and the owner lives in one of the units, it is exempt from the Fair Housing Act in some states – it does not apply in Ohio because the State of Ohio Fair Housing Act overrides federal law in this case and disallows the exemption. Where it is allowable, however, housing professionals must remember that the exemption can only be invoked when there is absolutely no advertising or statements made about the availability of units and that the exemption does not include racial discrimination which is governed by the Civil Rights Act of 1866. Race discrimination is never legal and is never exempted anywhere in the USA.
- The second is for qualified senior housing, which is exempt only from the Familial Status provision of the act. To be a qualified senior community you must meet the following standards: Either 100% of the community is 62 or older or 80% of the households have at least one resident 55 or older.
- Remember, no housing is exempt from section 804(c) of the Act, which states that you cannot make, print or publish a discriminatory statement. Any exempt housing that violates 804(c) has lost that exemption and can be held liable under the Act.

It is against the law to do any of the following because of ancestry, military status, race color, national origin, religion, gender, familial status, or disability, and Piqua's additional protected classes of marital status, age, :

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable or deny that housing is available
- Set different terms, conditions or privileges for the sale or rental of housing
- Advertise in a discriminatory way

- Deny or make different terms or conditions for a mortgage, home loan, home insurance, or other real estate related transaction
- Threaten, coerce or intimidate anyone exercising a fair housing right or assisting others in exercising those rights

On the other hand:

- Fair Housing Laws do not guarantee any person a right to housing they cannot afford.
- Property owners may set rents at whatever the market will bear.
- An agent or property owner may refuse to rent to a person if they have reliable information that the person has a history of violent, disruptive or destructive behavior.
- An agent or property owner can adopt and apply uniform, objective and nondiscriminatory rental criteria designed to evaluate a prospective tenant's character, credit worthiness and reliability.
- An agent or property owner is not required to rent to users and dealers of illegal drugs.

Technical Fair Housing Issues

A. Disability Issues

Under the law, a disability is defined as a physical or mental impairment that substantially limits one or more of a person's major life activities. This includes wheelchair users, those who are visually impaired, those limited by emotional problems, mental illness, or retardation, recovering alcoholics, recovering drug addicts, difficulties associated with aging, or those suffering from HIV/AIDS. It does not apply to the illegal use of, or addiction to illegal drugs or to any individual who poses a "direct threat to the health or safety of other individuals or whose tenancy would result in a substantial physical damage to the property of others."

The Act requires housing providers to make reasonable accommodations, which are changes in the "rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." A simple example of a reasonable accommodation would be to waive a "no pet" policy for a visually impaired person who has a guide dog.

The Act also requires housing providers to allow a tenant to make reasonable modifications to their housing unit. Housing modifications are made at the tenant's expense. A housing provider may require a tenant to escrow the cost of returning property to its original condition as well as require that alterations be made by a certified contractor. One example of a modification would be to allow a tenant to build a ramp or widen the doorways for wheelchair access.

When a current or potential tenant raises a disability issue, the housing provider has a duty to attempt to accommodate the request. Typically, accommodations will be a matter of negotiating what will serve both the housing provider and the disabled person best. Since every disabled person's needs and abilities vary substantially, it is impossible

to list all the possible examples of accommodations in this booklet. If a situation arises in which you have a question or concern, do not hesitate to contact us for assistance.

B. Familial Status Issues

Under the Fair Housing Act, it is illegal to discriminate against families with children. Examples of illegal practices include: policies that state "no children" or segregating housing so that children are only allowed in particular areas. It is also illegal to attempt to restrict children because of "unsafe conditions," state that parents and children cannot share a bedroom, or force children of opposite sexes to have separate bedrooms. These types of decisions are the parent's choice to make and cannot be the landlord's imposition.

The U.S. Department of Housing & Urban Development (HUD) states that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. However, reasonableness of any occupancy policy is disputable, implying that each case may be evaluated individually and also be based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. **See Section J – Occupancy for more HUD guidance and for Piqua City Code.**

C. Per-Capita Charges and Fees

The Fair Housing Act requires an examination of "the totality of the circumstances" to determine a discriminatory impact against a protected class. Per capita charges more readily affect families with children since, in the typical case, differences in the number of individuals in a household will be related to the number of children in the family. Thus, in most cases, a per capita charge will have a disparate impact on families with children and therefore violate the Fair Housing Act.

However, if a housing provider can offer a legitimate non-discriminatory justification for the policy, then it may be permissible. This typically means the presentation of actual cost data showing that the additional persons in the household will increase the costs to the housing provider. For instance, if water is included in the rent, then it might be legitimate to say that the costs would be higher for a family of 4 than for a family of 2. If a housing provider is to use this argument, then actual historical cost data must be presented in defense. The additional cost charged per person must be directly related to the per capita charges of the housing provider.

D. Lead-Based Paint Hazards and other "unsafe" living conditions

Children under the age of six are particularly vulnerable to lead poisoning both because they are more likely to ingest lead in housing situations and because ingested lead can adversely affect the development of children's brains, central nervous systems, and other organ systems. Recent studies have shown that simply breathing dust particles

that are in the air because of the opening and closing of lead-based painted windows can be just as hazardous as the "ingestion" of lead paint. The importance of this issue has raised questions concerning lead-based paint and the requirements of the Fair Housing Act to rent to families with children.

So what is a housing provider's responsibility regarding this issue? First, it is illegal under the Fair Housing Act to not rent to families with children. Case law has stated that a landlord cannot discourage a potential tenant or determine for them that a property is safe or unsafe for their children. Examples include: steep stairways, steep balconies, busy streets and the presence of dangerous equipment. Case law has determined that it is up to the parent to determine if a situation is appropriate for their children, not for the landlord to make that determination for them. The presence of lead based paint is a similar situation.

Housing providers must advise families that a unit that has not undergone lead hazard control treatments, (see section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992), but may not decline to allow the family to occupy the unit because the family has children. It would also violate the Fair Housing Act for a housing provider to seek to terminate the tenancy of a family residing in a unit where lead-based paint hazards have not been controlled.

E. FAIR HOUSING ADVERTISING GUIDELINES CHECKLIST

These are some guidelines to use when marketing property. The goal is to make sure that housing advertising is inviting to everyone in the market.

1. Are the ads free of words, phrases, symbols, or visual aids which indicate or convey any preference, limitation, or discrimination based on race, color, religion, sex, mental or physical handicap, national origin, familial status, or marital status?
2. Are the directions used in the ads free of reference to any landmarks or area which could imply an unlawful discriminatory preference?
3. If the ad contains discounts or promotions, have you eliminated unlawful discriminatory preference?
4. Are any logos used in the ads (e.g. complex, Management Company) free of unlawful discriminatory preference? Are Equal Housing logos used properly?
5. Do the ads use models and model graphics in a non-discriminatory way? (For one-time advertising such as a brochure or billboard, look at the brochure or billboard alone; otherwise look at the overall advertising campaign.)
 - (a) Are both sexes adequately represented?

(b) Are children adequately represented?

(c) Are minority populations represented in reasonable proportion to their population in the metropolitan area (not the housing itself or the suburban area)?

(d) Are the model and model graphics clearly definable as representing minority and majority populations and are the minorities being used in equal social settings?

(e) Are models or model graphics of children and minorities being used for all and not just some properties advertised?

6. If the ad is printed, has the Publisher printed the "Publisher's Notice" at the beginning of the real estate section?

7. Is an Equal Housing Opportunity logo, statement or slogan, as appropriate, being used in connection with the advertising? (Are you using the Piqua Mandated statement in your public spaces?)

8. Are displays or announcements being used properly at all sales offices?

9. If appropriate to the metropolitan area, are you placing in non-English language media?

10. Is the distribution of your advertising campaign (including brochures, fliers, billboards, mailings, radio ads, newspaper ads, and publication ads) reaching the protected classes?

F. Develop Standard Procedures

Determine exactly how your rental agents will deal with prospective tenants. The crucial requirement is that all persons who inquire about rentals be treated in the same manner and that the sequence in which they are told about apartments, shown apartments, asked for credit references, etc. be identical for all and that the information given by the rental agent be the same in every case. Put this procedure in writing.

The following is a sample:

1. Tell applicant about all existing vacancies
2. Tell applicant about all units that will be available within the next 30 days
3. Show applicant all apartments in which he or she has expressed an interest
4. Tell applicant what will be done to refurbish units
5. Tell applicant the rent for each unit; whether or not utilities are included; what is required in the way of a security deposit, key deposit, etc.
6. Ask applicant to fill out application form
7. Ask applicant for credit references

8. If there are no vacancies or no units that will be available within 30 days, ask applicant if he or she would like to be placed on a waiting list
9. Give applicant a business card
10. If there is a waiting list, notify applicants in the order in which they applied.

Your own procedures may vary from this example, provided you use them uniformly for all applicants. All decisions on whether to accept or reject applicants must be based on identical criteria. Therefore, it is important to establish written criteria by which you will qualify prospective tenants and be available to all applicants. Applicants who are rejected should be notified within a reasonable period of time and should be told why they have been rejected. The Equal Credit Opportunity Act (ECOA) states that if you deny an applicant for a credit related transaction, they must be informed why.

G. Educate Your Employees

1. Review your standardized rental office procedures with all employees at regular intervals
2. Provide fair housing training for all employees
3. Provide all employees with written non-discrimination policy
4. Ask each employee to sign a memorandum of understanding that states your intention to terminate the employment of any employee who violates the fair housing laws.

H. Make It Known That You Obey Fair Housing Laws

1. Display a fair housing poster in a clearly visible location in the room where rental business occurs.
2. Use an equal opportunity logo or statement on all brochures and pamphlets.
3. Use an equal opportunity statement on rental applications.
4. Avoid advertising that could be construed as an attempt to select or discourage persons on the basis of any of the protected classes.

Maintain a list of available apartments to be shown to rental applicants to ensure that all applicants are given the same information. Include on this list such things as the apartment number, the rent, utilities, security deposit, date of availability, and deposit required.

I. Penalties for Violating Fair Housing Laws and Legal remedies available to complainants:

1. Prospective tenants may file a complaint with HUD. HUD will file a charge if its investigation finds evidence of discrimination. An Administrative Law Judge (ALJ) will hear the charge unless one of the parties elects to have the case heard in Federal Court. The complainant or the U.S. Department of Justice may file a federal lawsuit.

2. The complainant may be awarded actual damages. These may include any out-of-pocket costs the plaintiff spent while obtaining alternative housing and any additional costs, including rent, associated with that housing. Non-economic damages such as humiliation, mental anguish or other psychological injuries may be levied and are in addition to out-of-pocket losses.
3. In cases tried before an ALJ, a civil penalty of up to \$11,000 for a first violation, increasing to \$55,000 for third violations, may be imposed. In cases brought by the Justice Department, civil penalties up to \$100,000 may be imposed.
4. The federal court may award punitive damages. Punitive damages do not reimburse the plaintiff for losses actually suffered; instead, they punish the wrongdoer. Punitive damages are awarded only if the plaintiff shows "willful, wanton, or malicious" conduct, by the defendant, specifically motivated by an intent to exclude the plaintiff for discriminatory reasons.
5. Attorney's fees may be awarded to the prevailing party.
6. Courts may issue injunctions if they feel prompt action is necessary to prevent immediate and irreparable harm.

J. Occupancy standards:

- protect tenants from unsafe and unhealthy conditions
- avoid overcrowding
- protect government subsidies
- protect physical assets

Local laws may define occupancy standards for rental properties in your local areas. This information can be obtained by contacting the local governmental jurisdiction. In the absence of local laws, building owners and managers may wish to develop occupancy standards in order to limit the number of people who can live in rental properties for the reasons noted above. See Keating Memo below. This HUD memo and the following aspects of the dwelling should be considered in developing standards:

- size of the unit
- number of bedrooms and their dimensions
- configuration of the unit, e.g., a bedroom is not considered a bedroom if you have to walk through another sleeping room to access it
- physical limitations of the dwelling, e.g., number of bathrooms
- state and local laws
- capacities of the building, such as septic, sewage, or other building systems
- amenities

Owners and managers may set occupancy standards as long as they do not unreasonably exclude families with children under the age of 18.

HUD Guidelines

A 1991 memo by HUD General Counsel Frank Keating provides guidance for determining whether neutral occupancy limits are reasonable under the Fair Housing Act. The Keating Memo states that, as a general rule, HUD believes that an occupancy policy of “one person per bedroom plus one” (i.e., two persons per bedroom) is reasonable under the Fair Housing Act. Owners and managers may develop and implement reasonable occupancy requirements based on such factors as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. When reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. Following are some examples:

- **configuration of the unit:** Example: In the case of a family of five wishing to rent a unit of two bedrooms plus den, a strict two person per bedroom occupancy standard could be regarded as over-restrictive if the rooms are spacious and the den is a separate room.
- **size of bedrooms and unit:** Example: If a mobile home is advertised as a “two bedroom” home, but one bedroom is extremely small, it could be reasonable for the property manager to limit occupancy to two people.
- **age of children** example: It may be an acceptable standard to allow two adult parents to rent a one-bedroom apartment with their infant child, but not if the child is a teenager.
- other **physical limitations of the housing** example: In setting an occupancy standard, the capacity of septic, sewer, and other building systems can be considered.
- **state and local laws** (each state may be different. In Delaware, for example, four unrelated persons in a unit is the maximum limit)
- If HUD reviews a case, it will interpret the guidelines and consider this information on a case-by-case basis. Occupancy standards that

represent a subterfuge for excluding a substantial number of families with children are a violation of the Fair Housing Act.

Piqua City Codes - PROPERTY MAINTENANCE CODE

(A) (1) Pursuant to the provisions of Ohio Revised Code (R.C.) § 731.231, the 2003 International Property Maintenance Code, promulgated by the International Code Council, which provides standards intended to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of a structure or premises, is hereby adopted and shall be enforced as the city Property Maintenance Code, except for those portions thereof that have been or may hereafter be deleted or amended.

Occupancy:

<http://publiccodes.cyberregs.com/icod/ipmc/2003/index.htm>

404.4.1 Area for sleeping purposes.

Every bedroom occupied by one person shall contain at least 70 square feet (6.5 m²) of floor area, and every bedroom occupied by more than one person shall contain at least 50 square feet (4.6 m²) of floor area for each occupant thereof.

404.4.2 Access from bedrooms.

Bedrooms shall not constitute the only means of access to other bedrooms or habitable spaces and shall not serve as the only means of egress from other habitable spaces.

Exception: Units that contain fewer than two bedrooms.

Fair Housing:

[http://www.amlegal.com/nxt/gateway.dll/Ohio/piqua/cityofpiquaohiocodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:piqua_oh](http://www.amlegal.com/nxt/gateway.dll/Ohio/piqua/cityofpiquaohiocodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:piqua_oh)

CHAPTER 97: FAIR HOUSING STANDARDS

Section

- 97.01 Statement of policy
- 97.02 Definitions –
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- 97.04 Posting of notices
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(Relevant worded sections below are included in this Fair Housing Primer for teaching purposes only. For legal advice, consult an attorney.)

Protected classes:

§ 97.01 Statement of policy

race, color, creed, sex, marital status, religious belief, national origin or handicap, age or familial status

§ 97.02 Definitions –

PERSON. One or more individuals, corporations, partnerships, associations, firms or enterprises, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

REAL ESTATE AGENT. Any real estate broker, real estate salesperson or an agent thereof, or any other person, partnership, association or corporation who, for consideration, sells, purchases, exchanges, rents, negotiates, offers or attempts to negotiate the sale, purchase, exchange or rental of real property or holds himself or herself out as engaged in the business of selling, purchasing, exchanging, renting or otherwise transferring any interest in real property.

§ 97.03 UNLAWFUL HOUSING PRACTICES.

It shall be an unlawful housing practice and a violation of this chapter to do the following:

(A) For any person or real estate agent:

(1) To discriminate against any person or family in the selling, leasing, subleasing, renting, assigning or otherwise transferring of any interest in housing;

(2) To discriminate against any person or family by refusing to negotiate, refusing to transmit a bona fide offer, **making false representations on the availability** of the housing unit for inspection, sale or rental, or withdrawing from the market a housing unit which is for sale, lease sublease or rental;

(3) To include in the terms, conditions or privileges of any sale, lease, sublease, rental assignment or other transfer of any housing, any clause, condition or restriction **discriminating against any person in the use or occupancy of that housing.**

(4) To discriminate in the furnishing of any facilities, repairs, improvements or services or in the terms, conditions, **privileges or tenure of occupancy of any person.**

E(3) To induce or attempt to induce the sale or listing for sale of any housing by **representing** that the presence or anticipated presence of persons of any particular race, color, creed, sex, marital status, religion, national origin, or handicap, age or familial status in the block, neighborhood or area will or may result in:

(a) The lowering of property values;

- (b) A change in the racial, color, religious, nationality or ethnic composition of the block, neighborhood or area in which the property is located;
- (c) An increase in criminal or antisocial behavior in the area;
- (d) A decline in the quality of the schools serving the area.

§ 97.99 PENALTY.

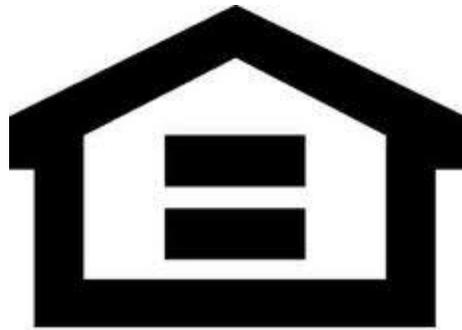
Any violation of this chapter may subject the person to a court action for compensatory damages and court costs. The court may also order other relief as it deems necessary.

('97 Code, § 100.08) (Am. Ord. 6-94, passed 2-7-94)

§ 97.04 POSTING OF NOTICES.

(A) Every real estate agent shall post in a conspicuous location in that portion of the agent's business normally used by the agent for negotiating the terms of a sale or lease of housing, and each person who operates a multi-unit residential building containing more than two units shall post at all times when prospective tenants are being interviewed, in a conspicuous location in that portion of this housing business normally used by him or her for negotiating the rental of a housing unit therein, a notice prepared by the Miami County Fair Hosing¹ Committee, which contains the following language, printed in black on a light-colored background, in not less than 14-point type: [logos a MVFHC addition]

¹ Typographical Error in the published code on the site used for text – should be “Housing” not “Hosing”



**EQUAL HOUSING
OPPORTUNITY**

It is a violation of Title VIII of the Civil Rights Act of 1968, which includes the Fair Housing Amendments Act of 1988, for any real estate agent or for any person owning or managing a multi-unit apartment dwelling to:

(1) Deny housing to any person because of [ancestry, military status], race, color, creed, sex, marital status, religious belief, national origin, handicap, age or familial status;

(2) Discriminate against any person because of that person's race, color, creed, sex, marital status, religious belief, national origin, handicap, age or familial status with respect to the terms, conditions, or privileges of housing accommodation or in the furnishing of facilities or services in connection therewith.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, CONTACT THE MIAMI COUNTY FAIR HOUSING COORDINATOR, THE OHIO CIVIL RIGHTS COMMISSION, OR THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

