

# PROTECT YOUR ASSETS!

## Landlord and Property Manager Training

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# LEARNING OBJECTIVES

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- Increase knowledge of laws and regulations affecting landlords and property managers including Fair Housing Laws and the Alabama Uniform Residential Landlord and Tenant Act
- Learn about the Americans with Disabilities act and reasonable accommodations
- Strengthen knowledge of community resources including organizations that provide rental assistance

# SOURCES OF LAWS

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- Title VI of the Civil Rights Act of 1964
- Fair Housing Act of 1968
- Fair Housing Act Amendments of 1988
- Age Discrimination Act of 1975
- Titles II and III of the Americans with Disabilities Act of 1990 (ADA)
- Section 504 of the Rehabilitation Act of 1975
- Architectural Barriers Act of 1968

# WHAT IS THE FAIR HOUSING ACT?

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- Passed in 1968
- Title VIII of Civil Rights Act of 1968
- Prohibits discrimination in the rental (including services), sale, advertising, design, insuring and financing of dwellings, and in other housing-related transactions, based on membership in protected classes.

# FAIR HOUSING DEFINED

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- Prohibits discrimination in the rental (including services), sale, advertising, design, insuring and financing of dwellings, and in other housing-related transactions based on membership in protected classes.
- Applies to Landlords, Realtors, Mortgage Brokers, Insurance Agents, Zoning Codes, etc.
- The law is intentionally broad in order to cover all housing related activities.



# MEMBERSHIP IN PROTECTED CLASSES

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- Characteristics of a person cannot be targeted for discrimination
- Can be documented by patterns of treatment
- Examples of patterns of treatment include steering certain groups like families with children to certain areas of an apartment complex such as a single building.
- Examples also include charging more fees or rent to individuals using mobility devices

# DOES FAIR HOUSING APPLY TO ME?

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- The answer is almost always YES, at least parts apply.
- Even if federal laws don't apply, most likely there are state laws that apply to your units.
- Always better to err on the side of caution with compliance to federal laws.



# EXEMPTIONS TO FAIR HOUSING ACT OF 1968

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- Single Family Homes rented without the use of an agent or advertising as long as the owner owns 3 homes or less.
- Advertising includes both print and electronic media including Craigslist, For Rent By Owner (FRBP), Facebook, Twitter, etc. including traditional print in newspapers and periodicals.

# OTHER EXEMPTIONS

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- Apartment (4 units or less) communities if owner lives in one of the units. Advertising in Fair Housing still applies.
- A single room rental in a home
- Qualified senior housing, where at least 80% of the units are occupied by seniors 55 and over. These are exempt from familial status rules.
- Housing operated by Religious or certain private organizations (think of a monastery or convent)
- REMEMBER THERE MAY BE STATE AND LOCAL LAWS THAT STILL APPLY

# 7 FEDERALLY PROTECTED CLASSES

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- Race
- Religion
- (skin) Color
- Sex/Gender
- Familial Status
- National Origin
- Disability

# DISABILITY STATUS

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- In 2016, HUD investigated 8,342 new discrimination complaints. Of those, 4,908, were based on disability status (2016 FHEO Report to Congress)
- Fair Housing Act amended in 1988 to include disability and familial status
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- 1999 Olmstead Decision

# DISABILITY CASE EXAMPLE

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- **United States v. Anderson (D. N.M.)**
- On August 14, 2015, the court entered a [consent decree](#) in *United States v. Anderson* (D. N.M.), a HUD election case. The [complaint](#), which was filed on August 6, 2015, alleged that the defendant violated the Fair Housing Act on the basis of disability when she denied the complainant a reasonable accommodation regarding her requests for an assistance animal and her adult daughter as a live-in aide. The consent decree requires injunctive relief, including fair housing training and adoption of a reasonable accommodation policy, as well as provides a monetary award of \$6,000 to the complainant. The case was referred to the Division after the Department of Housing and Urban Development (HUD) received a complaint, conducted an investigation, and issued a charge of discrimination.

# AMERICANS WITH DISABILITIES ACT

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- Covers places of public accommodation and public entities
- Those areas of a housing development which are open to the public including the rental offices, amenity areas including pools, clubhouses, gyms, and other community spaces.

# DISABILITY DEFINITION

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- An individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities
- Person who has a record of such impairment
- Person regarded as having such an impairment
- Impairments include but are not limited to visual or hearing impaired, mobility, mental illness, emotional illness, intellectual disability, alcoholism & **past** substance abuse, chronic diseases that impact major life activities.

# MAJOR LIFE ACTIVITIES

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- Including but not limited to seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, speaking, thinking
- Disability can be temporary

# REASONABLE ACCOMMODATION VS. MODIFICATION

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- Fair Housing requires:
- A landlord may not unreasonably refuse to provide a reasonable accommodation of a rule, policy or procedure to address the needs of a person with a disability. An example of a reasonable accommodation would be reserving a parking spot close to a unit occupied by a tenant with a disability.
- An landlord may not unreasonably deny permission to a tenant to make a modification to address the needs of a person with a disability.

# ACCOMMODATION VS MODIFICATION

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- With accommodations there are few “costs.” Accommodations are a change in rules, policies, practices or services. These include allowing service/comfort animals. These can also include providing allowance for a live in aide.
- Modifications are structural changes and can be interior or exterior or both. Example of a modification would be grab bars in a restroom.
- Landlords are required to formally address requests under each type

# ACCOMMODATION CASE

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- ***Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2d Cir. 1995).**
- An apartment tenant with multiple sclerosis sought a preliminary injunction to require her landlord reasonably to accommodate her by relaxing its "first-come, first-served" policy and immediately grant her a parking space in the building's garage
- The use and enjoyment of a parking space cannot be considered in isolation from the tenant's ability to use and enjoy her dwelling place, a right specifically protected by the Fair Housing Act

# MODIFICATION EXAMPLES

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- EXAMPLE# 1:
- An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Furthermore, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

# CONTINUED...

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- EXAMPLE# 2:
- A disabled tenant asks his landlord for permission to install grab bars in the bathroom at his own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of his tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

# REASONABILITY DEFINITION

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- Economically and architecturally feasible
- Does not alter the fundamental nature of the program
- Each request must be considered on a case by case basis.
- Best Practice is to keep all documentation related to request including outcome of whether a request is denied and basis for denial.

# DOCUMENTATION OF DISABILITY

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- Unless the need is obvious and apparent, a landlord is allowed to ask for documentation of an individual's disability related need for a modification or accommodation request. The documentation can come from a number of sources including but not limited to a physician, therapist, peer support group, non-medical service agency, etc.
- **Tenants are not required to provide a full medical history**

# ALABAMA UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

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- Tenants in the state of Alabama have the right to freedom from discrimination in housing-related activities. However, unlike most states, there is no statewide fair housing law that specifically protects tenants in Alabama. Instead, Alabama tenants must rely on protection under the [Federal Fair Housing Act](#).
- In Alabama, a landlord can charge a tenant a maximum of one month's rent as a security deposit. However, the landlord may also be allowed to charge an additional deposit for pets or for changes to the unit.

# ALABAMA UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT CONTINUED

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- In Alabama tenants do not have the right to withhold rents for repairs related to life safety issues. A tenant has the responsibility to pay their rent on time. The tenant, however, does have the right to provide written notice to the landlord that the necessary repairs must be made to the unit within 14 days or the lease agreement will be terminated.
- A landlord must provide the tenant with at least two days' notice before being allowed entry into the tenant's unit. There are certain situations, such as in emergencies or under a court order, when the landlord does not have to provide this two days' notice to enter.

# ALABAMA UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT CONTINUED

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- If a landlord attempts to retaliate against a tenant, the tenant has certain rights. The tenant could be awarded possession of the rental unit if he or she has been illegally evicted or the tenant can elect to terminate the rental agreement. In either case, the tenant may be awarded up to three months' period rent or actual damages, whichever is greater, plus reasonable attorney's fees.
- Minimally, the information that tenants have a right to know related to rent includes the amount of monthly rent, where rent is to be paid and the length of the lease agreement.



# ALABAMA UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT CONTINUED

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- A tenant has the lawful right to know the name and business address of the landlord or the landlord's agent. It is the person who has the authority to manage the property, to collect rent and to receive and give notices and demands. The landlord is required to disclose this information to the tenant in writing.
- For more information on rights and responsibilities consult the Alabama Landlord Tenant Code §§ 35-9-1 to 35-9-100 and Alabama Uniform Residential Landlord and Tenant Act §§ 35-9A-101 to 35-9A-603

# LANDLORD RESPONSIBILITIES

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§ 35-9A-204. Landlord to maintain premises.

- (1) comply with the requirements of applicable building and housing codes materially affecting health and safety;
- (2) make all repairs and do whatever is necessary to put and keep the premises in a habitable condition;
- (3) keep all common areas of the premises in a clean and safe condition;
- (4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

# LANDLORDS RESPONSIBILITIES CONTINUED

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(5) provide and maintain appropriate receptacles and conveniences for the removal of garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(6) supply running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

# 2018 CHANGES TO SEC. 35-9A-421 AM'D

## ACT 2018-473 (FORMERLY HB 421)

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- Required notice changed from seven calendar days to seven business days
- Number of breaches dropped from four to two times in any 12 month period
- List of non-curable breaches was expanded
- If you have not done so already, forms and policies including notices of default should be reviewed by an attorney to ensure that they do not need to be updated.

# EXAMPLES OF HOW NOT TO ADVERTISE

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- Although not an exhaustive list, these examples should give you some idea of what might constitute a discriminatory housing advertisement under fair housing laws. Most of these examples are obvious and should come as no surprise, but it never hurts to have a short refresher on this important topic.
- 1. Race/Color
- Ads stating a preference for the race of a desired applicant (e.g., “no blacks,” “whites only,” etc.)
- Ads describing the race of current occupants of the complex or neighborhood (e.g., “African-American neighborhood,” “most residents are Asian,” “lots of Hispanic families,” etc.)
- 2. Religion
- Ads stating a preference for the religion of a desired applicant (e.g., “Christians only,” “no Muslims,” etc.)
- Ads describing the religion of current occupants of the complex or neighborhood (e.g., “nice, Christian neighborhood,” “Jewish family seeks roommate,” etc.)
- 3. National Origin
- Ads stating a preference for a certain national origin (e.g., “no immigrants,” “no foreigners,” “Irish preferred,” etc.)
- Ads posted only in a language other than English

# EXAMPLES OF HOW NOT TO ADVERTISE

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- Ads describing the national origin of current occupants of the complex or neighborhood (e.g., “predominately Latino neighborhood,” “mostly Asian residents,” etc.)
- 4. Handicap/Disability
- Ads stating a preference for able-bodied tenants (e.g., “no wheelchairs,” “must be able to live independently,” etc.)
- Ads describing the complex as unable to accommodate people with disabilities (e.g., “units are not accessible”, “no pets, even seeing eye dogs”, etc.)
- 5. Familial Status
- Ads stating a clear preference for families without children (e.g., “no children,” “no kids and no pets,” “single occupancy only,” etc.)
- Ads that could discourage families with children (e.g., “ideal for working professionals,” “perfect for single or couple,” “nice, quiet, mature, neighborhood,” etc.)
- 6. Sex/Gender
- Ads stating a preference for one sex over another (e.g., “no young men,” “female preferred,” etc.)

# RESOURCES

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- *“The Alabama Tenants Handbook,”*
- Alabama Landlord Tenant Laws are governed by Alabama Code, Title 35: Property – Chapter 9A, <http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/155218.htm>.
- <https://www.hud.gov/>
- Reasonable Accommodation Guidance, [www.hud.gov/sites/documents/DOC\\_7771.PDF](http://www.hud.gov/sites/documents/DOC_7771.PDF)
- Fair Housing Act, <https://www.justice.gov/crt/fair-housing-act-2>
- Low Income Housing Coalition of Alabama, <https://collaborative-solutions.net/info@lihca.org>

# WHY PARTNER WITH COMMUNITY SERVICE PROVIDERS?

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- Landlord/Tenant Education Class (pay rent, keep your unit clean, be a good neighbor)
- Protective Payee Services
- Budgeting Services
- Lease Addendum
- Additional Housing Support to address housing/lease issues
- Tenant Home Visits
- Finder Service—housing programs can be a go-to source for filling housing vacancies

# BENEFITS TO THE LANDLORD

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- Participation in ending homelessness
- Communication and introduction to the potential tenant
- Another party in the transaction
- Someone to help things end well

# WHAT SERVICE PROVIDERS BRING

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- A pre-existing relationship with the tenant
- Knowledge of the tenants' wants and needs
- Translation skills
- Ongoing ties with the tenant
- Motivation to help the tenant stay housed
- Support

# WHAT YOU CAN REQUEST

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- A written policy from the organization on what they are agreeing to provide
- Timely answers

# TYPES OF HOUSING PROGRAMS

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- Rapid Rehousing
- Permanent Supportive Housing
- Population-specific Housing
- Housing Authority Vouchers