2018
Ohio Rural Housing Conference

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Title VIII of the Civil Rights Act of 1968, as amended, makes it unlawful to discriminate in the sale, rental, advertising, or financing of most housing based on: race, color, religion, sex, handicap, familial status, and national origin

The Fair Housing Amendments Act of 1988 (the Fair Housing Act) amended Title VIII of the Civil Rights Act of 1968, and strengthened enforcement by adding handicap & familial status as protected classes

Protected Class Disability

Disability Means:

- A mental or physical impairment that substantially limits at least one major life activity
- A record of an impairment
- Being regarded as having an impairment

Protected Class: Familial Status

Includes persons who are

- Pregnant
- Parent/legal custodian of child living with them who is under 18
- Securing custody of a child

The Fair Housing Act:

- Authorizes federal funding for State and Local agencies to administer and enforce fair housing laws
- Provides for the award of monetary damages where discriminatory housing practices are found

HUD/FHEO operates two grant programs:

- Fair Housing Assistance Program (FHAP)
  - 24 CFR Part 115
- Fair Housing Initiatives Program (FHIP)
  - 24 CFR Part 125

FHAP agencies are primarily concerned with investigating and enforcing discrimination complaints

Ohio Civil Rights Commission (OCRC)

Fair Housing Contact Service Inc (Akron)	125,000
Housing Opportunities Made Equal of Greater Cincinnati Inc.	125,000
Fair Housing Opportunities Inc dba Fair Housing Center (Toledo)	125,000
Housing Research & Advocacy Center (Cleveland)	125,000
Central Ohio Fair Housing Association Inc (Columbus)	125,000
Fair Housing Resource Center Inc (Painesville)	300,000
Fair Housing Contact Services Inc (Akron)	300,000
Fair Housing Opportunities of NW Ohio (Toledo)	300,000
Housing Opportunities Made Equal of Greater Cincinnati Inc	300,000
Housing Research & Advocacy Center (Cleveland)	300,000
Central Ohio Fair Housing Association (Columbus)	300,000

FHIP

- FHIPs provide education and outreach services, including public service announcements, meetings, newsletters, websites, pamphlets, and training courses
- FHIPs also investigate and enforce discrimination complaints

FHIP

- The Office of Fair Housing and Equal Opportunity fund public or private entities to assist HUD in eliminating discriminatory housing practices
- HUD No. 18-004 Released January 23, 2018 Fiscal Year 2017
- HUD Awards $37 million to fight housing discrimination (grants will support more than 150 fair housing organizations nationwide

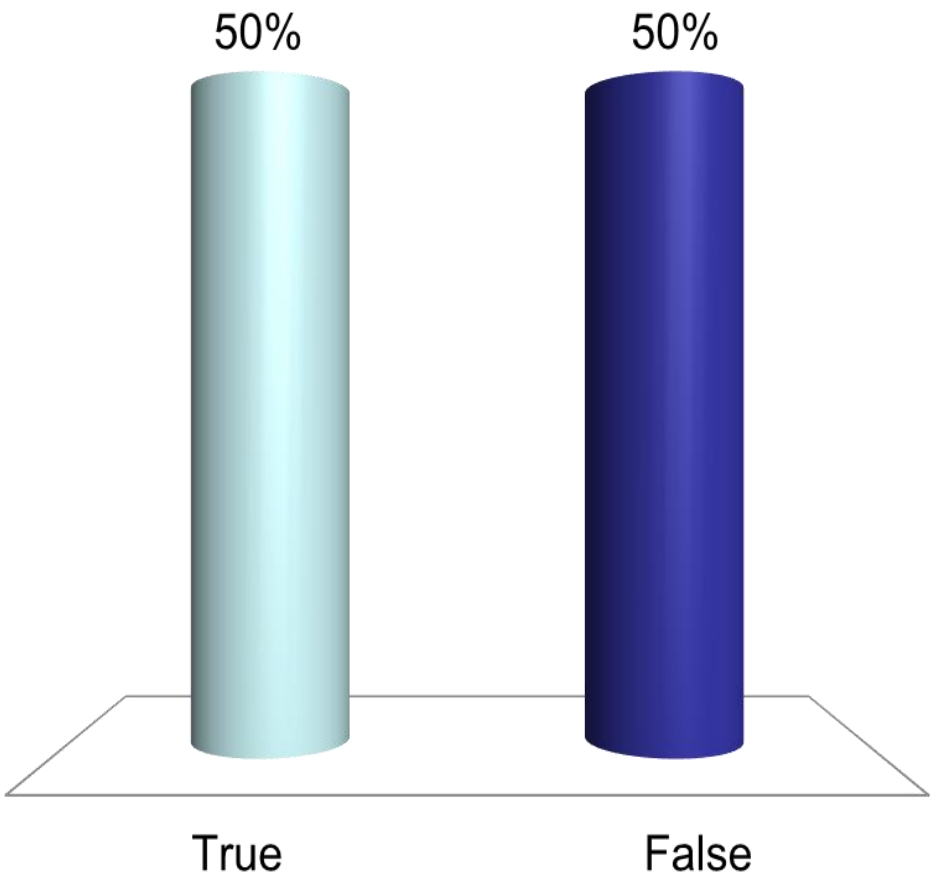
Approximately 70% of all Fair Housing Complaints processed by FHIP's

Most housing discrimination complaints are filed against apartment owners and managers for discrimination against renters

YOUR STATE OR LOCALITY MAY ADD OTHER PROTECTED CLASSES TO THE SEVEN FEDERALLY PROTECTED CLASSES.

✓A. True

B. False



YOUR STATE OR LOCALITY MAY ADD OTHER PROTECTED CLASSES TO THE SEVEN FEDERALLY PROTECTED CLASSES.

- The correct answer is TRUE
- Your state or locality may add additional protected classes, such as sexual orientation, source of income, or military status.

OHIO
Ohio Revised Code 4112

- Ancestry
- Military Status

Columbus City Code

- Sexual Orientation
- Gender Identity or Expression
- Age

Dayton City Code

- Section 32.01 et seq.
- Sexual Orientation
- Gender Identity
- Age
- Marital Status

Cleveland City Code

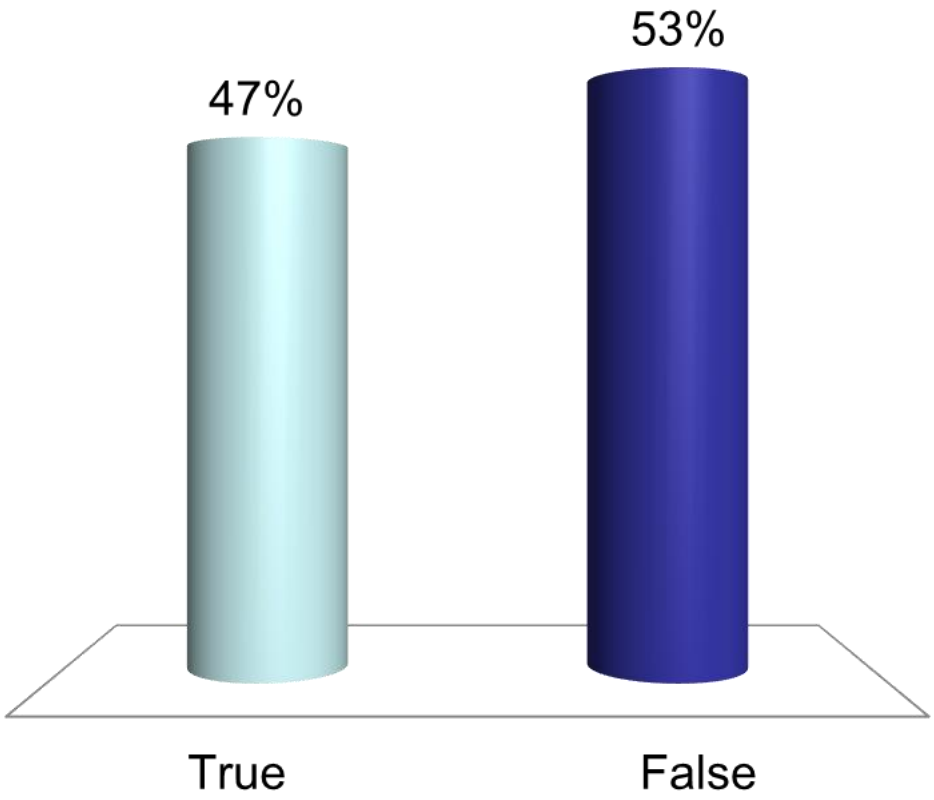
- Sexual Orientation
- Gender Identity & Expression
- Age
- Ethnic Group
- Vietnam Era or Disabled Veteran Status
- Marital Status

- Section 504 of the Rehabilitation Act (504)
- Americans with Disabilities Act (ADA)
- Fair Housing Act
- Ohio Revised Code Section 4112
- Columbus City Code 2331.02 1st Degree misdemeanor
- 2927.03 Injure, intimidate, or interfere with fair housing rights – 1st Degree misdemeanor

THE AMERICANS WITH DISABILITIES ACT (ADA) APPLIES TO ALL APARTMENT AND CONDO DWELLING UNITS

A. True

✓B. False



THE AMERICANS WITH DISABILITIES ACT (ADA) APPLIES TO ALL APARTMENT AND CONDO DWELLING UNITS.

- The correct answer is: FALSE
- Why?

ADA

- Title I- Employment
- Title II- Public Services
- Title III- Public Accommodation & Services Operated by Private Entities
- Title IV- Telecommunications
- Title V- Miscellaneous Provisions

AMERICANS WITH DISABILITIES ACT (ADA)

- Covers places of public accommodation
- Those areas of a housing development which are open to the public
  - Rental/Sales offices
  - Other areas of the property which are rented to non-tenants
  - No Grandfathering- Readily Achievable

BASIC CONCEPT OF 504

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, is applicable when housing is built or rented with the use of federal funds. Therefore, both public housing and Section 8 housing are covered under the HUD regulations implementing Section 504, 24 C.F.R. Part 8. A housing authority that administers a Section 8 program is a covered entity, although a private landlord that accepts tenants through Section 8 program is not. 24 C.F.R. § 8.3 (definition of recipient).

RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE

- HOME
- Project based Section 8
- HUD Section 236 and Section 202 properties
- Rural Development properties
- CDBG
- Rent or Sup or RAP

504 Requirements

- Home
- Project Based Section 8
- HUD Section 236 & Section 202 properties
- Rural Development Properties
- CDBG
- Rent or Sup or RAP

504 Requirements

- Physical Improvements
  - Must be physically accessible
    - All common areas
    - 5% of units for mobility impaired
    - 2% (additional) for visual & hearing impaired persons

504 Requirements

- Must provide reasonable modifications at Owner's expense

504 Requirements

- If a recipient has 15 or more employees:
  - –Must appoint someone to coordinate efforts to comply with section 504
  - –Must establish a grievance procedure that can be used by tenants and employees who believe their rights under this law have been violated
  - –Must notify applicants for housing and employment, tenants & employees that it does not discriminate of the basis of disability

504 Requirements

- Must provide reasonable accommodations

504 Requirements

- Must assign units to people with disabilities

In addition to the Act, the following legislation & executive orders may apply & provide a basis for federal fair housing enforcement:

- Title VI of the Civil Rights Act of 1964 (www.justice.gov)
- The Architectural Barriers Act of 1968 (www.access-board.gov)
- Title IX of the Education Amendments Act of 1972 (www.justice.gov)
- Section 504 of the Rehabilitation Act of 1973 (www.hud.gov)
- Section 109 of Title I of the Housing Act of 1974 (hud.gov)
- The Age Discrimination Act of 1975 (www.dol.gov)
- Title II of the Americans with Disabilities Act of 1990 (www.ada.gov)
- The Violence Against Women Reauthorization Act of 2013
- Executive Orders (hug.gov)
  - 11063, 11246, 12892, 12898, 13166, 13217

Needless to say, you are not going to become a Fair Housing expert in an hour, but you may appreciate that you are standing on “thin ice”

Hot Topics

- Occupancy Standard
- Disparate Impact
- Certa Pet
- Hoarding
- VAWA

2 Per Bedroom

- Ohio Legislative Service
- Keating Memo
- OCRC Memo 2002
- City Codes 4541

Question

The Fair Housing Act (FHA) applies to:

A. Subsidized housing providers
B. Public Housing Agencies (PHA), including landlords who accept Housing Choice Vouchers (HCV)
C. Low-Income Housing Tax Credit
D. A & C, but not B
E. All of the above

The correct answer is…

ALL OF THE ABOVE

Each of these actors engage in the rental of dwellings, and the FHA was created to prohibit discrimination against protected classes in housing-related transactions. Do not confuse the FHA with 504

Discrimination

When a tenant's race, color, religion, sex, handicap, familial status, or national origin is a significant factor in the landlord's decision to terminate the tenancy, a defense to the action may exist under one or more of the following statutes:

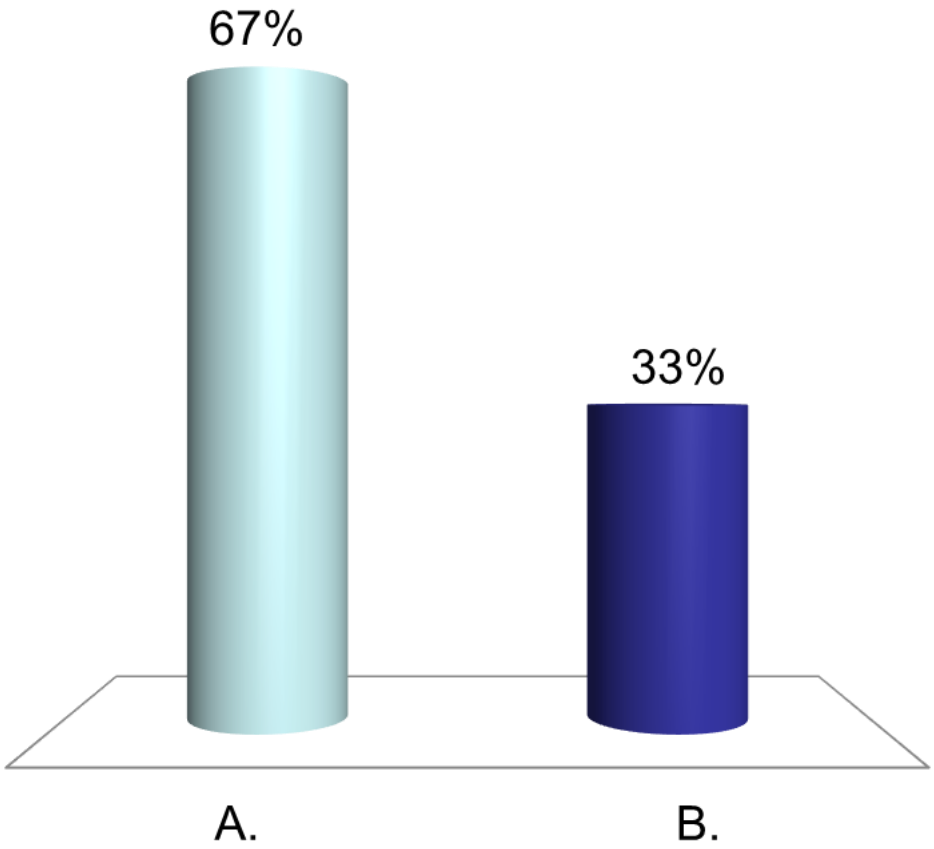
a) The Federal Fair Housing Act, 42 U.S.C.§ 3604
b) Section 504 of the Rehabilitation Act of 1973 if handicap discrimination is alleged and the landlord receives federal financial assistance
c) Title II of the Americans with Disabilities Act if handicap discrimination is alleged & the landlord receives state or local government financial assistance
d) The Civil Rights Act of 1866, race discrimination
e) The Ohio Civil Rights Act, R.C. 4112.02(H)

Question:

The Fair Housing Amendments Act could be a defense even if you can prove reason to evict?

✓A. True

B. False



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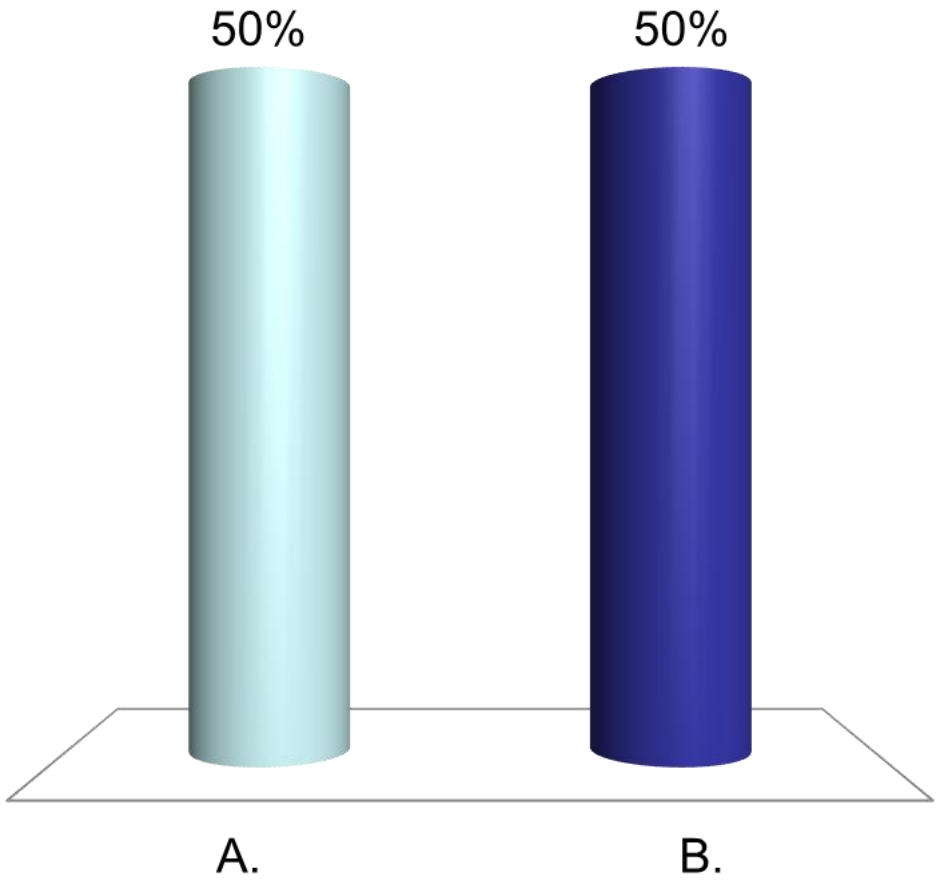
- Answer: True
  - When the threat or violation could be removed by applying a reasonable accommodation, the landlord must base their decision on current objective data, not on supposition that the tenant may or could pose a harm or threat to other persons or property.

Question:

It is permissible for a landlord to use screening criteria that ends up discriminating against a protected class as long as the landlord had no intent to discriminate and applied the criteria to all applicants.

A. True

B. False



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Answer

False.

This is what The Supreme Court case, *ICP v. TDCHA* (2015) was all about.

Question:
Which of the following statistics is true?

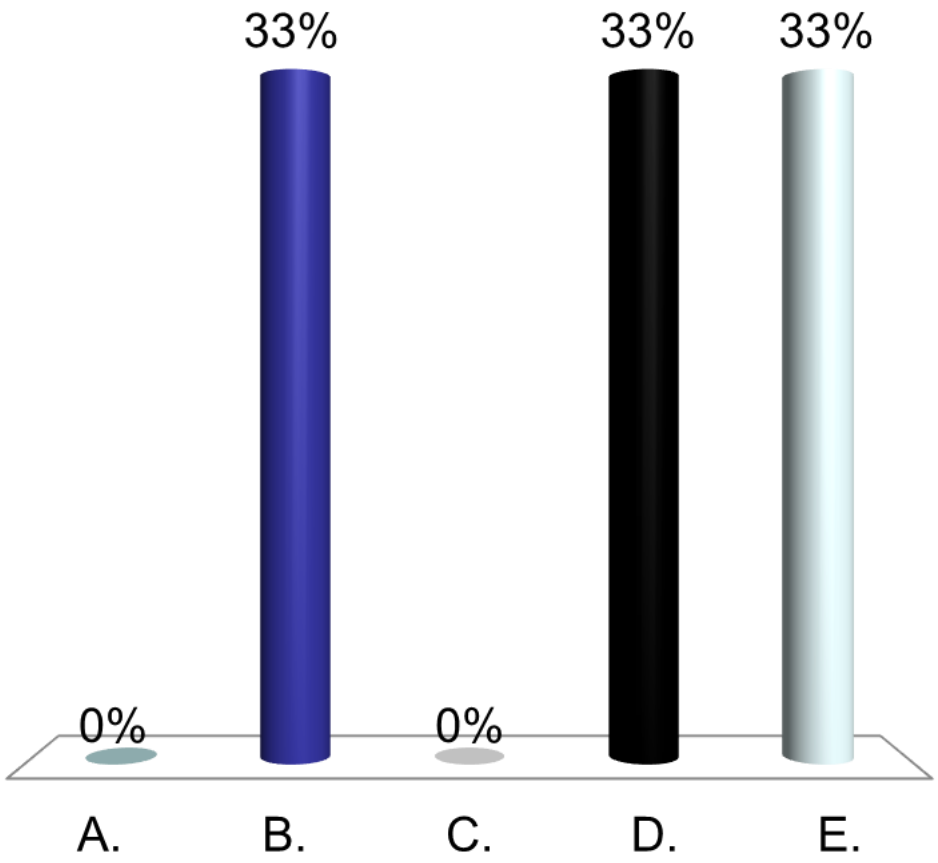
A. The U.S. prison population equals 2.2 million

B. The U.S. houses ¼ of all the world's prisoners

C. Over the last 10 years, the U.S. has averaged greater than 650,000 individuals released from incarceration per year

D. All of the above

E. None of the above



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Answer

- D. All of the above

- Thus HUD's concern regarding the re-entry population and the ability of applicants being released from incarceration to be able to find adequate housing

Sources:

- Nat'l Acad. Sci., Nat'l Res. Couns., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 2 (Jeremy Travis, et al. eds., 2014), *available at*: http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes.
- E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at 29, appendix tbls. 1 and 2, *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387.

Please make your selection…

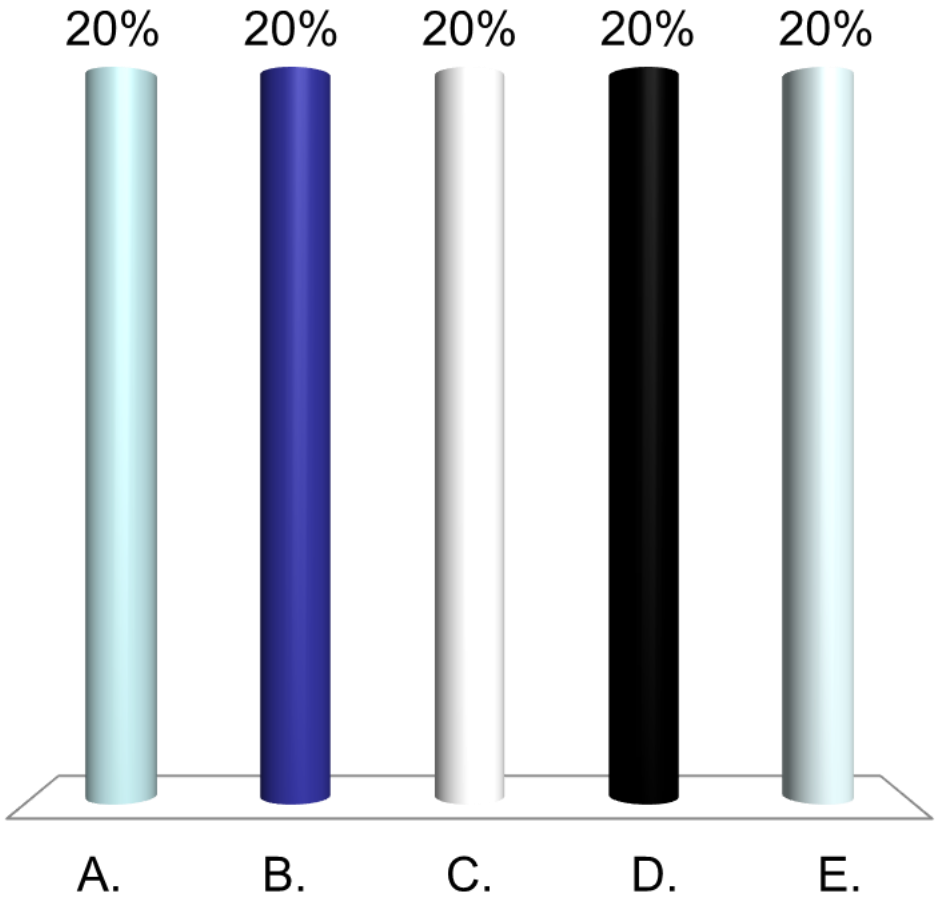
A. A landlord can bar an applicant for being arrested as long as the person was arrested for a “serious” crime

B. A landlord can bar an individual for being arrested for ANY crime as long as there were multiple arrests

C. A landlord can bar an individual for being arrested for any crime as long as there are multiple arrests, BUT ONLY if it was for the same crime

D. None of the above

E. All of the above



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Answer

D. None of the above

HUD makes it clear that arrest records alone are insufficient probative evidence that any crime has actually been committed and has a disparate impact based on race

Disparate Impact

Disparate Impact is a legal doctrine under the Fair Housing Act which means that a facially neutral policy or practice could be considered discriminatory if it has a disproportionate "adverse impact" against any group based on race, national origin, color, religion, sex, familial status, or disability. Additional information can be found at:

http://www.nationalfairhousing.org/PublicPolicy/DisparateImpact/tabid/4264/Default.aspx

The Day Criminal Screening Changed

U.S. Department of Housing & Urban Development

Washington, DC 20410-0500

April 4, 2016

Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions

Excluding Individuals with Prior Convictions

A housing provider that imposes a blanket prohibition on any person with any conviction record- no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden

Must be based on a case by case basis

A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest

Currently, HUD regulations specify only two explicit bans on occupancy based on criminal activity. This includes a lifetime ban on admission to the Public Housing and Housing Choice Voucher programs for:

1. Individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing (24 CFR § 960.204, 24 CFR § 982.553), and
2. Sex offenders subject to a lifetime registration requirement under a State sex offender registration program (24 CFR § 960.204, 24 CFR § 982.553)

Good Materials:

- HUD Guidance on Application of Fair Housing Standards to use Criminal Records

- Willis Law – Criminal Screening Draft

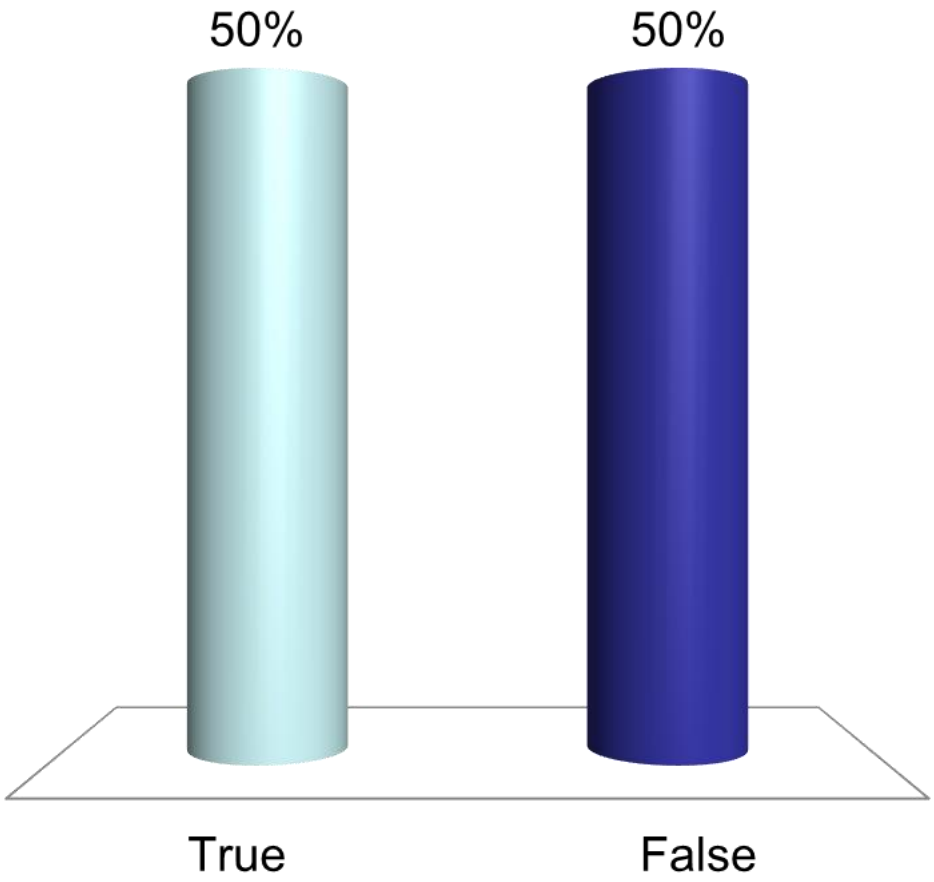
Other policies & practices that may have Discriminatory Effects (Disparate Impact)

- Enacting or implementing land use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings

OWNERS AND MANAGERS ARE LIABLE FOR STAFF MEMBERS' FAIR HOUSING VIOLATIONS

✓A. True

B. False



OWNERS AND MANAGERS ARE LIABLE FOR STAFF MEMBERS' FAIR HOUSING VIOLATIONS.

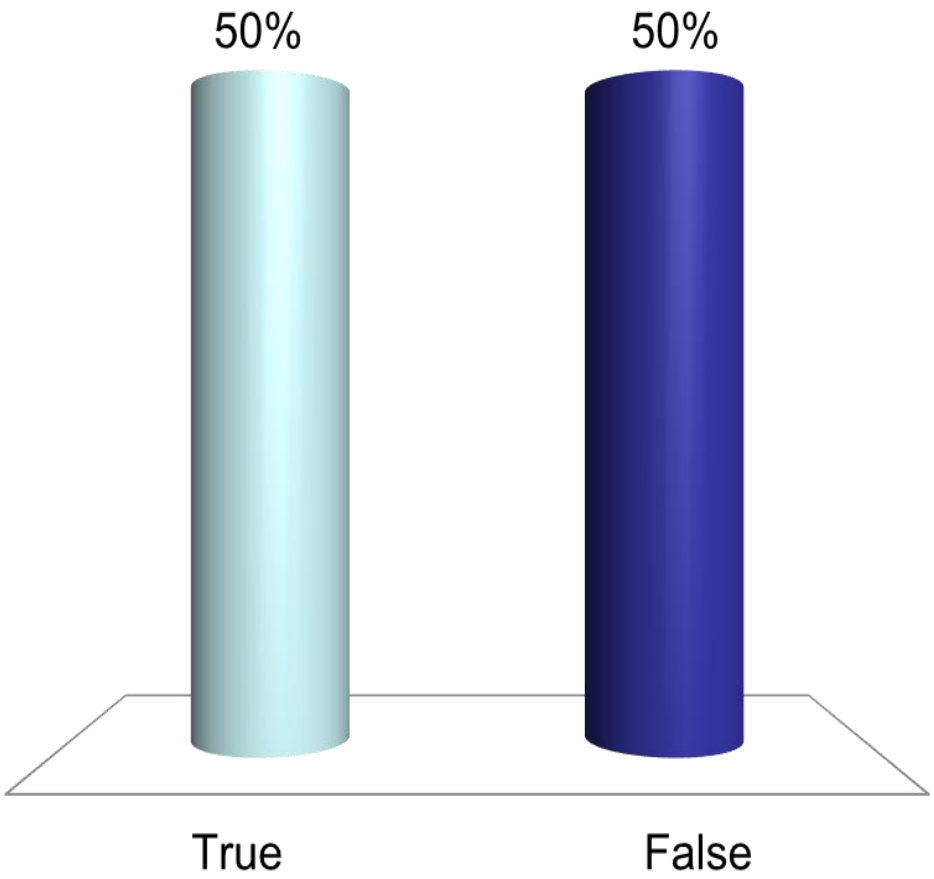
- Correct answer is: TRUE

- Owners and managers can be held liable for staff members' violations

STAFF MEMBERS CAN BE SUED INDIVIDUALLY FOR THEIR FAIR HOUSING VIOLATIONS.

✓A. True

B. False



STAFF MEMBERS CAN BE SUED INDIVIDUALLY FOR THEIR FAIR HOUSING VIOLATIONS

- Correct answer is: TRUE

- Staff members can be held accountable in court for their own fair housing violations.

FAIR HOUSING LAWS AFFECT ALL MULTIFAMILY EMPLOYEES

- People who answer the phone
- Maintenance staff
- Leasing consultants/administrators
- Owners

- Maintenance has the most interaction with residents
- In someone’s home every 15 minutes
- Often not adequately trained to deal with harassment & discrimination
- You are an Agent of the Company

Proper Training of Maintenance Staff coupled with proper practices and policies may reduce/eliminate successful claims and damages (punitive damages)

PROHIBITED ACTIVITY

- Refusal to rent/sell
- Misrepresenting availability
- Refusal to negotiate with a person
- Imposing different terms and/or conditions

PROHIBITED ACTIVITY (CONTINUED)

- Steering
- Discouraging prospective home buyers or tenants from selecting property because of racial and/or ethnic composition of neighborhood
- Unreasonable occupancy limitations
- Discriminatory advertising

PROHIBITED ACTIVITY (CONTINUED)

- Intimidation and/or interference
- Financing discrimination
- Refusal to permit reasonable accommodations or modifications for persons with disabilities

FAILURE TO KEEP RECORDS

- Accurate records are your best defense against allegations of unfair housing practices
- **If it is not documented it is only a rumor!**

HOW WILL OPPOSING COUNSEL USE YOUR OWN RECORDS AGAINST YOU?

- Former employees may be questioned
- All of your records can be subpoenaed
- Residents and former residents may be questioned

Maintenance Staff

You are the eyes and ears of the company

Document Everything!

- Maintenance software systems are not very effective if not properly used or documented
- Delays on routine work orders can happen for many reasons
- Write them down
- Lack of staff
- Outside vendor delays
- Weather
- Materials/parts on back order

- Do you have a policy that routine work orders are handled on first come, first serve basis?
- Are work orders dated – time of request?
- Completion date and time?
- Comments for delay?
- Does our policy define routine, priority, and emergency work orders?
- Do we have a system that would, if a previous request for accommodation elevates routine work order to emergency status? (AC)

You can not refuse to respond to a work order request because the manager informed you that the resident has AIDS

- Be consistent – always follow bio-hazardous policy
- Any tenant may have communicable disease
- Protocol should be the same

How you conduct & deliver maintenance services may be the grounds for a Fair Housing Complaint

Mrs. Smith vs Mrs. Jones Syndrome

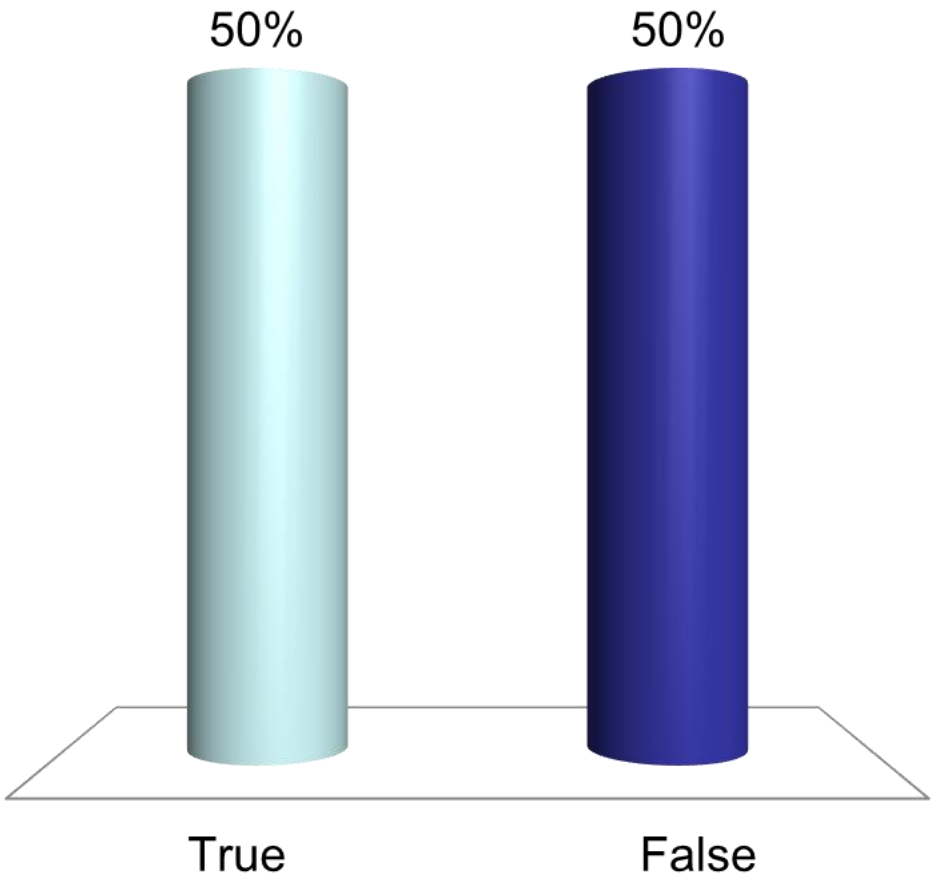
You can not retaliate against, threaten or act in any manner to intimidate someone because they filed an OCRC claim

- Ignoring or delayed response to work order request
- Be consistent – “Miss Congeniality”
- Be professional

IN OHIO, A MANAGEMENT EMPLOYEE'S PHONE CALL COULD BE RECORDED AND USED AGAINST THEM

✓A. True

B. False



Traffic cards are very helpful!

Telephone Logs

Memos to File

Work Orders

WRITTEN POLICY AND OPERATIONS MANUAL

- You should memorialize and codify your company's methods and policies
  - Policies
  - Procedures
  - Forms
  - marketing

- At a minimum, you should have a written policy for reasonable modifications and reasonable accommodations
- 504 – You have to!
  - Compliance Program
  - Program Accessibility Review

- Goals:
- It’s your public fair housing policy
- It’s your staff’s road map describing who does what and when

MAJOR GOALS: CONSISTENCY AND CONTINUITY

- Employee turnover
- System not dependent on employee skill level
- Eliminate some decisions
- Make decisions more efficiently and unilaterally fair

MASS HOUSING

Maintenance Providers and Safety Personnel's Rights and Responsibilities under Federal and Massachusetts State Fair Housing Law

EXCELLENT RESOURCE

Certa Pet

- Not necessary that medical professional possesses license in State

JOINT STATEMENT DOJ/HUD May 2004

- Request reliable disability-related information
- “Credible statement by the individual. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual’s disability may also provide verification of a disability”

FHEO-2013-01
April 25, 2013

"Documentation from a physician, social worker, or other mental health professional"

HUD HANDBOOK 4350.3 November 2013

"Physician, psychiatrist, social worker, or other mental health professional"

Columbus FHEO Center/Regional Director – November 2015

"Expect the medical professional to have knowledge of the requesters disability through the process of an examination, or possess knowledge of the requester's disability through a professional association with the tenant where knowledge of the requester's disability is derived, as an acceptable document. Therefore, the diagnosis of the disability is based on substantive evidence"

MANDATORY READING

- HUD FHEO Notice on Assistance Animals

  FHEO – 2013 – 01
- Understand and Appreciate difference between an Assistance Animal and a Service Animal
- OCRC Tech Policy T-31

Do not confuse the ADA's definition of a Service Animal

"Individually trained" to do work or perform tasks for the benefit of an individual with a disability"

UNDER THE ADA

- Limited to dogs and miniature horses
- Generally, most permit “service animals” to accompany people with disabilities (PWD) in all areas where members of the public are allowed to go
- Generally, service animals must be harnessed/leashed. Must be under PWD’s control

UNDER THE ADA (continued)

- PWD cannot be asked to remove animal unless: (1) animal is out of control and PWD does not take effective action to control, or

  (2) animal is not housebroken. If legitimate reason to ask for removal, staff must offer the PWD the opportunity to obtain good/services without the animal's presence

UNDER THE ADA

- Staff may only ask two questions:

  (1) is the animal a service animal because of a disability, and

  (2) what work or service has the animal been trained to perform

UNDER THE ADA

- Staff cannot ask about the person's disability
- Require medical documentation
- Require special identification
- Require PWD to demonstrate the work or task

UNDER FHA or 504

HUD Regulations do not use or define terms such as:

- Service Animal
- Support Animal
- Therapy Animal
- Companion Animal
- Emotional Support Animal

UNDER FHA and 504

Use the term “Assistance Animal”

UNDER FHA and 504

FEDERAL STATUES AND REGULATIONS DO NOT ATTEMPT TO DEFINE THE ANIMALS THAT CAN BE USED AS ASSISTANCE ANIMALS

- Monkeys, horses, birds, goats, chickens and pot bellied pigs
- “Animal works for the benefit of the disabled person by aiding him to cope with his disability”

- There are no Federal or State “credentials” for assistance animals
- Federal and Ohio laws do not define the animals that can be used as an assistance animal
- Assistance animals do not necessarily need to be trained: animal may relieve depression and anxiety
- You can not prohibit “Aggressive Breed” for assistance animals

Generally, Assistance Animals are only permitted in an individual’s dwelling. However, requests for Reasonable Accommodation must be considered on case-by-case basis beyond the individuals dwelling unit

Many Local Municipalities have enacted their own Breed-Specific Legislation and Breed Bans (BSL)

If your Insurance Carrier would cancel, substantially increase the cost of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or certain animal, HUD has found that this is not an undue financial and administrative burden on the housing provider

A person with a disability who uses an assistance animal is responsible for the animal's care and maintenance. A housing provider may establish reasonable rules in lease provisions requiring a person with a disability to pick up and dispose of his or her assistance animal's waste, not disrupting neighboring residents and complying with state and local laws

QUESTION…

A resident asks permission to have an assistance animal. You agree to allow it as a reasonable accommodation. But the dog the prospect chooses weighs 50 pounds, and the community rules only allow dogs that weigh 25 pounds or less. What should you do?

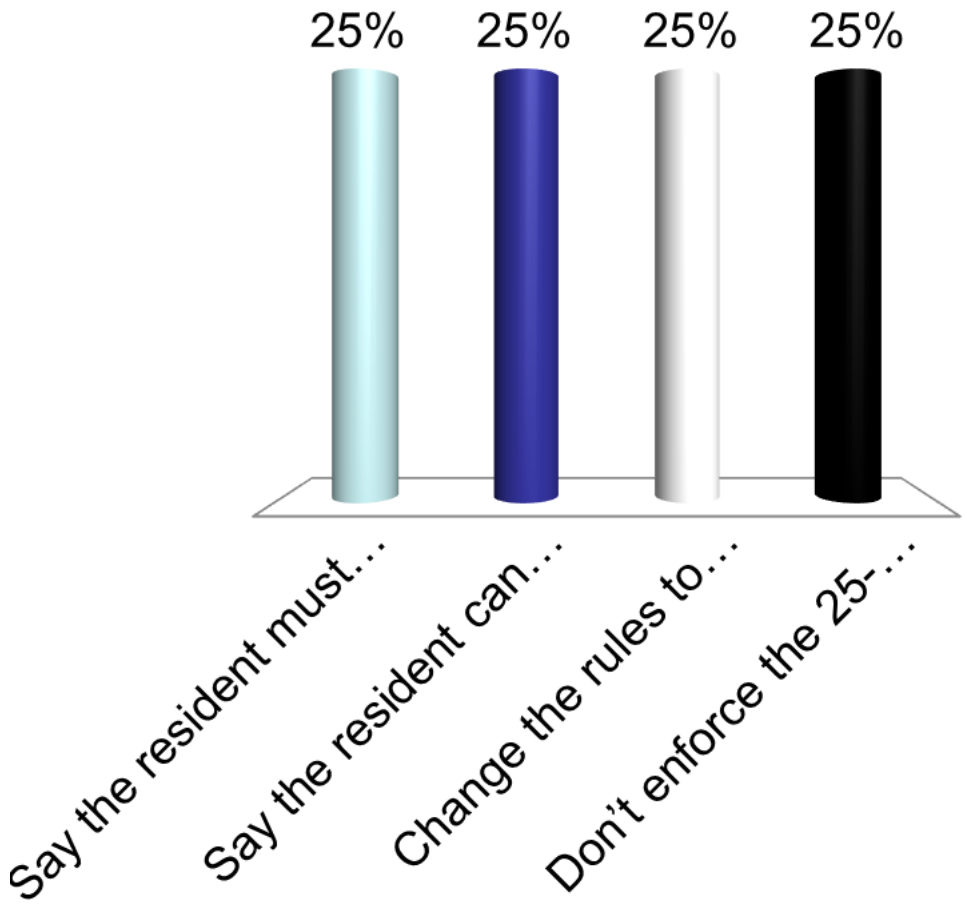
Please make your selection…

A. Say the resident must find a smaller assistance animal.

B. Say the resident can keep the dog if she gets a note from her veterinarian saying it won't pose a threat.

C. Change the rules to allow dogs of any size.

✓ D. Don't enforce the 25-pound rule against this resident, and let her keep the dog.



- The correct answer is: D

- The resident proved that she needed a service animal for her disability. At this point, you must overlook your weight limit as a reasonable accommodation and let the resident have her 50-pound service animal.

QUESTION…

Your community allows pets but charges every pet owner a pet deposit of $25 a month to cover clean up costs. Should you charge a pet deposit if you allow a disabled resident keep an assistance animal as a reasonable accommodation?

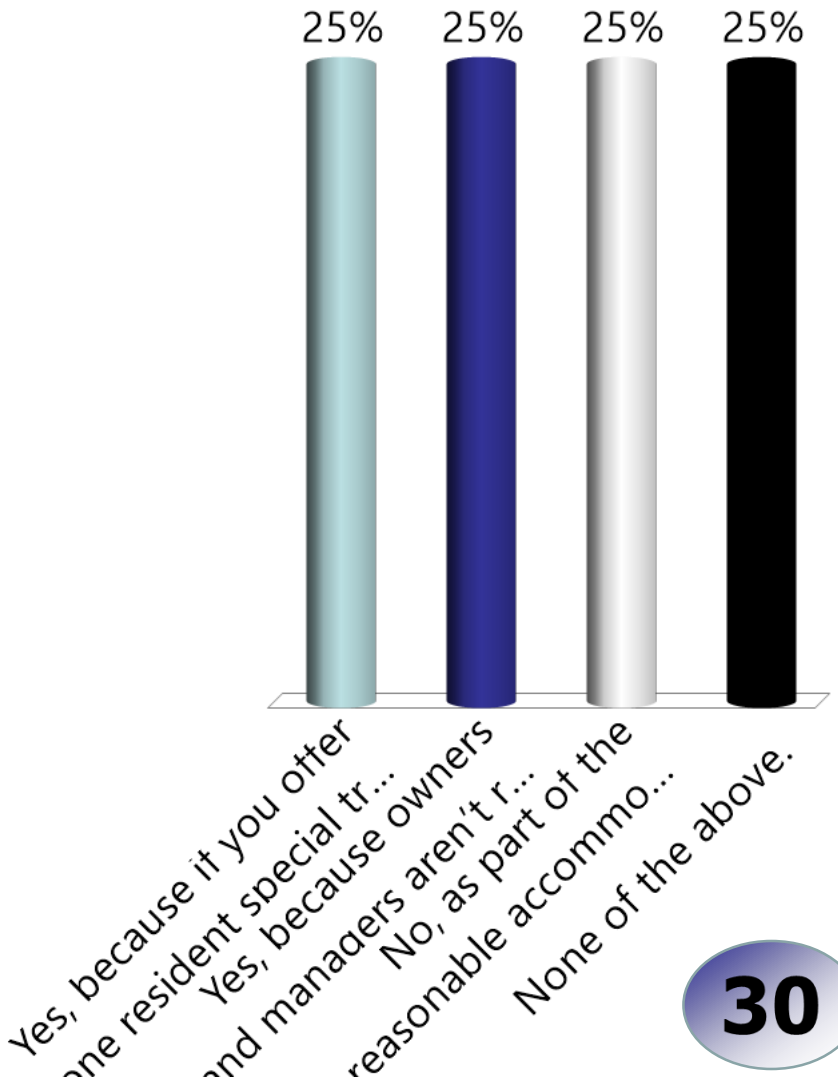
Please make your selection…

A. Yes, because if you offer one resident special treatment, you'll have to offer it to everyone.

B. Yes, because owners and managers aren't responsible for personal items like cleanup services for assistance animals.

✓ C. No, as part of the reasonable accommodation, you should waive the resident's payment of the pet deposit.

D. None of the above.



- The correct answer is: C

- As a general rule, part of accommodating a resident with a disability is to waive any pet fees or deposits you have with regard to assistance animals.

A housing provider may not require an applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep assistance animal. However, if a tenant's assistance animal causes damage to the unit or the common areas of the dwelling, the housing provider may charge the tenant for the cost of repairing the damage

If the assistance animal is particularly disruptive, or the tenant fails to take proper measures to ensure that the animal does not bother other tenants, the landlord may be justified in denying the accommodation or ultimately filing for an eviction

In Woodside Village v. Hertzmark, (Conn Sup. Ct. 1993), the Court found that a federally assisted housing complex did not violate the Fair Housing Act by evicting a resident with a metnal illness for failure to walk his dog in designated areas and to use a pooper-scooper

A housing provider may only refuse an assistance animal where specific facts exist:

- There is reliable evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation;
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others;
- The presence of the assistance animal would pose an undue financial and administrative burden to the provider; or
- The presence of the assistance animal would fundamentally alter the nature of the provider's services

WHAT IS REASONABLE?

- Applicant / Tenant must have a disability as defined by the Fair Housing Act
- Accommodation must be related to the disability and necessary to allow tenant/applicant an equal opportunity to use and enjoy the unit
- Owner has the right to verify the existence of the disability (although not to the type or severity) and the need for the accommodation

Whether a requested accommodation is required by law is “highly fact-specific, requiring a case-by-case determination”

Bazelon Center for Mental Health

www.bazelon.org

- Resources for Advocates
- Excellent Fair Housing Fact Sheets

- #2 Structural Modifications in Public and Section 8 Housing
- #4 Using Reasonable Accommodation to Prevent Eviction
- #8 Tenant posing a “Direct Threat” to others

DEFINITION OF DISABILITY

- Fair Housing Act protects an “individual with a handicap”
  - Any person who has a physical or mental impairment that substantially limits one or more major life activity; has a record of such an impairment; or is regarded as having such an impairment

MAJOR LIFE ACTIVITIES

- Functions such as caring for one's self performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working
- "Record of" means person has a history of a covered impairment, even if not currently impaired

- Overlook Mutual Homes, Inc. v. Spencer et al, No. 3:2007cv00398 – United States District Court for the Southern District of Ohio

- United States Court of Appeals for the Sixth Circuit
  - File Name 11a0061N.06-09-4036

Sixth Circuit	Seventh Circuit
Kentucky	Wisconsin
Michigan	Illinois
Ohio	Indiana
Tennessee	

Plaintiff must prove all of the following elements:

(1) that the plaintiff or his associate is handicapped within the meaning of 42 USC § 3602(h);

(2) that the defendant knew or should reasonably be expected to know of the handicap

(3) that accommodation of the handicap may be necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling;

(4) that the accommodation is reasonable;

(5) that defendant refused to make requested accommodation

The Sixth Circuit, however, has held that an accommodation must be **necessary**. See Howard v. City of Beavercreek, 276 F. 3d 802, 806 (6th Cir. 2002) (noting that "the concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects the disability") (quoting Bronk v. Ineichen, 54 F 3d. 425, 429 [7th Cir.]). Thus, the third above quoted element has been effectively modified by the Sixth Circuit to replace the "may be" with "is"

BRONK CASE

- The accommodation must facilitate the disabled persons' ability to function

Vs

- The accommodation must survive a cost-benefit balancing that takes both parties' needs into account

- Bronk v. Ineichen – 42 USC § 3604 (f)(2)

- Two adjectives, “reasonable”, “necessary” figure prominently in this definition, modifying both the term “accommodations” and [Landlord’s] obligations under the law.

  (Balancing-Test)

Does your company/organization utilize a verification that asks the medical nexus question?

GETTING BACK TO CERTA PET

- FAKE Certification / Registration / ID
- Certification does not mean the animal is a service animal or assistance animal

Can a person have more than one service or emotional support animal?

While there do not seem to be any cases dealing with the issue of multiple emotional support aniamls, the basic requirements for this reasonable accommodation would still be the same. In other words, if a person were claiming the need for multiple emotional support animals, then he or she would need documentation supporting this need from his or her physical or medical professional. The practitioner would need to provide documentation that each support animal alleviated some symptom of the disability.

What about the assistance animals of my guests?

HUD does not cover this issue specifically in its notice to housing providers. However, the underlying purpose of the FHA is to provide an equal opportunity to use and enjoy housing regardless of disability. If a tenant cannot have a particular guest over who uses a service or assistance animal, then the tenant may be deprived of the ability to use and enjoy his or her dwelling based on the presence of a disability. There do not yet appear to be any published legal cases that have reviewed this issue.

In 2011, the United States District Court for the District of Nevada entered a consent decree (a settlement of a lawsuit where a party agrees to take an action without admitting liability) on this issue. The complaint in the underlying case alleged that the defendants declined to allow a friend of their tenants who uses a service animal to visit the tenants' apartment. The defendants then evicted the tenants based on the service animal's presence in the apartment. As plaintiff, the United States alleged that this denied the tenants the "full enjoyment of their apartment at Defendants' apartment building." See U.S. v. DeAngeli, Case No.3:11-CV-00796-RCJ-WGC (July 8, 2013), available at http://www.justice.gov/sites/default/files/crt/legancy/2013/10/30/deangelisettle.pdf. As part of the agreement, the defendants had to agree to comply with the Fair Housing Act, create a policy for assistance animals in their apartment builidng, undergo education and training on the issue, and abide by other requirements of the consent decree.

Additional Good Resources

- Michigan State University College of Law Animal Legal & Historical Center FAQ's on Emotional Support Animals
  - Author: Rebecca F. Wisch, 2015

- US Dept of Justice

  Civil Rights Division/Disability Rights Section

  Commonly Asked Questions about Service Animals in Places of Business

Other Common Reasonable Accommodation Requests

Unit Transfers

Tenants with disabilities can request to be transferred to another available unit of equal value, if the transfer is medically necessary. For instance, a tenant with a worsening physical disability should be allowed to transfer from their third-floor unit to a similar ground floor unit due to difficulties climbing the stairs.

Examples: SAD, noise, smoke/other smells

Parking

A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis.

What should the housing provider do?

The housing provider should make an exception to its policy of not providing assigned parking spaces to accommodate this resident

Caregivers

Tenants with disabilities may find it medically necessary to have 24-hour caregiver live in their unit. A request to have a live-in caregiver must be granted unless it poses an undue financial or administrative burden, or fundamentally alters the housing providers business. Housing providers cannot require that a caregiver be added to the lease, and in most cases, a rent increase is not permissible

Rent

Many tenants with disabilities receive social security income as their primary money source, and social security checks often arrive on the third day of the month or later. Monthly rent is usually due on the fist day of the month. Disabled tenants may request that their housing provider accommodate their disability by moving their rent due date to coincide with their social security check. This would allow them to avoid paying costly late fees every month and/or be in constant risk of eviction.

ACCOMMODATION EXAMPLES

- Assistance in completing the application
- Mail
- Visual fire alarms
- Help with trash removal
- Chemical sensitivities

HOARDING

Hoarding officially recognized as Mental Disorder in May 2013

Hoarding that violates health and safety codes is a lease violation

In Ohio, any violation of ORC 5321.05 (Tenant Obligations under Landlord-Tenant Act) requires a 30-Day Notice with Rights to Cure pursuant to RC 5321.11

5321.05 Tenant Obligations

- A tenant who is a party to a rental agreement shall do all of the following:
  - Keep that part of the premises that he occupies & uses safe & sanitary
  - Dispose of all rubbish, garbage, & other waste in a clean, safe, & sanitary manner
  - Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits
  - Use and operate all electrical & plumbing fixtures properly
  - Comply with the requirements imposed on tenants by all applicable state & local housing, health, & safety codes

5321.11 Failure of tenant to fulfill obligations – remedies of landlord

If the tenant fails to fulfill any obligation imposed upon him by section 5321.05 of the Revised Code that materially affects health & safety, other than the obligation described in division (A)(9) of that section, the landlord may deliver a written notice of this fact to the tenant specifying the act or omission that constitutes noncompliance with the pertinent obligations & specifying that the rental agreement will terminate upon a date specified in the notice, not less than 30 days after receipt of the notice. If the tenant fails to remedy the condition specified in the notice, the rental agreement shall terminate as provided in the notice.

Examples of Lease Violations

- Odor
- Infestation or failing to prepare
- Blocking Exits
- Fire Hazards
  - Blocked Exits
  - Papers near stove, heating vents
  - Storing combustible items
  - Resident a smoker?

Examples of Lease Violations (Continued)

- Animals
  - Multiple
  - Feces,untended litter
  - Damage to carpet, other property
  - Garbage
  - Health/fire department citations
  - Unusable bathroom facilities

Evidence (document, document, document)

- Photos/videos – legal if obtain proper entry
- Health or Fire Department Citations
  - Make friends w/ inspectors, ask them to talk at residents' meeting
  - Make joint approach to specific cases
  - Your court action is defense against their citation
  - Neighbor complaints

Standard Lease Enforcement

Major (serious threats to health & safety of others) or repeated violations

- Eviction notice with reasons stated
- Meet with Resident to discuss
  - Plan to return to lease compliance
  - Right to Reasonable Accommodations
- Minor Violations
  - Lease violation notice
  - Meet as above

Initiate & Accommodate

Hoarders usually don't ask for accommodation. In fact, many are secretive & their disorders may go unnoticed for years until a neighbor complains or maintenance has to enter the apartment to make repairs. While hoarders should ask for accommodation, Fair Housing law trends suggest that if a landlord knows or should have known about the disability then there is a duty by the property to accommodate

Hoarding

- Means Time & Assistance to clean out enough to achieve lease compliance
- Does not mean health and safety violations can continue indefinitely
- Does mean an imminent threat (usually fire, structural or contamination) must be addressed immediately

Resident has the right to refuse accommodation

Meeting with the Resident

- Inform resident
- Give list of specific lease violations
  - In person & in writing
  - Go over each specific violation, in states if necessary
- Show resident the evidence
- Cite lease or health & fire codes
- Offer to make reasonable accommodation
- Offer to help w/ removal/cleaning plan
- Give RC 5321.11 3-Day Notice and go to court earlier rather than later

Developing a Plan

- Involve a service provider in plan, if possible
  - They have time
  - They have expertise
- Make agreement through the Court
  - So resident understands seriousness
  - So it is enforceable
  - So it can include lease addendum
- The greater the danger, the more certain the plan must be including the resident's cooperation

Accommodation Plan Includes

- Specific standards in specific areas
- The timeline for each step and the deadline
- Who will do removal
- Who will check and how often
- Services resident will accept
- Relevant releases
- Method to ensure permanent resolution of problem

Do not request verification of disability if the disability is obvious or readily apparent or if resident received SSI Disability

Can ask for Medical Nexus

QUESTION…

A resident notices that maintenance staff comes twice a week to pick up his neighbor's garbage. The resident doesn't know that the staff is doing this as a reasonable accommodation because his neighbor has AIDS. The resident comes to your office and asks why his neighbor is getting special treatment. What do you tell him?

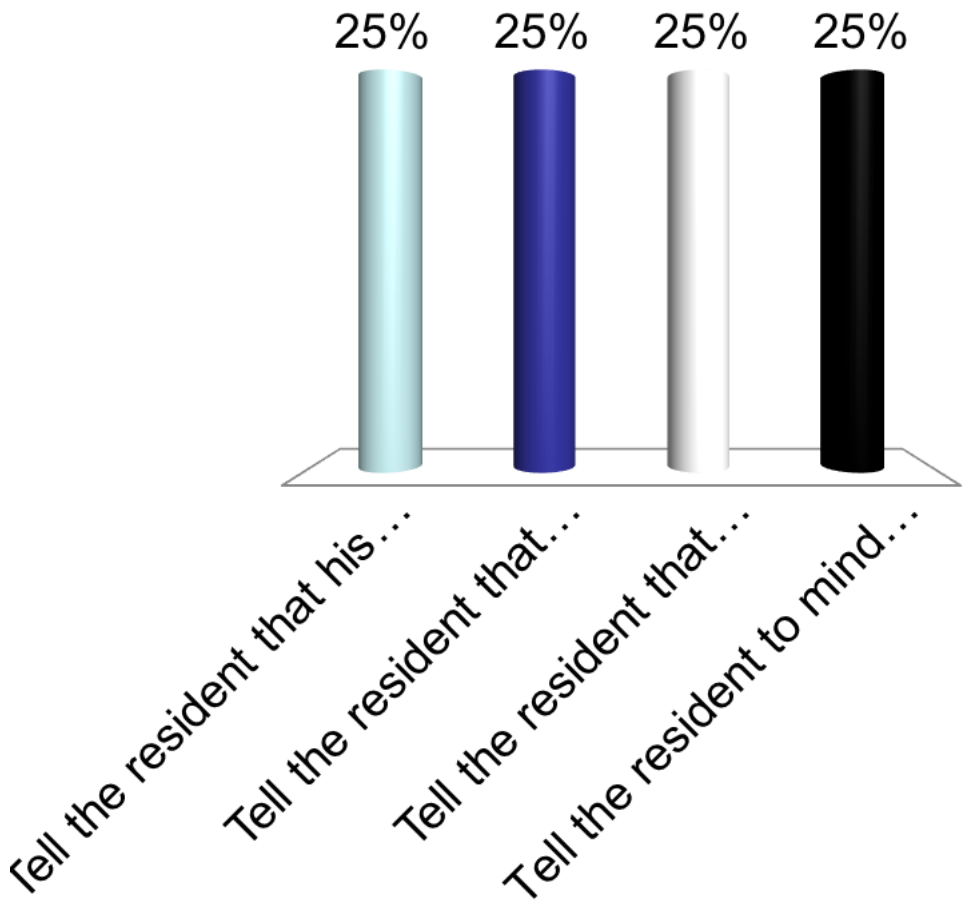
Please make your selection…

A. Tell the resident that his neighbor is disabled with a respiratory illness and is getting his garbage picked up as a reasonable accommodation. You don't think that it would be nice to say that his neighbor has AIDS.

B. Tell the resident that because you're picking up his neighbor's garbage, you'll pick up his as well.

✓ C. Tell the resident that your community's policy and fair housing law prohibit you from discussing other residents with him.

D. Tell the resident to mind his own business.



- The correct answer is: C

- We comply with all state and federal laws, and are not permitted to discuss other residents with you.

Undue Financial and Administrative Burden

- Financial resources of Landlord
- Cost of the accommodation
- Benefits to the Resident
- Alternative accommodation that would effectively meet resident’s disability related needs

QUESTION

I work on a HUD 202 Community. Can I tell folks that ask that we don’t allow families with children?

Please Make Your Selection….

A. Yes. Section 202 is supportive housing for the elderly and doesn't allow kids

✓ B. No. Occupancy in Section 202 is open to any very low income household comprised of at least one person who is at least 62 years old at the time of the initial occupancy

The correct answer is #2. HUD has stated that a HUD financial elderly site can't exclude an otherwise eligible household just because the family has a child. Therefore, if 62 year old grandma applied with 13 year old grandchild, the site couldn't refuse to rent to the household because of the child.

“I’d love to help you, but I’m probably not the best person to answer your question. I’d be happy to get that person for you.”

FAIR HOUSING “TO DO” LIST

- Continue fair housing education
- Train new employees
- Collect fair housing materials for employees to read and discuss
- Document what you have done

The Violence Against Women Act

Joe Maskovyak

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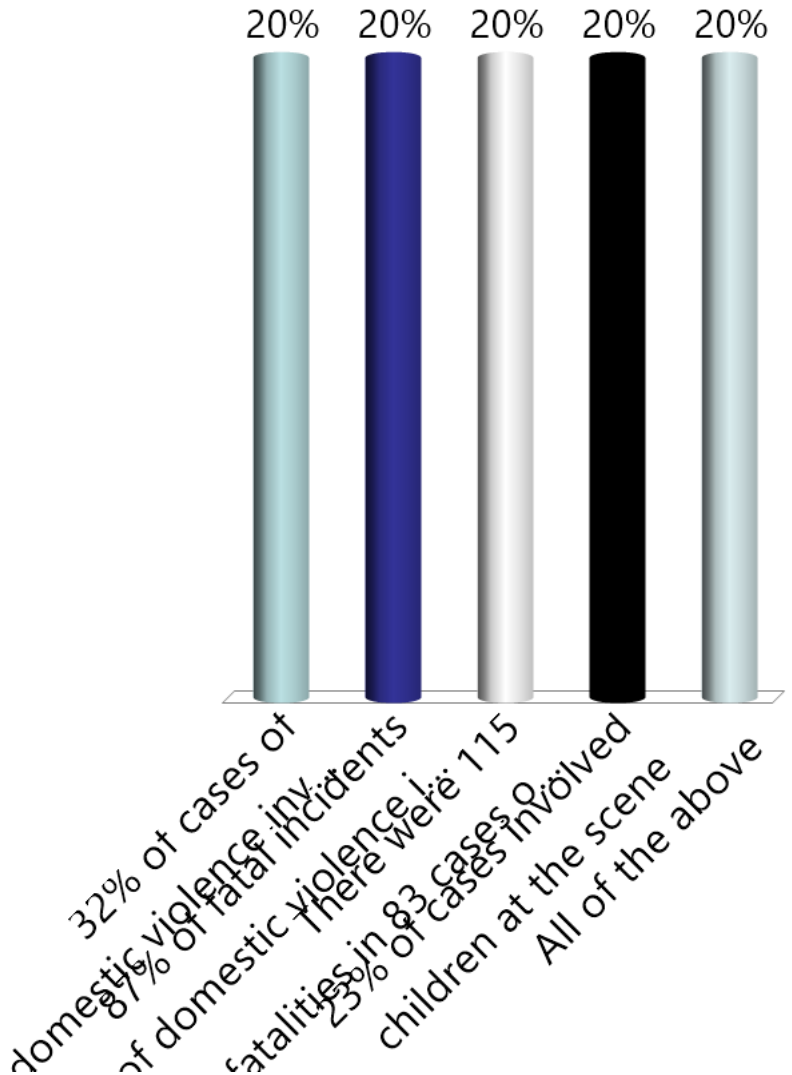
Why does VAWA Matter?

From July 1, 2016 – June 30, 2017, which of the following was/were true in Ohio?

A. 32% of cases of domestic violence involved a suicide
B. 87% of fatal incidents of domestic violence involved guns
C. There were 115 fatalities in 83 cases of domestic violence
D. 23% of cases involved children at the scene
E. All of the above



Why Does VAWA Matter?

- E) All of the above

- The Ohio Domestic Violence Network compiled these statistics, among others, over a one-year period to demonstrate the significant impact of domestic violence in Ohio.

See “Ohio Domestic Violence Fatalities: July 1, 2016-June 30, 2017,” *Ohio Domestic Violence Network*.

Violence Against Women Act

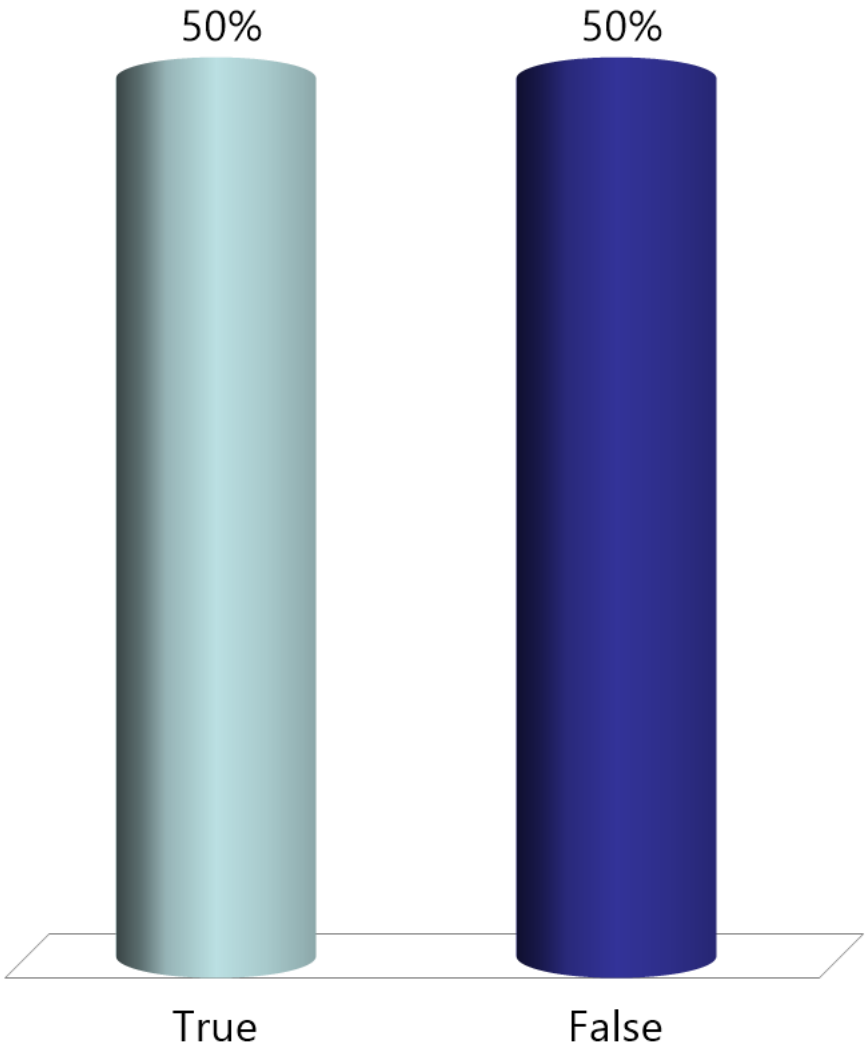
- VAWA first passed in 1994
- Reauthorized in 2000, 2005 and 2013
- VAWA protects certain classifications of victims in particular types of subsidized housing
- New Regulations (November 2016): https://portal.hud.gov/hudportal/HUD?src=/states/shared/working/r8/mf/whatsnew
- New Notice to Multifamily O/As (June 2017): https://portal.hud.gov/hudportal/documents/huddoc?id=17-05hsgn.pdf

Who is Protected?

VAWA means the “Violence Against Women Act”. As a result of the title, it is intended only to protect women

A. True

B. False



Who is Protected?

B) FALSE

- VAWA is intended to protect survivors of domestic violence, dating violence, stalking, and sexual assault regardless of their sex. Women are overwhelmingly the survivors of these types of violence, which is why the title of the statute specifically refers to women.

Who Is Protected?

- Survivors of:
  - Domestic Violence
  - Dating Violence
  - Stalking
  - Sexual Assault
- VAWA applies to survivors regardless of their sex, gender, identity, sexual orientation, disability, or age.

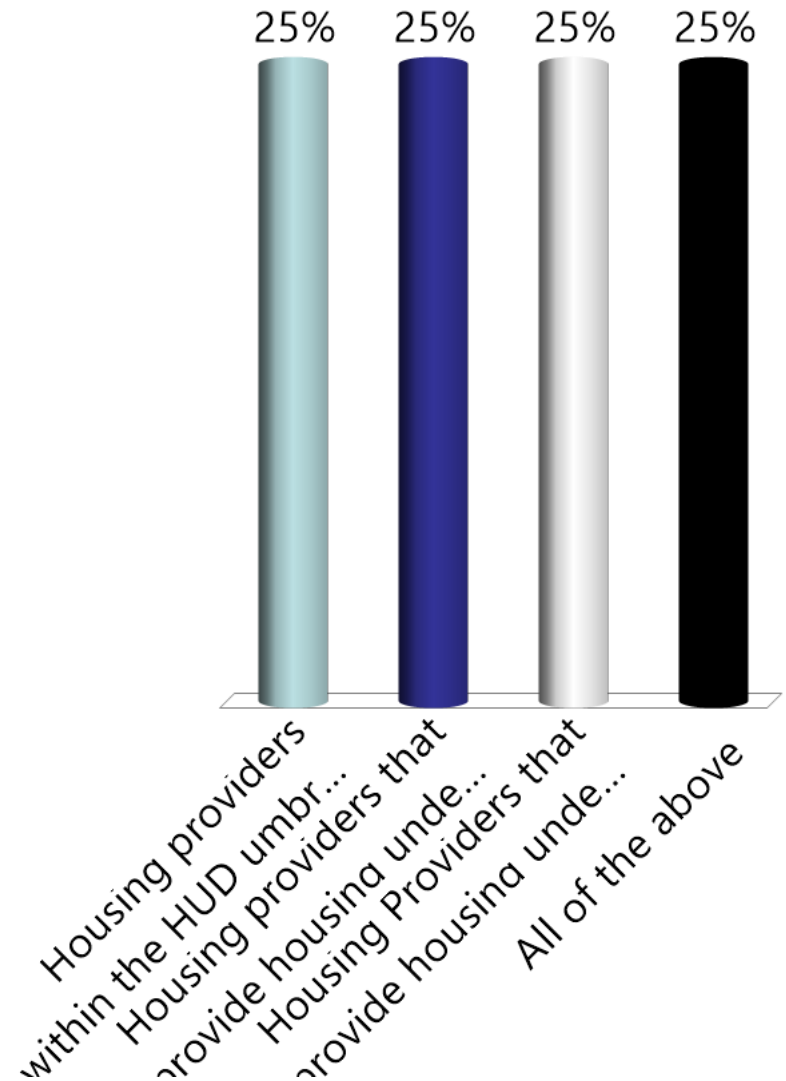
Who Is Protected?

- 2013: Protections extend to "*Affiliated Individual*".
  - "Affiliated Individual" replaces 2005 designation of "immediate family member".
  - Includes immediate family or household member.
  - Protection only extends to co-tenants or individuals on the lease agreement.
- Affiliated individual may not be evicted or denied assistance or admission because of DV.

Who is Covered by VAWA?

VAWA Applies to:

A. Housing providers within the HUD umbrella
B. Housing providers that provide housing under Rural Development Service
C. Housing Providers that provide housing under LIHTC
D. All of the above



Who is Covered by VAWA?

D) All of the above

- Under VAWA and 24 CFR §5.2003, housing providers that provide housing under HUD, RDS, and LIHTC are considered “covered housing program[s].”

VAWA-2005
Protected Categories of Housing

I. Types of Housing Covered:

A. Public Housing

B. Housing Choice Voucher (Section 8 Voucher, HCV)

C. Project-Based Section 8

D. Supportive Housing for Elderly or Disabled

VAWA 2013 Reauthorization

II. New Categories of HUD Multifamily Housing

A. HUD 236 and 221(d)

B. HOPWA

C. HOME

D. HUD 202 (Elderly) and HUD 811 (Disabled)*

*Previously added by HUD reg in 2010, but not by Congress

III. Other New Categories of HUD Housing

A. Homeless Assistance Programs, including Continuum of Care

VAWA 2013 Reauthorization

III. Continuum of Care Programs

A. HEARTH Act in 2012 updated and consolidated CoC programs into:
   A. Permanent housing (PH)
   B. Permanent supportive housing (PSH)
   C. Rapid rehousing
   D. Transitional housing (TH)
   E. Homeless prevention
   F. Emergency Solutions Grant (ESG)

Almost everything subject to HUD authority is subject to VAWA

VAWA 2013 Reauthorization

IV. More New Categories of Housing (Non – HUD)

A. USDA (Rural Housing) Multifamily

   A. Section 515 Rural Rental Housing (RRH)
   B. Section 514/516 Farm Labor Housing (FLH)
   C. Section 538 Guaranteed Rural Rental Housing (GRRH)
   D. Section 533 Housing Preservation Grant (HPG)

(referred to collectively as MFH programs)

B. LIHTC (Low Income Housing Tax Credit)

* These two categories alone add an estimated four million more units that now have VAWA protections*

Heads Up!

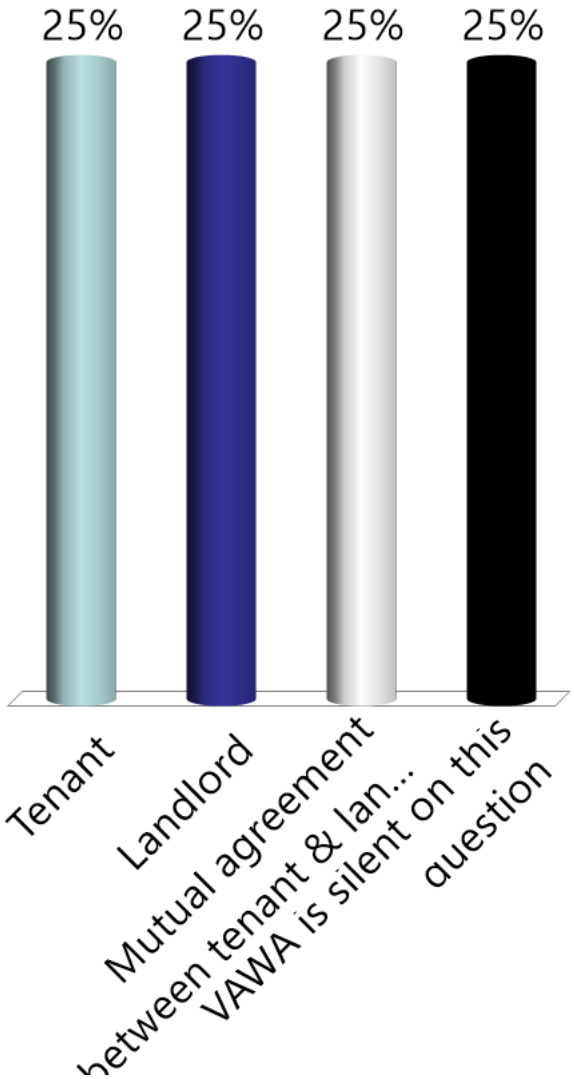
- If you are RD or LIHTC owners or agents, you will also need to know HUD regulations. RD and OHFA both insist that RD and LIHTC properties should follow HUD regulations at 24 CFR 5.2001-2011.

“Covered Housing Provider”

- *Must*:
  - Not discriminate against survivors or affiliated individuals;
  - Provide notice of rights and certification form;
  - Maintain confidentiality;
  - Adopt emergency transfer plan;
  - Comply with court orders.
- *May*:
  - Authorize lease bifurcation;
  - Determine whether to evict/terminate assistance;
  - Request documentation of abuse.

VAWA permits a landlord to require documentation, however, the choice of which documentation will be used comes from:

A. Tenant
B. Landlord
C. Mutual agreement between tenant & landlord
D. VAWA is silent on this question



Documentation

A) Tenant

- Pursuant to 24 C.F.R §5.2007(b)(1), tenants and applicants get to choose which form of documentation to provide to the covered housing program.

Documentation (Continued)

A landlord may require written documentation from the tenant. Acceptable forms of documentation are:

- A) CPO or TPO
- B) Police Report
- C) HUD self certification form
- D) Statement from a lawyer
- E) All of the above
- F) A,B, and C, but NOT D

Documentation (Continued)

E) All of the above

- A tenant may choose to provide ANY (yes, even a statement from a lawyer) of the aforementioned forms of documentation in response to a covered housing program’s request for documentation.

Proving Domestic Violence

- Covered Housing Provider may accept information from tenant through a verbal statement with no further documentation, or may ask for additional proof of violence

- Written Request: any request to tenant for additional documentation must be in writing;
  - Tenant has 14 business days from receipt of the request to provide documentation;
  - Housing provider may allow more time.

Proving Domestic Violence

- Documentation:

  Tenants and applicants get to *choose* which of the forms of documentation listed in VAWA to give to housing providers to document the occurrence of a VAWA incident.

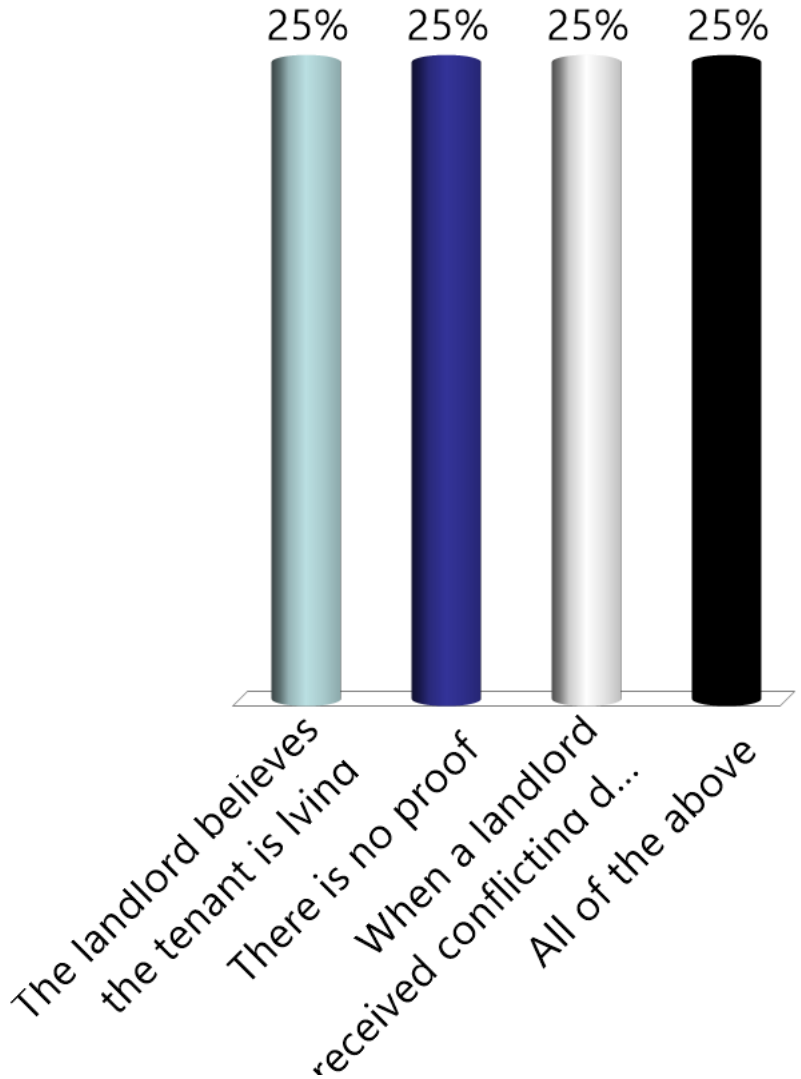
  (See 24 C.F.R. 5.2007(b)(1))

Documentation Options

1. Self-Certification Form (Appendix C to New HUD Rule)
2. Police, Court, or Administrative Record
3. Statement from a Third Party
   - May consist of documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of abuse, in which the professional attests under penalty of perjury to the professional's **belief** that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation

A Landlord can require 3rd party documentation when:

A. The landlord believes the tenant is lying
B. There is no proof
C. When a landlord received conflicting documentation
D. All of the above



Third Party Documentation

C) When a landlord receives conflicting documentation

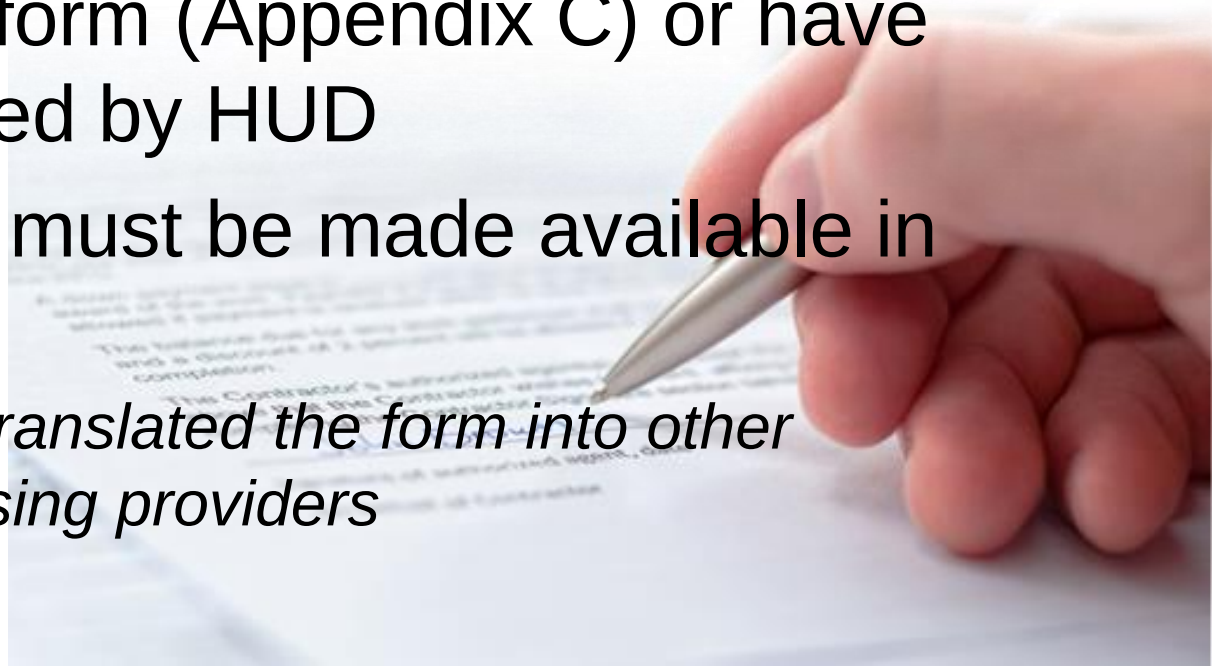
- A landlord may ONLY request 3rd party documentation when the landlord receives conflicting documentation. Otherwise, the landlord CANNOT require an individual requesting VAWA protection to provide 3rd party documentation.

Proving Domestic Violence

- Housing Providers ***CANNOT*** require an individual requesting VAWA protection to provide third- party documentation
- Exception: where a housing provider receives **conflicting certifications**, the provider ***may*** require third-party documentation
- *In cases of conflicting evidence, tenants have 30 days to provide third party documentation*

Self-Certification Form

- Housing Providers are required to allow tenants to use a self-certification form
- Housing Providers **must** either use HUD's Self-Certification form (Appendix C) or have their form approved by HUD
- Certification form must be made available in other languages
  - *HUD has already translated the form into other languages for housing providers*



Confidentiality Must Be Maintained

- Certifications are required to be kept confidential
- Housing Provider **shall**:
  - Limit which employees have access to info;
- Housing Provider **shall not:**
  - Put data into any shared database;
  - Disclose to any third parties (some limited exceptions)

Confidentiality Must Be Maintained

- Any information submitted to a housing provider by an applicant or tenant **“shall be maintained in strict confidence”** and the housing provider may “not enter confidential information… into any shared database or disclose… except to the extent the disclosure is:
  - Requested or consented to in writing [by the tenant];
  - Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
  - Otherwise required by applicable law.”

24 CFR 5.2007(c)

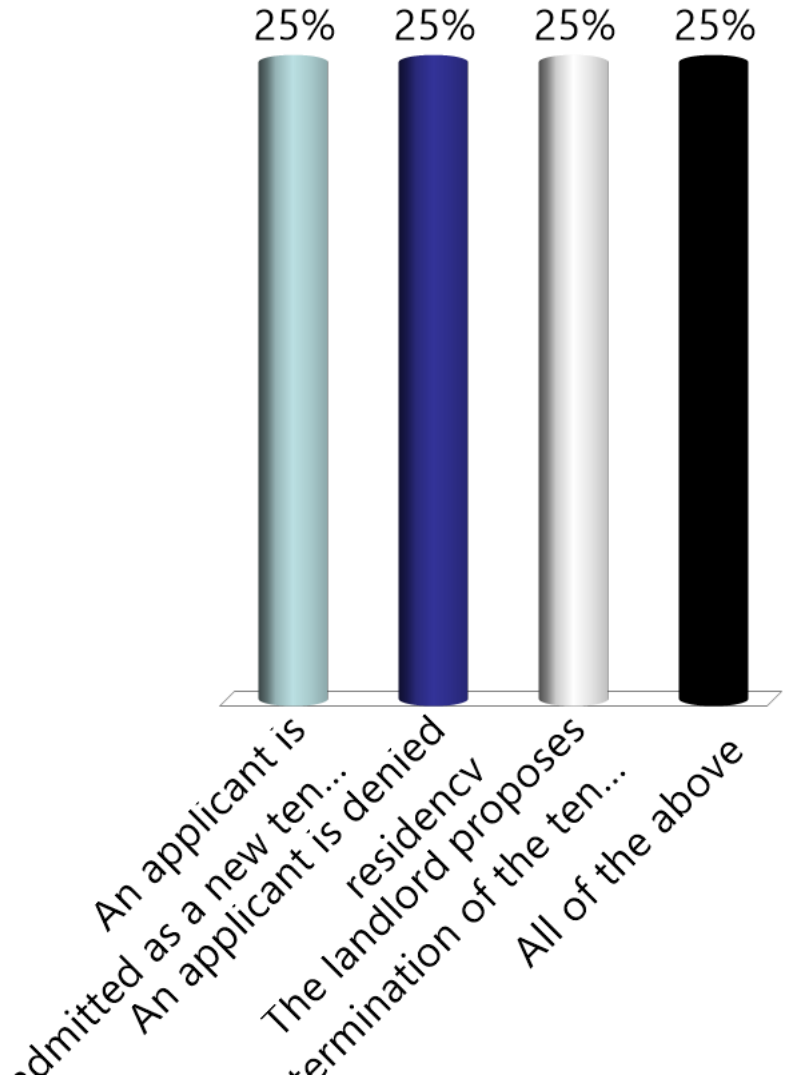
A landlord must give notice of Occupancy Rights when:

A. An applicant is admitted as a new tenant

B. An applicant is denied residency

C. The landlord proposes termination of the tenancy

D. All of the above



Notice of Occupancy Rights

D) All of the above

- These are all crucial places in the process where a tenant/applicant may have need to know their rights

See 24 C.F.R. §5.2005(a)(2)

Notice of Occupancy Rights

- Covered housing providers **must** provide the **Notice of Occupancy Rights (Appendix A to new HUD Rule)** and self-certification form to applicants and tenants:
  - at the time an applicant is denied residency;
  - at the time the individual is admitted; and
  - with any notification of eviction or termination of assistance.

Notice of Occupancy Rights

- Covered housing providers **must** give all **current tenants** the Notice of Occupancy Rights and self-certification form at:
  - Annual recertification or lease renewal, **OR**
  - If there is no annual recertification or lease renewal, then at some other time, during the 12-month period following the effective date of the new rule (December 15, 2017)

Evictions and Terminations

- PHAs, landlords and owners ***may not deny*** assistance under, terminate a tenant from participation in, or evict a tenant from housing *on the basis of or as a* ***direct result of the fact*** *that* that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking

Admissions

- PHAs, landlords and owners **shall not** deny any applicant housing on the basis of OR as a result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking

Evictions and Terminations

- **HUD Example**: if an individual has a poor rental or credit history, or a criminal record, or other adverse factors that ***directly result*** from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program

Evictions and Terminations

Although a landlord may not terminate the tenancy of a VAWA victim, there are exceptions to this rule, including:

- A) When there was an incident that created property damage to the unit or common area
- B) When there was an assault in the unit or the common area
- C) When there was an incident that created noise that disturbed the neighbors
- D) A&B, but NOT C
- E) All of the above
- F) None of the above

Evictions and Terminations

F) None of the above

- Termination of tenancy should be a LAST RESORT that is only used when an individual poses an “actual and imminent threat” to other tenants or employees.

See 24 C.F.R. §5.2003 and §5.2005(d)(4)

Examples of Prohibited Evictions

- Assault by a family member
- Assault by a significant other not living in the household
- Damage to the unit during a domestic violence incident
- Noise that occurs during a domestic violence incident

Limitations-
Actual and Imminent Threat

- 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.
- Defined in 24 CFR 5.2003:

"...a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm..."

- Eviction should occur only if there is no other action to be taken that would reduce or eliminate threat

“Actual and Imminent Threat”

“…In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk,
- The nature and severity of the potential harm,
- The likelihood that potential harm will occur,
- And the length of time before the potential harm would occur.”

(Defined in 24 CFR 5.2003)

Eviction and Terminations

- **Termination should = LAST RESORT**

  (24 CFR 5.2005(d)(4))

- Termination to be used **"only when there are no other actions that could be taken...including but not limited to**:"
  - Transferring the victim to different unit;
  - Barring the perpetrator from the property;
  - Contacting law enforcement to increase police presence or develop other plans to keep the property safe, or
  - Seeking other legal remedies to prevent the perpetrator from acting on a threat.

Limitations: Court Orders

- Notwithstanding VAWA requirements, Covered Housing Provider must comply with Court Orders related to:
  - The rights of access or control of property, including civil protection orders; or
  - The distribution or possession of property among members of a household in a case.

  24 CFR 5.2005(d)(1)(i)&(ii)

Survivor Eligibility

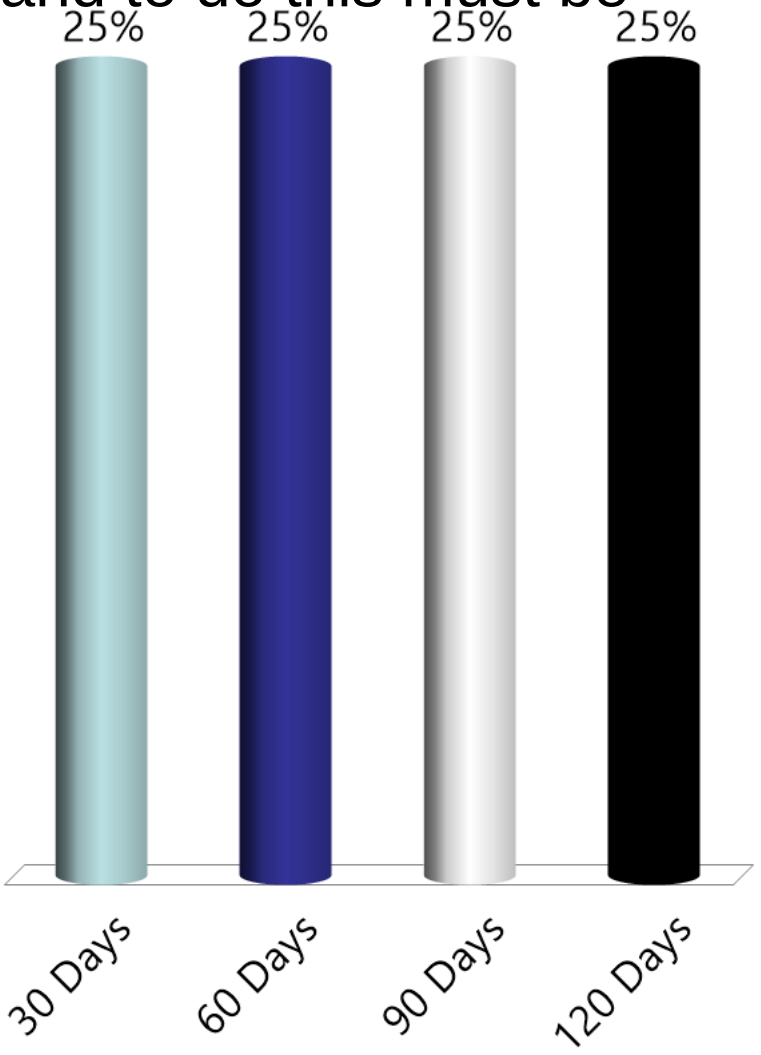
If the abuser was the head of household & the abuser is evicted or abandons the unit, the survivor is permitted to establish eligibility in their name and to do this must be given:

A. 30 Days

B. 60 Days

C. 90 Days

D. 120 Days



Survivor Eligibility

C) 90 days

- Under 24 C.F.R. §5.2009(b)(2), the survivor must be given 90 days to establish eligibility in their name.

Removing the Abuser from the Household

- PHA or Multifamily landlord ***may*** "bifurcate" a lease to evict a tenant who commits DV while preserving the survivor's tenancy rights
- 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

  90 days to establish program eligibility, or find additional housing (24 CFR 5.2009(b)(2))

Family Breakups and Section 8 Vouchers

- Housing authority may terminate Housing Choice (Section 8) Voucher assistance to the abuser while preserving assistance to survivor.
- Housing Choice (Section 8) Vouchers:
  - If a family breakup results from occurrence of VAWA incident, “the PHA must ensure that the victim retains assistance.” 24 C.F.R. § 982.315(a)(2).
  - Survivors can request that vouchers be transferred to their names because of abuse.

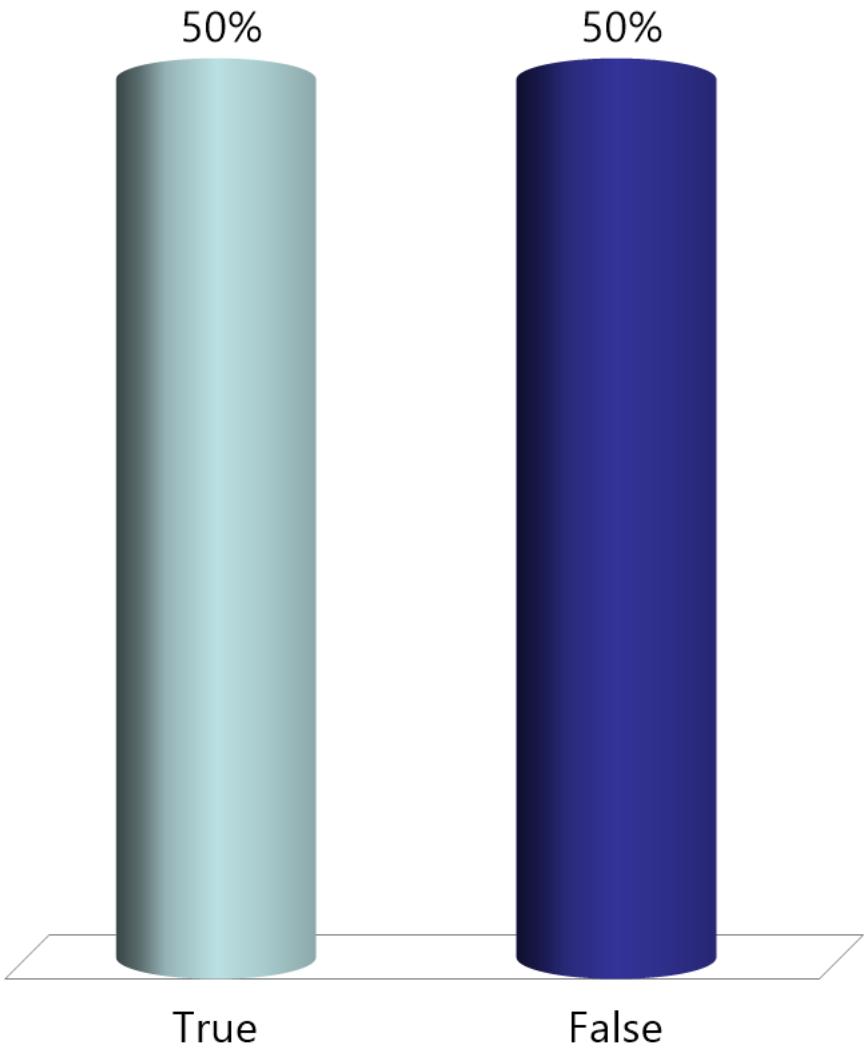
Family Breakups and Vouchers (Continued)

- VAWA states - In deciding who gets the voucher, housing authority can consider:
  - Whether remaining family members should get the assistance.
  - Interest of minor children or of ill, elderly, or disabled family members.
  - Whether family members were forced to leave unit because of domestic violence, dating violence, sexual assault, or stalking.
  - Whether any family member is receiving protection as a victim of domestic violence, dating violence, sexual assault, or stalking.
  - Other factors specified by PHA. 24 C.F.R. § 982.315(b).

Transfers: A landlord may decide to transfer a victim to another unit of the landlord's, but VAWA does not require a transfer policy

A. True

B. False



Transfers

B) FALSE

- Covered housing programs MUST have an internal emergency transfer policy for tenants seeking VAWA protections.

Remedies for Survivors: Emergency Transfer Plan

VAWA 2013 increases protection for survivors by **requiring** covered housing providers to adopt an ***emergency transfer plan.***

Mandatory Internal Emergency Transfer Plan

Emergency Transfer Plan must allow survivors to transfer to another safe and available unit if:

a) The tenant expressly requests the transfer; AND

b) The tenant reasonably believes they are threatened with imminent harm if they remain in the same unit; or if the tenant was a victim of sexual assault that occurred in the 90 days preceding the request.

Mandatory Internal Emergency Transfer Plan

- HUD has adopted a model emergency transfer plan for use by covered housing providers (Appendix B to HUD's new rule)
- *Transfer plan must ensure strict confidentiality so that PHA or owner does not disclose location of new unit to abuser*
- Housing Provider must have adopted an emergency transfer plan by **June 14, 2017**
- **There is no limit on the number of transfer requests a victim may make**

Mandatory Internal Emergency Transfer Plan

- **Housing Providers must**:
  - Give priority to victims in relation to other categories of individuals seeking transfers or placement on waiting lists
  - Allow for a tenant to transfer to a new unit when a safe unit is immediately available and the tenant does not have to apply in order to occupy the new unit
  - Not require third party documentation to prove VAWA protection
  - Provide the emergency transfer plan upon request and the plan must be publicly available whenever feasible

Mandatory Internal Emergency Transfer Plan

- **Housing Providers may**:
  - Require tenants to document an occurrence of domestic violence, dating violence, sexual assault, or stalking before transfer
  - Require tenants to submit a written request before a transfer occurs certifying they meet the criteria for an emergency transfer
- ***HUD has developed a model Emergency Transfer Request form- Appendix D to HUD's New Rule***

Mandatory Internal Emergency Transfer Plan

The Emergency Transfer Plan **must**:

- incorporate strict confidentiality measures
- describe **reasonable efforts** the covered housing provider will take to assist a tenant who wishes to make an **external emergency transfer** when a safe unit is not immediately available

** Turning down a transfer **cannot** be a basis for termination**

Mandatory Internal Emergency Transfer Plan

The Emergency Transfer Plan **must**:

- describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available
- **include policies** for assisting a tenant who is seeking an **external emergency transfer** under VAWA **out of** the covered housing providers program or project, and a tenant who is seeking an external emergency transfer under VAWA **into** the covered housing provider's program or project

Emergency Transfers

- “[T]he HUD-required lease, lease addendum, or tenancy addendum . . .must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking.” 24 C.F.R. §5.2005(a)(4).
- “Each covered housing provider . . . shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD’s model emergency transfer plan . . .” 24 C.F.R. 5.2005(e).
- These requirements apply to public housing and the Section 8 voucher program

Emergency Transfers

- 24 C.F.R. §5.2005(e)(12) requires that ”[t]he covered housing provider . . . keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such request, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.”

Voluntary External Emergency Transfer Plan

HUD **strongly encourages** housing providers to:

- Make arrangements, including memos of understanding, with other O/As or PHAs to facilitate moves
- Provide a letter that the victim may share with prospective covered housing providers, indicating the victim is eligible for an emergency transfer and is seeking an external emergency transfer because a safe unit is not immediately available at the O/A's property
- **Create an admissions preference for victims seeking an external emergency transfer from another covered housing provider**
- **Internal and external transfer requests can be concurrent**

Who Pays for the Emergency Transfer Plan?

Housing Providers pay for:

- Unit turnover costs
- (PHAs can utilize the limited vacancy provision of 24 CFR 990.150 that allows operating subsidy to be paid for a limited number of vacant units under an annual contributions contract (ACC))

Tenants pay for:

- Moving costs (includes application fees, security deposits)
- *HUD encourages housing providers to bear these costs where possible, or to work with victims to identify possibilities for funding transfers*

- **Remember**: **If it is an internal transfer, a housing provider cannot require a new security deposit and application fees**

Tenant Selection Plan

- HUD encourages covered housing providers "to review their transfer waiting list policies in their Tenant Selection Plans, to determine if revisions are necessary to facilitate [VAWA] emergency transfers."
- "In determining whether changes to the existing waiting list policies are necessary, O/As may want to consider the following:
  - Availability and location of units at the tenant's property;
  - Demand by applicants for assistance;
  - Frequency of internal transfer requests; and
  - Availability of alternative housing opportunities."

HUD Notice H 2017-05 (Issued on June 30, 2017)

Ohio Voluntary External Emergency Transfer Plan

- In Ohio, we're creating a voluntary external emergency transfer plan for HUD Multifamily owners
- A tenant or owner can contact the following organizations to pursue a transfer:
  - HUD (Bonnie Spurling - 614-280-6130)
  - Coalition on Homelessness & Housing in Ohio (COHHIO) (Joe);

Ohio Voluntary External Emergency Transfer Plan

- HUD has assembled an internal team for organizing external emergency transfers
- The Ohio Domestic Violence Network is a partner in this plan
- COHHIO is able to answer questions and assist owners who would like to participate

What are USDA-RD's rules and regulations?

What are USDA-RD's rules and regulations?

- RD Multi- Family Housing (MFH) Borrowers and Management Agents will find their VAWA guidance in the RD Administrative Notice #4814, dated January 18, 2017, "Implementation of 42 U.S.C. 14043e-11 of the Violence Against Women Reauthorization Act in Rural Development's Multi-Family Housing Programs."

What rules are the same as HUD's?

- MFH Borrowers/ Management Agents cannot deny admission OR Rental Assistance on the basis that or the result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.
- "Incidents of actual or threatened domestic violence, dating violence or stalking will not be construed as serious or repeated violations of the lease or other 'good cause' for terminating the assistance, tenancy, or occupancy rights of a victim of abuse."

Administrative Notice #4814

What rules are the same as HUD's?

- Confidentiality must be maintained.
- Borrowers and M/As must comply with court orders.
- RD's Borrowers must provide an emergency transfer plan.
- RD's Borrowers may provide lease bifurcations.

What rules are the same as HUD's?

- Borrowers and M/As must distribute the HUD Notice of Occupancy Rights and the Certification of Domestic Violence and Alternate Documentation Form to all applicants and existing tenants.
- RD's Borrowers and M/As may use the HUD VAWA documents, e.g., VAWA Model Lease Addendum, Model Emergency Transfer Plan, etc.

VAWA 2013 Requirements for RD Multi-Family Housing

- “When there is conflict between the VAWA 2013 and RD program regulations, VAWA 2013 requirements shall govern.”

RD Recommendations for Borrowers

- Housing Preservation Grant Borrowers should include a clause in the Management Agreement that the owner agrees and certifies that the assistance is being made available subject to VAWA 2013.
- Borrowers *should modify* their Management Plan.
- Borrowers *should update* their Tenant Selection Policy and Occupancy Rules, if applicable, to incorporate the rights afforded to applicants and tenants under VAWA 2013.

RD Recommendations for Borrowers

- Borrowers *should update* their tenant leases by providing a Lease Addendum containing the rights and protections afforded to victims under VAWA 2013.

Lease Bifurcation and Termination: RD Recommendations

- Lease bifurcation in order to evict or remove the abusing tenant shall be done under the authority of 7 CFR 3560.159(d) Criminal Activity.
- A victim must be a tenant or household member on the lease to request a bifurcation of the lease.
- The “actual and imminent threat” exception still applies, but again, exercising it should be the housing provider’s last resort.

Lease Bifurcation and Termination: RD Recommendations

- When terminating assistance or bifurcating a lease, Borrowers *should follow* the procedures outlined in HB-2-3560, Chapter 6.32 “Termination of Occupancy.”
- After a household member is removed, an interim recertification *should be done*, as outlined in HB-2-3560, Chapter 6.28B “Interim Recertification Process.”

Mandatory Emergency Transfer Plan

- Similar to HUD regulations, but an internal transfer is defined as a "transfer to a unit that is under the Borrower's control and is in an RD program."
- Specific to RD Emergency Transfer Plan:
  - "Tenants who are actual or imminent victims of domestic violence, dating violence, sexual assault, or stalking and are requesting an emergency transfer under the Rural Development Emergency Transfer Plan may receive benefits by the use of a Letter of Priority Entitlement (LOPE) from the Agency, as RD considers this to be a situation beyond the tenant's control."

Mandatory Emergency Transfer Plan

- The tenant must request an emergency transfer.
- If the property manager requires written certification, the property manager may offer the HUD Certification of Domestic Violence Form. BUT written certification is not required.
- After the tenant requests the ET, “The property manager shall immediately contact their MFH RD servicing office, who shall provide the LOPE along with a letter to the tenant indicating at a minimum, that the tenant may receive a priority placement in an available RD unit and the given timeframes.”

Voluntary Emergency Transfer Plan

- Administrative Notice No. 4814 prioritizes internal transfers, but
- MFH Borrowers and property managers are *strongly encouraged* to "establish relationships with victim advocacy organizations, Owners/ Management Agents of private markets and other non-RD subsidized housing providers in their jurisdiction to better be able to assist victims in emergency situations."

Voluntary Emergency Transfer Plan

- Borrowers *should make* available to tenants a list of other RD and non-RD housing providers in the local area who assist victims of VAWA-related crimes.
- They *should also maintain* a list of programs and phone numbers of advocacy organizations that assist victims of domestic violence, dating violence, sexual assault, and stalking on an emergency basis.

Variance from HUD requirements?

- “Where VAWA assistance is provided under more than one Federal housing program, MFH will not prevent tenants who are seeking the VAWA 2013 protections or remedies under any or all of those programs, as long as the protections or remedies chosen are feasible and permissible under MFH’s regulations and statutes.”

What are OHFA's rules and regulations for LIHTC Properties?

OHIO HOUSING FINANCE AGENCY

PROGRAM COMPLIANCE UPDATE

OHFA's Policy on the Violence Against Women Act

Basics of Violence Against Women Act

With the reauthorization by Congress of the Violence Against Women Act (VAWA) of 2013, the Low Income Housing Tax Credit program was added to the list of covered programs. The VAWA protections apply to all victims of domestic violence and other related crimes, regardless of gender. The following housing programs are covered by VAWA:

What are OHFA's rules and regulations for LIHTC Properties?

OHFA Requirements for VAWA

Adherence to the requirements of VAWA is required for all OHFA multifamily funding programs, including LIHTC, HOME, National Housing Trust Fund (NHTF), Ohio Housing Trust Fund (OHTF). Properties that received funding of HOME and NHTF are required to follow the **HUD 2013 VAWA Final Rule**. Although the IRS has not provided guidance on how to comply with the VAWA, OHFA recommends properties with HTC funding follow the **HUD 2013 VAWA Final Rule** when implementing VAWA Rule protections for their tenants.

Tenants and applicants must be informed of their rights under VAWA. OHFA recommends use of the **HUD Notice of Occupancy Rights under VAWA form 5380** and language incorporated into the tenant selection plans. The OHFA Tax Credit Lease Addendum contains language regarding following VAWA. However, additional language regarding VAWA can be incorporated into the lease or the **HUD VAWA Lease Addendum** may be used in addition to the OHFA Addendum.

Each owner or manager is required to have an emergency transfer plan (**HUD Model Plan**) for victims seeking safety, which incorporates reasonable confidentiality measures to ensure that the owner or manager does not disclose the location of the dwelling unit of a tenant to a person that commits an act of violence or stalking against the tenant.

What are OHFA's rules and regulations for LIHTC Properties?

OHFA recommends the use of HUD forms when rights under VAWA are invoked, which include the **Certification of Domestic Violence form 5382** and the **Emergency Transfer Request form 5383**. Other possible documentation includes an affidavit signed by the victim under penalty of perjury; an affidavit or letter signed by a domestic violence service provider, attorney or medical/mental health professional who assisted the victim; or a court or administrative record. ***This submission shall be confidential.*** HUD also provides **VAWA forms in multiple languages**.

Beginning with the 2017 Annual Owner Certification Reporting cycle, OHFA will require owners certify compliance with VAWA requirements. The VAWA certification will be a separate form and not part of the Annual Owner Certification. Additional information on the VAWA certification will be issued in several months. Should an owner encounter a conflict between VAWA and a Housing Tax Credit rule, such as the Full-Time Student Rule, the owner should contact OHFA's Office of Program Compliance for additional guidance.

New VAWA Annual Owner Certification Questions

- On ALL certification types, there are four required questions on VAWA:
  - 1) Does the property have an emergency transfer plan?
  - 2) Were tenants informed of their VAWA rights?
  - 3) If VAWA was invoked by a tenant, what, if any, documentation was required as proof of the incident(s)?
  - 4) Is there additional language on VAWA included in the lease?

OHFA Certification Form

2019 Draft QAP

- HTC owners/managers CANNOT deny admission to, terminate, or evict an applicant or tenant, or affiliated individual, "on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking" if the applicant or tenant otherwise qualifies for housing.
- The HTC owner/manager must provide applicants or tenants the Notice of Occupancy rights when an applicant or tenant is 1) admitted as a tenant, 2) denied admission, or 3) being terminated.

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2019 Draft QAP

- "An incident of domestic violence, dating violence, sexual assault, or stalking shall not be considered a lease violation by the victim, nor shall it be considered good cause for an eviction."
- "Each HTC owner/manager shall have an emergency transfer policy for victims seeking safety, which incorporates reasonable confidentiality measures . . . an emergency transfer policy incorporates many features in addition to a transfer plan, since an emergency transfer often may not be possible."

2019 Draft Qualified Allocation Plan, Page 6

Ohio Domestic Violence Network

- The Ohio Domestic Violence Network's toll free number:

800-934-9840

How to Keep in Touch

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- Joe Maskovyak
  - Phone: 614.280.1984 Ext. 133
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Thank You!