

The Fair Housing Act and Your Coop

Keeping your membership policies on the
right side of the law



Origins of the FHA

- **The Fair Housing Act was a major part of the Civil Rights Act of 1968.**
- **Minorities were excluded from housing in specific neighborhoods through formal and informal practices.**
- **Legislators were convinced that housing segregation would undermine other parts of the civil rights agenda.**
- **The FHA was written to outlaw specific types of discrimination against specific groups.**

Protected Classes

- **Federally Protected Classes (others may be protected locally):**

Race, Color, Nationality, Gender, Family Status, Disability, Religion

- **Chicago adds the following protected classes:**

Age, Sexual orientation, Marital status, Military discharge, and Source of income (including section 8)

What is Discrimination?

- **Refuse to rent/sell housing, or to negotiate for housing**
- **Make housing unavailable or deny a dwelling**
- **Set different terms, conditions or privileges for sale or rental of a dwelling**
- **Provide different housing services or facilities**
- **Falsely deny that housing is available for inspection, sale, or rental**
- **For profit, persuade owners to sell or rent (blockbusting)**
- **Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.**

What is NOT discrimination?

- **Refusing housing to someone who cannot meet legal membership requirements, or uphold their contract**
- **Evicting a member based on not fulfilling their contract**
- **Evicting a member for violating agreed upon policies**
- **Evicting a member who presents a clear threat to themselves or others**

Violations

- **Violations can come with actual and punitive damages, paid by the coop or individual directors responsible**
- **Damages can be financial or related to policy and procedure**
- **Both membership policies and advertising have to comply with FHA**

Non-obvious Violations

Refusing housing to someone based on their membership in a protected class is not the only kind of housing discrimination.

- **Offering housing on different terms to different people (larger deposits, for example)**
- **Offering only certain units or rooms to different people**
- **Using language or imagery in ads or tours that would discourage someone from moving in or applying**

Steering

Steering would mean guiding residents to specific locations based on a protected class, such as:

- **Making families with children live in one area**
- **Forcing disabled persons to live in a certain area**
- **Only showing certain units to an applicant**

Limiting and Discouraging

- **You cannot advertise in a way that indicates a limitation or preference based on a protected class.**
- **You cannot make any statement that indicates a limitation or preference based on a protected class.**
- **You cannot threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.**

Disabilities and the FHA

- **Who counts as having a disability?**
 - If you have a physical or mental disability that substantially limits one or more major life activities,
 - Have a record of such a disability or,
 - Are regarded as having such a disability
- **Disabilities include:**
- **Hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and developmental disabilities**

Protections and Accommodations

- **You cannot refuse to let members with disabilities make reasonable modifications to their rooms or common areas, at their own expense, to make the housing usable.**
- **You may require the member to agree to restore the property to its original condition when they move**
- **You may not refuse to make reasonable accommodations in rules, policies, or practices for the disabled person to use the housing.**

Reasonable Accommodation

- **Service animals and companion animals are not pets.**
- **A building with a "no pets" policy must allow a visually impaired tenant to keep a guide dog, and cannot charge a pet deposit.**
- **A coop that offers parking for members should honor a request from a mobility-impaired member for a reserved space near her apartment to assure access.**
- **However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.**

Exemptions to FHA

- **There are a few exemptions to the FHA:**
 - Owner-occupied buildings with less than four units
 - Single Family homes not using a broker or advertising
 - Retirement Communities (can exclude families with children)
 - “Lodging,” or temporary housing operated by private clubs which limit occupancy to being a part of membership (eg- a cabin available for weekends to members of a private lodge)

So coops are exempt, right?

- **NO! Courts have found that coops are not “private clubs” in the context of FHA**
- **Coops are permanent, not temporary housing**
- **Coops are “open membership” as a part of the cooperative principles, and not private clubs**
- **Even exempt housing cannot use discriminatory advertising or make statements to limit someone moving in**

No, really. I thought my coop was exempt

- **If your coop is not incorporated,**
- **If the owner of your home lives there,**
- **If your coop is fewer than 4 units,**
- **If your coop never advertises,**
- **If you do not take public funding or tax status,**
- **Your coop may fall into an exemption, and if this is important to your coop, you may wish to consult an attorney. This is a very rare situation, and you should assume that the law applies to your group.**

Common Coop Issues

- **Gender Balance:** Because the FHA doesn't allow gender discrimination, your coop can't reject a member because of gender. Even to help balance a gender ratio. It can do outreach to the underrepresented gender.
- **Children:** The coop can't refuse to allow a member with a child to move in, require a different process than for any other applicant, or discourage them from moving in. It can have a conversation about the environment within the coop.

How should we membership?

**Here are some tips on how your coop can preserve
the core of your membership policies while avoiding
any legal issues or accusations.**

Marketing

- **Make sure that your ads are free of discriminatory language or images.**
- **Make sure that the content of ads is relevant to the mission of the coop.**
- **Avoid content related to the culture or demographics of the coop.**

Explain Your Process

- **Explain the membership policy during tours**
- **Show every available room during tours**
- **Explain the application process during meetings**
- **Clearly state the criteria for membership (and possibly forbidden criteria) before decisions**

Have Clear Criteria

- **Avoid any subjective reasons (“creepy”, “won't fit in”, “won't be happy here”) and use specific reasons for rejections.**
- **Put the result of all membership admissions/rejections in writing.**
- **Have the coop discuss objective ways to describe the traits that would make a good or bad member, and base criteria off of those.**

Keep Records!

- **Without records of decisions, the coop cannot prove why a decision was made if a complaint is made.**
- **The record should be signed by an officer related to membership, and dated.**
- **The record should show the final vote (or test for consensus) for the decision.**
- **These don't have to be public records – but they should be available to defend the coop's decision if needed.**

Notify the Applicant

- **Consider a standard letter if an applicant is rejected.**
- **Keep it short and factual – and give more specifics if requested. Something like “We can't offer you a room at this time”.**
- **If requested, give more detail on what criteria were involved in their rejection.**
- **Make sure that the letter lists all of the criteria that were NOT involved in the rejection.**

Have a Coop Appeals Process

- **Make sure that the applicant can appeal if they feel that the coop is incorrect.**
- **Base the appeal on the facts of why they were rejected.**
- **If the applicant feels that they can address the coop fairly *within* the coop, they are less to bring a complaint from *outside* the coop.**
- **Remember – the coop may have been wrong!**

Follow Up

Feel free to contact me at **Daniel@nasco.coop** if you have follow up questions about specific situations or policies, or for more detail on suggested policies.

I am not a lawyer, and may not be able to answer all questions!