

# Fair Housing Toolkit

Disability and Admissions.....	page 1
Domestic Violence and Housing .....	2
Language Access.....	7
Best Practices: Screening Applicants for a Criminal Record..	8
Quick Facts: Screening Applicants for a Criminal Record....	9

## Reasonable Accommodation for People with Disabilities

The Fair Housing Amendments Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act require that housing providers make reasonable accommodations for people with disabilities. A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. Denying a reasonable accommodation is discrimination.

*39% of families living in federally assisted housing have at least one disabled family member*

A housing provider **MUST** provide a reasonable accommodation if:

1. The participant has a disability
2. The participant requests an accommodation
3. The requested accommodation would allow the person with a disability the equal opportunity to use and enjoy the dwelling.
4. The request is “reasonable”

Eva was diagnosed with several dissociative disorders in 1998. Her doctor prescribed a medication regimen for her, which she followed consistently. In 2005, Eva switched hospitals. During this switch, she did not receive her regular medication. She failed to pay rent, engaged in several verbal altercations with her neighbors, and was therefore evicted. While Eva was homeless for a period, a family member helped Eva set up an appointment with her new doctor, she began taking her medication again and has not since had problems. She finds a multifamily complex nearby her hospital and work, and submits an application with the property manager. During a routine check of credit and rental history, the property manager finds that Eva has negative rental history, specifically her 2005 eviction. Her application for housing is denied.

## Best Practices

- Ensure that applications/communications for housing include a notice in clear language that a person is entitled to a reasonable accommodation for their disability.
- Provide applications in accessible formats (large type, Braille, etc.)
- Have a clear process for accepting requests. Note that a housing provider cannot require that a request be in writing.
- Ensure that applications can be submitted in multiple ways, including online, in person, and by mail.
- If the property manager’s office is inaccessible, agree to meet at an accessible location.
- Utilize the HUD/DOJ Joint Statement on Reasonable Accommodations
- If the initial request is unreasonable, engage in an interactive process to determine a reasonable accommodation.

## Resources

- <http://nhlp.org/resourcecenter?tid=63> – NHLP webpage on reasonable accommodation
- <http://www.bazelon.org/Where-We-Stand/Community-Integration/Housing.aspx> -- Bazelon Center for Mental Health Law page on disability and housing
- <http://www.hud.gov/offices/fheo/library/hud DOJ statement.pdf> -- HUD/DOJ Joint Statement on Reasonable Accommodation

## **Domestic Violence and Housing: What's the Connection?**

- Women living in rental housing experience domestic violence at a rate more than three times the rate of women living in owned housing.
- A survey of legal service providers around the country found that these providers responded to almost 150 documented eviction cases during a 12-month period where the tenant was evicted because of the domestic violence crimes committed against her. In addition, nearly 100 clients were denied housing because of their status as victims of domestic violence.
- In a test conducted by the Equal Rights Center, 65% of applicants seeking housing on behalf of domestic violence survivors were either denied housing or offered less advantageous terms than applicants not associated with domestic violence.
- Because women constitute the majority of domestic violence victims, HUD has found that policies that have a negative effect on domestic violence victims can constitute sex discrimination under the Fair Housing Act.
- For Section 8 and public housing, the Violence Against Women Act (VAWA) prohibits denying housing to an applicant based on her status as a victim of domestic violence.

## **Domestic Violence and Admissions: A Case Example**

- Maria's batterer was arrested after he severely injured her. She cooperated with law enforcement and received victim compensation funds to relocate for her safety.
- Maria searched for a safe apartment on the other side of town from her batterer. She found a complex that fit her needs and was told by the property manager that there was an available apartment. The property manager gave her an application.
- Maria returned the application. The property manager reviewed the application and told her that she met the complex's screening requirements. The property manager asked Maria to come in the following week to review and sign the lease.
- Before executing the lease, Maria asked the property manager to complete a form for the victim compensation program so that she could receive her relocation funds.
- The next day, the property manager told Maria that the apartment was no longer available.
- An advocate working on Maria's behalf contacted the property manager and told her that the refusal to rent to Maria could be considered sex discrimination. Maria also considered filing a complaint with the Department of Fair Employment and Housing.

## **Keep In Mind:**

- Many domestic violence survivors have negative tenancy, credit, or criminal history that is related to the abuse committed against them. An increasing number of owners and housing authorities consider this as a mitigating factor in their admissions decisions.
- Requiring an applicant to provide proof that she has divorced the abuser or has a separation agreement could violate fair housing laws.
- Requiring an applicant to obtain a restraining order against her abuser could violate fair housing laws. Conversely, denying housing to an applicant because she has obtained a restraining order could violate fair housing laws.

## **DOMESTIC VIOLENCE POLICY**

### **Purpose**

This Policy is intended to promote awareness of domestic violence, to prevent discrimination against victims of domestic violence, and to assist tenants who may have been the victims of such violence.

### **Definitions**

*A victim of domestic violence* is defined as an individual who has been subjected to acts or threatened acts of violence or other acts or threatened acts of criminal conduct (except acts of self-defense), committed by any person who is currently or was formerly related to the victim, or with whom the victim is living or has lived, or with whom the victim is involved or has been involved in an intimate relationship.

For the purposes of this Policy, Landlord shall be defined as H.A. Housing, L.P. and/or Urban Property Management, Inc. and their employees and agents with respect to all federally subsidized Section 8 family housing which they own and/or manage.

### **Policy**

#### **I. Protection from Discrimination**

Landlord shall not refuse to rent to, and shall not evict, or otherwise discriminate against an individual on the basis of sex in any of the residential rental properties it owns and/or manages. In particular, Landlord shall not refuse to rent to, evict, or otherwise discriminate against an individual on the basis that such individual is a victim of domestic violence or on the basis that Landlord believes that person to be a victim of domestic violence. Landlord also shall not refuse to rent to, and shall not evict, or otherwise discriminate against a victim of domestic violence on the basis of acts committed by the perpetrator of domestic violence, regardless of whether or not the perpetrator of domestic violence is a resident in the victim's household.

#### **II. Emergency Situations**

- A. Where a tenant claims that he/she or his/her children are in imminent physical danger due to the threat of or actual domestic violence, the tenant may request a transfer to a different residential property owned or managed by Landlord. Landlord may require that the tenant provide evidence of such actual or threatened domestic violence. The evidence to be provided will take the form of one of the following, to be chosen by the tenant: a police or court record, or a statement from a member of the clergy, a victim services provider or a medical professional.
- B. A tenant shall submit such an emergency transfer request to the Resident Manager, who, once the request is received, shall complete and submit the

appropriate form within one business day to the District Manager for consideration.

- C. A tenant who qualifies for a transfer under this Policy will be afforded a preference and moved to the top of the wait list for a suitable unit not already committed to another applicant.
- D. Landlord shall make a diligent and good faith effort to transfer the tenant to a vacant unit in a different Section 8 family property owned and/or managed by Landlord, appropriate for the needs of the tenant, within five business days of receipt of the tenant's transfer request. It is understood, however, that the existence of this policy does not ensure or otherwise guarantee that such a unit may be available. If such a unit is not available within five business days of receipt of the tenant's request, Landlord shall continue to make a diligent and good faith effort to transfer the tenant to an appropriate vacant unit in a different Section 8 family property as one becomes available, and shall determine availability at least once every five business days while the transfer request remains in effect.
- E. Tenant's emergency transfer request shall remain in effect for a period not to exceed 60 days. The tenant may renew the emergency transfer request at the end of 60 days upon submission of further evidence as described in Paragraph II(A).
- F. Upon transfer, the tenant will enter into a new lease for the unit into which he/she has been transferred.

### **III. Confidentiality**

If a tenant reports to Landlord that she or he is a victim of domestic violence or otherwise seeks assistance under this Policy, Landlord will take reasonable steps to protect the confidentiality of the reporting tenant, informing other persons only to the extent reasonably necessary to protect the tenant or others and to comply with this Policy and applicable law. Nothing in this Policy is intended to prevent Landlord from contacting the appropriate authorities if Landlord reasonably believes the safety of tenants and/or the residential property is at risk. Where practicable, Landlord will provide prior notice to the reporting tenant that Landlord intends to contact the authorities about the domestic violence related matters.

### **IV. Complaints Related to Violation of This Policy**

Tenants and rental applicants who believe that a violation of this Policy may have occurred should report such circumstances to the Resident Manager and should fill out a complaint form maintained at the rental office. The Resident Manager shall promptly provide the completed complaint form to the District Manager. Landlord shall investigate the complaint and report Landlord's findings to the complaining individual within thirty days of the Resident Manager's receipt of the complaint form.

**V. Notice to Tenants**

- A. Landlord shall post in the rental office of each residential property that it owns or manages a notice of this Policy. In addition to the rental office, the notice also shall be posted in at least one other highly visible location in each residential property that Landlord owns or manages which could include, but is not limited to, bulletin boards, common areas, elevators, or laundry rooms. The notice shall read as follows:

**NOTICE TO VICTIMS OF DOMESTIC VIOLENCE**

The owner and managers of this property have a policy that no person will be denied any housing benefit or discriminated against on the basis of sex, including being a victim of domestic violence. This policy includes protection of a tenant who is a victim of domestic violence from eviction because of the domestic violence, even where the perpetrator of the violence is or was a member of a tenant's household. This policy also provides that a tenant can request a transfer to another subsidized complex if the tenant is in imminent danger because of domestic violence.

To complain of discrimination on the basis that you are a victim of domestic violence or to request an emergency transfer because you are in imminent danger due to domestic violence, see the Resident Manager to obtain the appropriate form. Once you return a completed discrimination complaint form to the Resident Manager, your Landlord must respond to your complaint within thirty days. Once you return a completed transfer request form to the Resident Manager, your Landlord will promptly begin a search for an appropriate vacant unit. You may be asked to provide evidence of the domestic violence.

If you are a victim of domestic violence and you would like help addressing your situation, you may contact the National Domestic Violence Hotline: 1-800-799-SAFE (7233), TTY 1-800-787-3224.

If you would like legal assistance regarding a domestic violence situation or housing discrimination, you may also contact the Colorado Legal Services office in Denver at: 303-837-1313 (representatives can direct you to the local Colorado Legal Services office nearest you; you can also find contact information for all Colorado Legal Services offices online, at <http://www.coloradolegalservices.org>).

- B. Landlord shall distribute a copy of the notice set forth in Section V(A) to all tenants currently living in Section 8 family housing owned or managed by Landlord by placing the notice under the door of each tenant or posting it on the door, if necessary. Landlord also shall provide one copy of the notice to each new tenant upon signing of the lease.

## **VI. Training**

All employees of Landlord who will be responsible for implementation of any aspect of this Policy shall receive training that provides a basic understanding of domestic violence, relevant fair housing laws and regulations, and the substance and implementation of this Policy. All other employees of Landlord who interact with tenants (i.e., maintenance, housekeeping) will receive training that provides a basic understanding of domestic violence as a component of and at the same time that they receive other training from Landlord on fair housing laws and issues.

## **VII. Governing Law**

It is understood that Landlord and this Policy are subject to all applicable state and federal laws, regulations, and rulemaking. In the event of an inconsistency between this Policy and applicable state and federal laws, regulations, and rulemaking, the latter will control.



## LANGUAGE ACCESS

Title VI of the Civil Rights Act: Subsidized housing providers must ensure meaningful access for persons with limited English proficiency (LEP)

Q. Who is an LEP Person?

A. LEP persons include anyone “who does not speak English as their primary language and who have a limited ability to read, write, speak, or understand English . . .” (HUD LEP Guidance, 68 F.R. 244).

*According to the US Census, in 2000 about 22% of the American adult population spoke a language other than English. Of those people, 26%, or nearly 12.5 million, self-identified as speaking English “not well” or “not at all.”*

Q. What must a housing provider do to ensure meaningful access for LEP persons?

- A. 1. Conduct a four-factor analysis
- 2. Develop a language access plan
- 3. Provide appropriate language assistance

Early on a Tuesday, Ms. Petrova, walks into the property manager’s office at a HUD-subsidized multifamily building. She is accompanied by a younger man, Nicholas, who states that he is Ms. Petrova’s son and that she would like an application for housing. The manager provides them with an application, in English. Nicholas and Ms. Petrova speak with each other in what appears to be Russian, as Nicholas proceeds to fill out the form. After a few days, the property manager leaves a message on Ms. Petrova’s voicemail that her application looks good and housing is available.

After a year of living at the property, Ms. Petrova submits her recertification form. The manager notices that at this time, the tenant has submitted information that she works at a bakery, information that had not been provided on her initial application. Upon further investigation, Ms. Petrova has held this job for four years. While she is still eligible as a very low income person, the tenant receives a letter saying that she must either repay \$5,000 in back rent based on her actual income over the past year, or face eviction. Ms. Petrova takes the letter to a community group for translation. Her caseworker at the community group suggests that they go to Legal Aid’s drop-in clinic to address her problem. There, the lawyer learns that Nicholas never explained to Ms. Petrova what the application for housing said, and that he controls all of her finances. He was out of the country during recertification, and so Ms. Petrova had gotten assistance from a bilingual friend in filling out that form. The attorney agrees to represent Ms. Petrova to help keep her housing, and suggests filing and administrative complaint with HUD’s Fair Housing Enforcement Office.

### Resources:

- <http://www.lep.gov/> - Website of the Federal Interagency Working Group on Limited English Proficiency, includes a number of helpful resources for recipients of federal financial assistance.
- <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm> -- HUD’s LEP page, includes documents already translated into various languages, as well as HUD’s “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 72 FR 2732 (January 22, 2007).
- <http://nhlp.org/resourcecenter?tid=88> -- NHLP’s language access page





### **Best Practices**

- Display prominent signs informing applicants and residents of their right to translation/interpretation
- Utilize “I speak” cards at front desk
- Advertise housing availability in ethnic media, in the language of that media
- Do not allow family members, especially minor children, to interpret on behalf of an applicant (if the applicant insists, require signed acknowledgement that free interpretation was offered)
- Hire bilingual staff and ensure that they are competent translators (a variety of testing tools are available)
- Contract with a phone-based interpreter system
- Train staff on cultural competency and LEP procedures on an annual basis
- Utilize HUD-translated materials
- Provide translated materials in the commonly spoken languages in the area your housing serves
- Ensure that all vital communications are in the applicant/tenant’s language



## Best Practices: Screening Applicants for a Criminal Record

### Screening Criteria

- Do not bar all applicants who have a criminal record or a particular conviction.\*
- Consider...
  - The individual circumstances of each applicant.
  - The relationship between the offense and the safety and security of other residents or the property.
  - How long ago the offense occurred.
  - Mitigating factors, including, but not limited to: (1) the seriousness of the offense; (2) the age of the applicant at the time of the offense; (3) evidence of rehabilitation, such as employment, participation in a job training program, education, participation in a drug or alcohol treatment program, or letters of support from a parole or probation officer, employer, teacher, social worker, or community leader; (4) if the offense is related to acts of domestic violence committed against the applicant; and (5) the effect a denial of admission would have on the household and the community.
  - Granting a waiver of admission policies or practices as a reasonable accommodation if the offense is related to a physical or mental disability.
- Do not consider...
  - Arrests that did not result in convictions.
  - Convictions dismissed under Cal. Penal Code § 1203.4 or 1203.4a. The purpose of the statute is to release an individual “from all penalties and disabilities resulting from the offense.”
  - Juvenile adjudications.

\* Federal law does impose restrictions on admission to certain HUD-funded units. Applicants who are subject to a lifetime registration requirement under a state sex offender registration law are not eligible for admission to public housing, the voucher program, project-based Section 8, Section 8 moderate rehabilitation, Section 202, 811, 221(d)(3), or 236 housing. Applicants who have been convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing are not eligible for admission to public housing, the voucher program, or Section 8 moderate rehabilitation housing.

### Application

- The written application materials should...
  - Outline the screening criteria that will be used.
  - Provide space for the applicant to explain the conviction and present evidence that he or she will be a suitable tenant.
  - Provide space for the applicant to request a waiver of admission policies or practices as a reasonable accommodation.
  - Be written in language that is clear and accessible. Applicants who do not understand a question or cannot remember the specifics of a conviction are often rejected for misrepresentation.

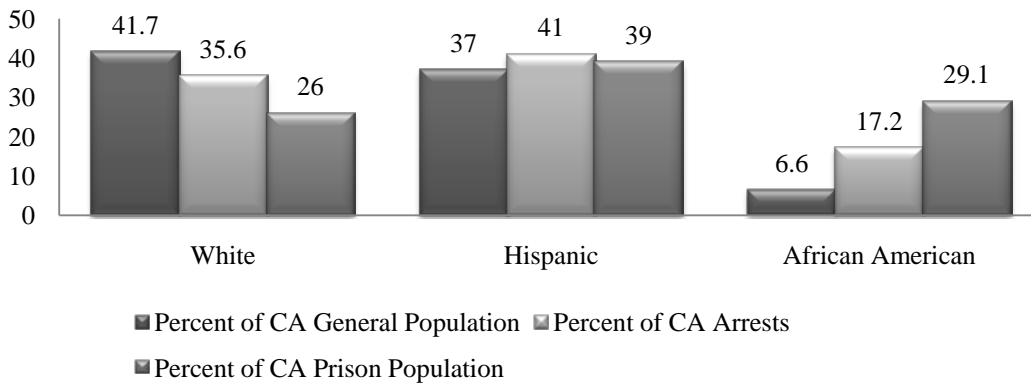
## **Notice of Denial and Appeal Process**

- Send a written notice to each applicant denied admission. The notice should...
  - List the particular conviction or convictions that led to the decision.
  - Explain how the applicant can request an informal meeting to contest the decision.
  - State that an applicant with a disability is entitled to request a reasonable accommodation to participate in the meeting.
  - Inform the applicant that he or she is entitled to bring an advocate or attorney to the meeting.
  - Describe the evidence that the applicant can present at the meeting.
  - Inform the applicant that if the offense is related to a physical or mental disability, he or she is entitled to request a waiver of admission policies or practices as a reasonable accommodation.
  - Provide referral information for local legal services and housing rights organizations.
  - Note: If the rejection is based on a criminal background check obtained from a tenant screening agency, the Fair Credit Reporting Act and the Investigative Consumer Reporting Agencies Act impose additional notice requirements.
- Give applicants denied admission the chance to challenge the decision in an informal meeting.
- An applicant who goes through the appeal process should not lose his or her place on the waitlist.
- Allow the applicant to bring an advocate or attorney to the meeting.
- Confine the subject of the meeting to the reason for denial listed in the notice.
- Give the applicant a chance to present documents and witnesses showing that he or she will be a suitable tenant.
- Have an impartial person conduct the meeting. It should not be the staff person who made the initial decision or a subordinate of the person who made the initial decision.
- Within 5 days of the meeting, provide the applicant with a written decision that states the reason for the decision and the evidence relied upon.



## Quick Facts: Screening Applicants for a Criminal Record

- In California, 20 percent of adults have a criminal record on file with the state. In 2009, California prisons released over 130,000 individuals, and San Francisco County jails released over 28,000 individuals.
- People of color are over-represented at each stage of the criminal justice system, from arrest to sentencing. Studies confirm that racial discrimination contributes to the problem.



- Individuals with a criminal record often end up homeless or in unstable housing arrangements.
  - Between 30 and 50 percent of parolees are homeless in San Francisco and Los Angeles.
  - Many individuals returning to the community end up shuttling between relatives and friends, unable to find permanent housing.
- Leaving vulnerable individuals homeless or in unstable housing arrangements does not enhance community safety.
  - Research shows that individuals who manage to secure housing soon after release face a lower risk of recidivism.
- There is no evidence that individuals with a criminal record are not good tenants. In fact, a study of homeless individuals with behavioral health disorders found no connection between the presence of a criminal record and housing retention. Daniel K. Malone, *Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders*, 60 *Psychiatric Services* 224 (2009).