

CoC Training: Fair Housing

4.8.24





please mute yourself

Housekeeping

1

Respect the
trainer(s)

2

Respect
attendees

3

Make and
take space

4

Share the mic

5

Acknowledge
power and
privilege

Training Norms & Agreements

About

- **Continuum of Care Trainings:** Monthly trainings for homeless service providers covering information or skills considered essential by HUD or our system of care
- Hosted by H3 the **2nd Monday** of every month from **10am-Noon**
- **Required** for direct service staff (case managers, care coordinators, etc.) and program managers.

Required Trainings

- Some trainings such as **Housing First** are required by our funder, the US Department of Housing and Urban Development (**HUD**) to ensure all programs and staff in our CoC operate under the same principles and practices
- Other trainings are relevant trainings H3 and/or providers has identified as important such as **Housing Focused Case Management**

Required Elements for This Training

HUD

- 24 CFR
5.105(a)(2)

CoC Written Standards

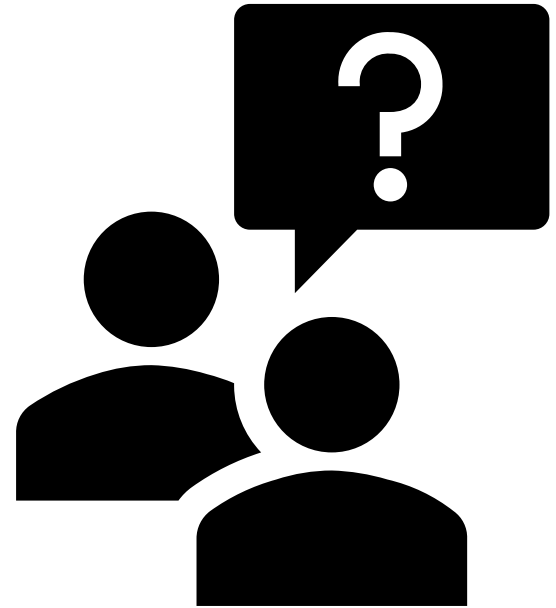
- See p. 18

Monitoring

- Attendance is monitored by H3 staff and discussed during monthly/quarterly provider check-ins with CE Manager and/or CoC Administrator
- **Providers/programs lacking attendance at trainings can be subject to Corrective Action Plans**

Equity questions to consider

- Have you noticed inequities in your own work on this topic?
- Have you contributed to or interrupted inequities?
- What barriers still exist? How might they be addressed?



Trainers

- Marissa Jimenez, *Housing Staff Attorney*
- Maya Iyani, *Staff Attorney*

Bay Area Legal Aid



TENANTS' RIGHTS AND FAIR HOUSING TRAINING

Presented by Marissa Jimenez &
Maya G. Iyyani

BAY AREA LEGAL AID

AGENDA

BayLegal: Who We Are

Fair Housing Protections

- Federal and State Protections
- Reasonable Accommodations
- New Source of Income Discrimination (SB 329)
- Protection for Immigrant Tenants (AB 291)

WHO WE ARE:

BAY AREA LEGAL AID PROVIDES FREE LEGAL SERVICES TO ELIGIBLE LOW-INCOME RESIDENTS IN THE BAY AREA

Housing Preservation And Homelessness Prevention

- Landlord-tenant Matters
- Eviction Defense
- Fair Housing and discrimination
- Subsidized Housing Issues

Domestic Violence And Sexual Assault Prevention

- Restraining Orders
- Family Law
- Domestic Violence Related Immigration

Immigration

- Services for Immigrant Survivors of Domestic Violence and Sexual Assault

Economic Justice

- Public Safety Net Programs

Health Consumer Center

- Health Care Access
- Public Health Insurance Programs
- Health Consumer Issues

Consumer Law

- Debtor's Rights
- Fair Credit Reporting

Veterans Project

- Wrap-around services

Youth Justice Project

- Wrap-around services

CLIENT ELIGIBILITY

Live in the counties of: Alameda, Contra Costa, Napa, Marin, Santa Clara, San Francisco, or San Mateo.

Citizen or eligible immigrant:

- U.S. citizen, or certain family members of a citizen, with a pending application for permanent residency
- Permanent resident, refugees, asylees, etc.
- Any immigrant who is a victim of domestic violence, sexual assault, human trafficking, or other violent crime.
- We can represent eligible children in public benefits or domestic violence matters, even if their parents are not eligible

Gross income generally has to be **under 200% of federal poverty line. EXCEPT** for our health work.

WAYS TO ACCESS OUR SERVICES

LEGAL ADVICE LINE (ALL PRACTICE AREAS)

1-800-551-5554

Monday & Thursday 9:30AM – 3:00PM

Tuesday & Wednesday 9:30AM- 1:00PM

NEW CONTRA COSTA TENANTS' RIGHTS LINE

1-888-551-0068

Monday & Thursday 9:30AM – 3:00PM

Tuesday & Wednesday 9:30AM- 1:00PM

FAIR HOUSING LAWS

FAIR HOUSING LAWS

Federal Law

- Fair Housing Act (FHA)
- Fair Housing Amendments Act (FHAA)
- Section 504 of the Rehabilitation Act
- Americans With Disabilities Act (ADA)

State Law

- Fair Employment and Housing Act (FEHA)
- The Unruh Civil Rights Act

Purpose of fair housing laws: to prevent discrimination in housing by making it illegal to disadvantage someone in renting, buying, or occupying a home because of that person's membership in a protected class.

2023 NATIONAL FAIR HOUSING ALLIANCE FAIR HOUSING TRENDS REPORT

- 33,007 complaints filed. Complaints were 5.74% higher than in 2021 (increase in complaints based on source of income and domestic violence)
- Discrimination based on disability accounted for the majority (53.26%) of complaints filed
- Rental-related housing discrimination complaints in 2022 were the most numerous of any complaint transaction type
- The data represents only a small portion of incidents that occur each year. Because housing discrimination is difficult to identify or document. Victims of discrimination also don't report because of feelings of powerlessness and fear of retaliation.

2022-2023 FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA AUDIT

- FHANC sent “testers” to 60 housing providers in Marin, Sonoma, and Solano counties
- FHANC analyzed the tests to determine whether Latina women with children were treated less favorably than white non-Latina women with children and/or whether housing providers had policies or made statements that were discriminatory on the basis of familial status.
- FHANC found that **58.2%** of the housing providers investigated discriminated on the basis of familial status (**39%**) and/or national origin (**30.4%**) and **14.5%** discriminated on the basis of both.

2018 LA HOMELESS SERVICES AUTHORITY REPORT ON BLACK PEOPLE EXPERIENCING HOMELESSNESS

- “although Black people comprise 13% of the general population in the United States and 26% of those living in poverty, they account for more than 40% of the homeless population, suggesting that poverty rates alone do not explain the overrepresentation”
- “Black people are too often precluded from housing due to racial discrimination on the part of the property owner, leasing agent, or property manager. Homeless service providers participating in community listening sessions shared that it is more difficult, and sometimes impossible, to find housing for their Black participants”

PROTECTED CLASSES

Federal Law:

- Race
- Color
- Religion
- Sex
- Familial Status
- National Origin
- Physical/Mental Disability

California Law includes all protected classes under federal law, plus:

- Marital Status
- Ancestry
- Sexual Orientation/Gender Expression/Identity
- Source of Income
- Medical Condition /Genetic Information
- Veteran Status
- Primary Language /Immigration Status



WHAT DO THE FAIR HOUSING LAWS COVER?

All aspects of the housing process

Advertising (“No Children”, “Married couples only”)

Application process (lease/voucher)

Screening

Terms and conditions of a tenancy

Eviction/termination

PROHIBITED CONDUCT

Intentional Discrimination

Treating a member of a protected class, or a person associated with them, differently.

Disparate Impact

Conduct that is neutral on its face but results in a discriminatory impact on a protected class.

Sexual harassment

Hostile environment

Quid pro quo

Vicarious liability

Discrimination against domestic violence survivors



HYPOTHESIS

Tom Tenant lives in a large apartment complex in Concord. He lives in his apartment with his three children. The landlord tells him that, while children can live on the premises, the children aren't allowed to be outside in the common area at any time.

1. Can landlord institute this rule?

- a) Yes, the landlord has a right to control the common areas.
- b) No, this qualifies as familial status discrimination.
- c) Yes, because this is not discrimination based on a protected class.

EXAMPLES OF INTENTIONAL DISCRIMINATION

- Refusing to rent, sell or lend.
- Discouraging applications.
- Requiring different rental terms or rules.
- Enforcing lease terms or house rules differently.
- Segregating through advertisement, steering, or physical separation.
- Responding differently to requests for repairs.
- Treating applications differently.



DISPARATE IMPACT EXAMPLES

- Policy not to rent to a DV survivor who was evicted for her abuser's violent DV-related activity.
- Rule requiring tenants to come to the management office to do an annual recertification.
- Lease term requiring that rent is paid on the first of the month.
- Rejection for bad credit related to an abusive partner's spending.



FAIR HOUSING PROTECTIONS FOR SURVIVORS

- DV Survivors are not a separately protected class under state or federal fair housing laws, but most are women
- Some Statistics:
 - HUD FHEO DV Memo: “[W]omen are five to eight times more likely than men to be victimized by an intimate partner...” More than 70% of those murdered by their intimate partners are women.
 - U.S. Bureau of Justice Statistics: 85% of victims of intimate partner violence are women.
 - U.S. Dept. of Justice: Among people who rent their homes, women are 7.4% times more likely than men to be victims of domestic violence.

POLICIES THAT CAN VIOLATE FAIR HOUSING LAWS

- Evictions or terminations based on violence against a Survivor could violate fair housing laws.
- Policies based on gender stereotypes
 - Ex: An owner evicts women with a history of domestic violence because “they always go back to the men who abuse them.”
- Treating women differently because of their status as victims of DV
 - Ex: A landlord evicts a DV victim because the abuser broke into her unit and she called the police, but does not evict another tenant after a stranger broke into his unit and he called the police
- Evictions for property damage caused by the abuser.

WHAT IS VAWA?

- VAWA is intended to encourage Survivors who receive housing subsidies to report and seek help for the abuse committed against them without being afraid of eviction or losing their subsidy.
- VAWA protects individuals applying for or living in federally subsidized housing from being discriminated against because of acts of domestic violence, sexual assault, stalking and dating violence committed against them.
- Applies to both men and women, regardless of gender, identity, or sexual orientation
- Only applies to federal housing programs

WHO DOES VAWA COVER?

- **Domestic violence:** Any felony or misdemeanor crimes of violence committed by a current or former spouse, intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim
- **Dating violence:** Violence committed by a person who is/was in a social relationship of intimate nature with victim
- **Sexual assault:** Any nonconsensual sexual act prohibited by law
- **Stalking:** Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress
- **“Affiliated individual” of the victim:** Immediate family or any individual living in the household

VAWA APPLIES TO:

Applications and admissions

○ Public Housing Authorities, landlords and owners shall not deny an applicant housing on the basis that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

Terminations and evictions

- PHAs, landlords and owners may not evict a tenant on the basis that she/he/they is or has been a survivor
- A crime against a survivor that is directly related to the abuse are not grounds in itself for evicting the survivor or terminating her/his/their rental subsidy.
- An incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her/his/their rental subsidy.

WHEN CAN HOUSING PROVIDER STILL EVICT?

- PHAs and owners can still evict if they can demonstrate an “actual and imminent threat” to other tenants or employees at the property if the survivor is not evicted.
- “Actual & imminent threat” not defined in VAWA and is fact specific
- Current HUD regulations are important guidelines:
 - “Threat” consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.
 - Factors to be considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will occur, and the length of time before the harm would occur. 24 C.F.R. § 5.2005
 - Eviction should occur only if there is no other action to be taken that would reduce or eliminate threat. 24 C.F.R. § 5.2005

OTHER ACTIONS

- A public housing authority or landlord may “bifurcate” or split a lease to evict a DV abuser while allowing the victim to stay
- Protection for tenants remaining in housing after lease bifurcation
- If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.
- The landlord must follow federal, state, and local law in evicting the abuser

OTHER ACTIONS (CONTINUED)

- A PHA can terminate Sec 8 assistance to the abuser while preserving assistance to a survivor
- If a Section 8 voucher family moves out in violation of a lease, PHA has grounds to terminate their subsidy. VAWA provides an exception for survivors who must move for safety.
- Many PHAs prohibit Sec 8 voucher tenants from moving during the 1st year of their lease, or from moving more than once during a 12-month period. However, these policies do NOT apply when the move is needed for safety. See 24 C.F.R. § 982.314
- PHA can approve “emergency transfer” to another unit.

HYPOTHESIS

Tessa Tenant lives in subsidized housing in Antioch. On September 1st, she was attacked by her abusive partner in the front lobby of the apartment complex. On September 3rd, her landlord serves her with an eviction notice for the altercation in the lobby.

1. Can landlord evict Tessa under these circumstances?

- a) Yes, he can evict her because the altercation is considered a lease violation.
- b) No, he cannot evict her for acts against her that constitute domestic violence
- c) It depends on whether her housing is covered by VAWA.

DISABILITY DISCRIMINATION

- Under the Fair Housing Act, it is against the law for a landlord or property manager to:
 - Ask about a disability (unless a tenant is requesting an accommodation or applying for housing that gives priority to persons with disabilities).
 - Discriminate in housing due to a person's disability.
 - Refuse to reasonably accommodate for disability.
 - Ask a tenant to provide more documentation than is necessary to verify a disability/need for accommodation.
 - Ask a disabled person to prove ability to live independently.

EXAMPLES OF INTENTIONAL **DISABILITY** DISCRIMINATION

- **Steering** to a certain building or floor based on disability or perceived disability. (“You don’t want that unit by the pool because it is noisy and you won’t use the pool anyway.”)
- **Different terms, conditions, or privileges of tenancy** (e.g. higher deposit for motorized wheelchairs but not manual wheelchairs, walkers or canes; “No wheelchairs in the lobby.”)



REQUESTING A REASONABLE ACCOMMODATION

Reasonable Accommodation:

A change in a rule, policy, practice, or service that is necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

Disability:

Mental or physical impairment that substantially* limits one or more life activities; and/or

A history of such impairment; and/or

Regarded as having such impairment.

*California law does not require a “substantial” limitation.

HOW TO REQUEST A REASONABLE ACCOMMODATION

A reasonable accommodation may be requested verbally or in writing (preferably)

A reasonable accommodation must have a “nexus” to the disability requested. This means that the accommodation requested must be connected to the disability and be necessary for the person with a disability to use and enjoy their housing.

Best Practices:

- a) Make request in writing
- b) Provide verification from a knowledgeable professional if asked
 - 1) Impairment that substantially limits or limits major life activity
 - 2) The need for the accommodation requested

WHEN CAN AN ACCOMMODATION BE DENIED?

Under state and federal law, a housing provider **must** provide reasonable accommodation **unless**:

1. The requested accommodation has **no relationship** to the person's disability.
2. Providing the requested accommodation would **fundamentally change** the nature of the provider's operations or would impose an **undue financial** or **administrative** burden or **create a direct threat**.

LET'S TALK

If the housing provider believes that the requested accommodation is not reasonable, then the provider is required to engage in an “**interactive dialogue**” to get more information about the disability-related need and to find a reasonable **alternative** accommodation.

ACCOMMODATIONS AND OTHER RIGHTS

An RA request does not have to be in writing – knowledge of need for accommodation may be enough to trigger responsibility under FHA.

Verification of disability does not have to come from a doctor & medical privacy rights are still protected by HIPAA (Health Insurance Portability & Accountability Act)

A failure to respond to a request for reasonable accommodation is a denial.

REASONABLE MODIFICATIONS

Request for a **physical change** to the unit

Must be requested

Landlord is not required to pay for the modification

Tenant does not have to pay if it is a HUD subsidized tenancy.

What happens after tenancy ends: Property returned to original condition at tenant expense (private)

REQUESTING A REASONABLE ACCOMMODATION HYPOS

True or False

1. Someone with a mobility impairment can request a parking spot closer to their unit as a reasonable accommodation
2. Someone who has a hearing impairment can request a parking spot closer to their unit as a reasonable accommodation
3. A person with a mental health impairment received a notice of lease violation due to symptoms of his or her disability. This person can request that the notice be withdrawn as a reasonable accommodation.

OTHER COMMON EXAMPLES

Client needs a ramp to access entryway of home.
Reasonable modification to install ramp.

Client needs an emotional support animal, but “pets” are not allowed in the unit. Reasonable accommodation to allow emotional support animal.

Client’s source of income is SSI. SSI check comes in on the 6th of every month, but rent is late on the 5th.
Reasonable accommodation to change rent due date.

Client’s disabilities make it difficult for them to move within the Eviction Notice period. Reasonable accommodation for more time to move.

HOW IS FAIR HOUSING ENFORCED?

Administrative complaint (HUD , DFEH, Department of Justice)

Defense in unlawful detainer (evictions)

Civil lawsuit (damages and injunctions)





OTHER TENANT PROTECTIONS

SOURCE OF INCOME

- As of January 1, 2020, all landlords in California are required to accept Section 8 and VASH vouchers and other forms of rental assistance and to consider them as part of an applicant's income.

HYPOTHESIS

Tina Tenant is looking for a place to rent on Craigslist. She finds a listing she is interested in, but the listing states “No Section 8 Vouchers.” She also has poor credit. Regardless, she applied for the housing but is denied when they learn she has a Section 8 Voucher.

1. Can the landlord deny her housing based on this reason?

- a) Yes, because source of income is not a federally protected status.
- b) Yes, the landlord can deny based on her poor credit.
- c) No, because source of income is a protected status in California.

AB 291

IMMIGRANT TENANT PROTECTION ACT

Landlords are prohibited from

- Asking a tenant about their immigration or citizenship status (unless to comply with federal government program, or other legal obligation)
- Requiring a tenant or prospective tenant to make a statement, representation, or certification about their immigration or citizenship status
- Disclosing any information relating to the immigration or citizenship status for purposes of
 - Harassment
 - Intimidation
 - Retaliation
 - Influencing a tenant to vacate
 - Recovering possession of the dwelling

HYPO

Tammy Tenant rents a studio from Landlord. She has a green card. During her tenancy, Tammy's studio required several repairs. She provided written notice to her landlord, but her landlord did not respond immediately. After three weeks, her landlord stated that he would get a repair person out to her unit. After reminding her landlord, no one came to Tammy's unit for over a month. Tammy contacted Code Enforcement. Code Enforcement investigated and ordered Tammy's landlord to make repairs. Tammy's landlord gets upset and accuses Tammy of being undocumented and tells her that she needs to vacate immediately and "go back to her country". Landlord sends Tammy a text message threatening to contact ICE.

True or False: Landlord engaged in unlawful retaliation

CASE STUDY

CASE STUDY

This case study is a peek into the lives and housing related issues of tenants Tanya and Tevin.

Tevin and Tanya met at college and have been dating for years. Tevin is a veteran and a burgeoning writer, and he recently published a book about his ancestral origins from Sierra Leone. Tanya is in grad school for a master's degree in botany. They recently got engaged to be married and decided to rent an apartment of their own.

They begin their search for a 2-bedroom 1 bath apartment with the help of a Housing Navigator. The postings they find say things like: "must be gainfully employed" or "no Section 8" or "Credit score over 750" or "Single professional preferred" or "Must speak English". They are surprised by the advertisements and especially discouraged by the gainfully employed and credit score over 750 requirements. Based on their budget they can afford \$1300 for rent but all the two-bedroom apartments were unaffordable at \$1500 and up.

CASE STUDY

The next day their Housing Navigator speaks with Pamela Property Manager who says she has a 2-bedroom unit for \$1300 available right now. However, when the Housing Navigator tells Pamela that Tanya and Tevin are receiving rental assistance, Pamela says she doesn't rent to anyone getting help from a "program."

After some legal advocacy, Tanya and Tevin did go to see the apartment and moved in soon thereafter. Tanya applied and was approved for CalFresh food benefits to ease their tight budget. Pamela lived upstairs from them. She often made comments to them such as "I've never had a Black man, let alone an African from Sierra Leone living in this building, plus you two are not even married!" or "Don't go having kids now, they are too noisy" or "You can't pay the rent in CalFresh dollars", and "Don't eat too much Tanya, I know you have diabetes and I need you alive to pay rent".

CASE STUDY

Tevin and Tanya settle in, they're grateful to have their own space, even though Pamela lives upstairs and does not have good boundaries. They are also expecting their first child. When Pamela sees pregnant Tanya, she exclaims "if you have a baby your rent is going up!" Twice, the rent has been late because they must pay rent in person at her property management office. On those two occasions Tanya couldn't get all the way across town on the bus to the property management office before 2:30pm when they close. Also, Pamela found out through the grapevine that Tevin is a veteran and every time she runs into him, she questions him on his time as a soldier asking if he saw anyone die or does he have bad flash backs?

CASE STUDY

One day Pamela confronted Tanya and Tevin on the stairway. She yelled at Tevin and Tanya “I can’t have all this drama in my building. You’re going to bring a crying baby into the apartment soon and I’ll never have any peace. I can evict you for that!” The next day Tanya and Tevin received a 3-day notice to quit based on breach creating a nuisance.

What can they do?

REMINDER: HOW IS FAIR HOUSING ENFORCED?

Administrative complaint (HUD , DFEH, Department of Justice)

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THANK
YOU/Q & A



Closing and Survey

Shelby Ferguson, Health Housing and Homeless
Services

<https://forms.office.com/g/CZkaizxiAr>