

Housing IS Health Care

A presentation by
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Why does housing matter?

Where we live affects how others view us and how we view ourselves.

In our society, housing is connected to so many critical aspects of life – it contributes to our feeling of success or failure.

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Why does housing matter?

Where we live determines many things:

- ◆ What kinds of job opportunities will be open to us;
- ◆ What kind of education our children will have;
- ◆ What kinds of professional and social associations we will have in our community;
- ◆ What kinds of physical danger we will be exposed to;

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Why does housing matter?

Where we live determines many things:

- ◆ What kinds of values and expectations will be opened to us;
- ◆ *What kinds of health care facilities, and physicians will be nearby and what standard of care is available to us.*

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Housing IS Healthcare

This presentation will:

- ◆ Familiarize participants with resources that exist to assist consumers in seeking and obtaining quality affordable housing, free from illegal housing discrimination, while managing the fiscal responsibilities paired with being HIV positive.
- ◆ Educate participants on the fair housing laws and regulations that housing providers are subject to when renting or selling to potential residents.

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Historical Overview

- ◆ In 1968, subsequent to the assassination of the Rev. Dr. Martin Luther King Jr., Congress passed the Fair Housing Act. The Act expressly outlawed all discrimination in housing, and in other housing related transactions that could otherwise make unavailable or deny housing on the basis of race, color, religion, sex or national origin.
- ◆ In 1988, under President Reagan, the Fair Housing Act was amended to add familial status and handicap (disability) as protected classes.

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Application to All "Dwellings"

- The Fair Housing Act covers any "dwelling," which is defined as any building, structure, or portion of a building or structure that is occupied as, or intended or designed for occupancy as, a residence by one or more families or individuals.

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Application to All "Dwellings"

(continued)

- Thus, "dwellings" include houses, townhouses, condominiums, apartments, co-ops, nursing homes, assisted living facilities, residential hotels, and any other type of residential housing.
- A "dwelling" is also defined to include any vacant land offered for sale or lease for the construction or location of any residential housing.

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The Fair Housing Amendments Act

- ◆ Applies to property owners, landlords, housing managers, neighborhood & condominium associations, real estate agents, brokerage service agents, and homeowners insurance agents and companies.
- ◆ Exceptions:
 - Owner occupied, 4 or fewer units;
 - Single-family if owner owns 3 or less, other criteria

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The Fair Housing Amendments Act

- ◆ Examples of dwelling under the FHAA include:
 - Private sector rentals
 - Public & assisted housing
 - Tax credit housing
 - Co-ops and condominiums
 - Assisted living
 - Nursing homes
 - “Assisted” and “Nursing” units in CCRCs
 - Hospices
 - Group homes

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Protected Classes

- ◆ Race, Color, Religion, Sex, National Origin, Familial Status, Handicap (Disability)
 - While the categories of race, color, religion, sex, and national origin are not defined, the law does provide definitions of “handicap” and “familial status.”

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Handicap (as defined by the FHAA)

- A "handicap" is a physical or mental impairment which substantially limits one or more of a person's major life activities. It includes impairments which a person actually has, has a record of having, or is regarded as having.

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Handicap (as defined by the FHAA)

- In 1998, the United States Supreme Court, in *Bragdon v. Abbott*, US Sup. Ct. No. 97-156, ruled that a person's asymptomatic HIV infection is a disability under the Americans With Disabilities Act.
- Because of this ruling, it is clear that asymptomatic HIV infection is a disability that is also covered by the federal Fair Housing Amendments Act (FHAA).

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Disability Inquiry Prohibited

- ◆ Housing providers are not allowed to make inquiries in order "to determine whether an applicant . . . has a handicap or to make inquiry as to the nature or severity of a handicap of such a person.
- ◆ It's OK to ask . . .
 - Whether an applicant is "qualified for a dwelling available only to persons with handicaps or to persons with a particular kind of handicap."
 - Whether an applicant is "qualified for a priority available to persons with handicaps or to person with a particular type of handicap."
 - Inquiries such as these must be made to all applicants, whether or not they have handicaps. - 24 CFR § 100.202 (c)(2)-(3).

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Voluntary Disclosure

- ◆ An applicant or resident may choose to disclose information about a disability when:
 - Seeking preference in admission
 - Seeking disability-related rent disregard
 - Seeking a reasonable accommodation

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The Fair Housing Amendments Act

- ◆ Reasonable Accommodations
 - The FHAA requires housing providers to make reasonable exceptions to rules, policies, practices and services when that is necessary to allow people with disabilities an equal opportunity to fully use and enjoy a home.

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The Fair Housing Amendments Act

- ◆ Reasonable Accommodations & Reasonable Modifications
 - Under the FHAA, a reasonable *accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service, whereas a reasonable *modification* is a structural change made to the premises.

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Reasonable Accommodations

- Housing providers are not required to make a reasonable accommodation unless one is requested.
- Refusal to make a reasonable accommodation is illegal housing discrimination.
 - Does not require intentional discrimination.

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Reasonable Accommodations

- ♦ A housing provider can deny a request for reasonable accommodation if it would:
 - Impose an undue financial and administrative burden or
 - Fundamentally alter the nature of the provider's operations
 - Courts determine this on a case-by-case basis

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Reasonable Accommodations

- ♦ Disabled individual requesting accommodation must show:
 - They have a disability (mental or physical impairment that substantially limits a major life activity)
 - Housing provider knew or should reasonably be expected to have known of disability
 - Housing provider refused to make (or unreasonably delayed making) such an accommodation

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Reasonable Accommodations

- ◆ Disabled individual requesting accommodation must show:
 - The requested accommodation will affirmatively enhance the disabled individual’s quality of life by ameliorating the effects of the disability
 - Accommodation must be effective in addressing the issue affected by the disability

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Reasonable Accommodations

- ◆ Who pays the expense?
 - A housing provider may not charge an extra fee, require an additional deposit, or require special liability insurance as a condition of granting a reasonable accommodation.
 - However, the housing provider may charge the cost of repairing damage if the disabled individual’s use of the reasonable accommodation results in damage to the premises.
 - Normal wear and tear excepted.

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Examples of Reasonable Accommodations

- ◆ Allowing a service or companion animal in a building or community that has a “No Pets” policy
- ◆ Specifically reserved parking space close to the individual’s unit or front entrance to building – in addition to any “public” handicap parking spaces
- ◆ Permission to pay rent after normal due date, without late fee, if income is based upon receipt of SSDI or other public assistance and tenant does not receive rent by due date in lease
- ◆ Waiving of rules, i.e. non-tenants prohibited from using laundry; to allow friend/helper to do laundry on behalf of disabled individual
- ◆ Having management or other personnel deliver mail, or remove trash for disabled individual with mobility impairments

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Reasonable Modifications

- ◆ A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.
- ◆ Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas.
- ◆ A request for a reasonable modification may be made at any time during the tenancy.

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Reasonable Modifications

- ◆ The Act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.

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Examples of Reasonable Modifications

- ◆ Installing grab bars in bathrooms
- ◆ Lowering kitchen countertops and/or removing lower cabinets
- ◆ Installing stove or other appliances with front controls
- ◆ Widening doorways
- ◆ Installing a ramp or lift to allow easier access to an otherwise inaccessible unit

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Reasonable Modifications

- ◆ Who pays the expense?
- ◆ The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.
- ◆ Unless the housing provider received federal funds in the development and/or construction of the housing – then certain regulations require the housing provider to pay the cost of the modification.

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Reasonable Modifications

- ◆ The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where “it is reasonable to do so” and where the housing provider has requested the restoration.
- ◆ The tenant is not responsible for expenses associated with reasonable wear and tear.
- ◆ In general, if the modifications do not affect the housing provider’s or subsequent tenant’s use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state.
- ◆ A housing provider may choose to keep the modifications in place at the end of the tenancy.

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Handicap (as defined by the FHAA)

– Specifically *exempted* from the definition of “handicap” are illegal drug use and drug addiction, active alcoholism, and transvestites.

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Familial Status (as defined by the FHAA)

- Protection based on “familial status” refers to a situation where one or more children under 18 years of age live with a parent or guardian, to pregnant women, and to persons in the process of obtaining legal custody of a child under 18.

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Exemptions: Senior Complexes

- ◆ There are special rules applicable to senior complexes. The Fair Housing Act exempts “housing for older persons” from its prohibitions against “familial status” discrimination.
- ◆ The rules concerning which complexes will qualify as “housing for older persons” are complex.

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Senior Complexes (continued)

- ◆ The Fair Housing Act provides that housing for older persons includes:
 - (1) housing provided under a state or federal program that HUD determines is “specifically designed and operated to assist elderly persons;” and
 - (2) intended for, and solely occupied by, persons 62 years of age or older; or

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Senior Complexes *(continued)*

- ◆ The Fair Housing Act provides that housing for older persons includes:
 - (3) housing “intended and operated for occupancy by at least one person 55 years of age or older per unit,” which means that the housing must have at least 80 percent of its units occupied by at least one person 55 or older and must adhere to policies and procedures that demonstrate an intent to provide housing for persons 55 or older.

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Potential Liability Under The Act

- ◆ While this presentation does not explain in detail the enforcement provisions of the Fair Housing Act, you should be aware of the potential liability which may be imposed on those who engage in illegal housing discrimination.
- ◆ Private parties who are aggrieved by illegal discriminatory conduct may file suit in federal court or may file an administrative complaint with HUD.

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Types of Disability Discrimination

- ◆ Intentional discrimination
- ◆ “Disparate impact”
- ◆ Failure to make Reasonable Accommodations
- ◆ Failure to make Reasonable Modifications
- ◆ Failure to construct new multi-family housing in accordance with the FHAA accessibility design & construction requirements

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Liability Under The Act *(continued)*

- ◆ Lawsuits to challenge discriminatory conduct may be brought both by fair housing organizations and by residents who believe that discriminatory conduct has deprived them of the opportunities and benefits of living in a community free from illegal housing discrimination.

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Liability Under The Act *(continued)*

- ◆ In such a suit, if a court finds that a discriminatory practice has occurred or is about to occur, it may award the plaintiff:
 - compensatory damages,
 - punitive damages,
 - a declaratory judgment,
 - and/or appropriate equitable relief.

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Liability Under The Act *(continued)*

- ◆ Compensatory damages may include not only out-of-pocket expenses, but damages to the mission of an organization and damages for an individual's emotional suffering.
- ◆ Equitable relief may include a temporary or permanent injunction, restraining order or other specific conditions on the conduct of a housing provider or jurisdiction.

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Liability Under The Act *(continued)*

- ◆ In addition, a successful plaintiff in a housing discrimination suit is generally entitled to have the court order the defendant to pay the plaintiff's attorneys' fees, which can be significant.
- ◆ Where the defendant has acted in reckless disregard of the plaintiff's civil rights, punitive damage awards are also available under federal law.

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Liability Under The Act *(continued)*

- ◆ In addition to private party suits, the United States Government has the authority to file suit where it finds a "pattern or practice" of discriminatory conduct or when the case raises an issue of "general public importance."
- ◆ A "pattern or practice" is shown where the discriminatory conduct is not an isolated or accidental departure from otherwise nondiscriminatory practices.

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State Law

- ◆ In addition to federal law, most states have their own provisions concerning illegal housing discrimination.

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Compensatory Damages

- ◆ The courts have held that individual plaintiffs may recover compensatory damages for emotional distress caused by the deprivation of their right to equal housing opportunity.

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Compensatory Damages

(continued)

- ◆ An organizational plaintiff, such as a fair housing group, may be awarded damages to compensate for the diversion of its resources caused by virtue of its efforts to counteract the discriminatory practice, as well as for the “frustration of its equal housing mission.”

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Attorneys' Fees

- ◆ Attorneys' fee awards are also available to plaintiffs under the Fair Housing Act.
 - Prior to 1988, a district court could award attorneys' fees to a prevailing party in a Fair Housing Act case provided the plaintiff was “not financially able to assume said attorney's fees.”
 - The 1988 amendments to the Act eliminated this limitation, and the law now provides that a district court “in its discretion, may allow the prevailing party . . . a reasonable attorney's fee and costs.”

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Attorneys' Fees (continued)

- ◆ Under established Supreme Court case law, this language is interpreted to mean that a prevailing plaintiff should ordinarily recover his or her reasonable attorneys' fees and costs.

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Punitive Damages

- ◆ In addition, in some circumstances, a court may award a plaintiff punitive damages.
- ◆ Punitive damages are appropriate upon proof that the defendant's conduct was "motivated by evil motive or intent, or . . . involves reckless or callous indifference to the federally protected rights of others."

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National Fair Housing Resources

- ◆ The National Fair Housing Alliance (NFHA)
 - Headquartered in Washington, DC, NFHA is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States.
 - Through comprehensive education, advocacy and enforcement programs, NFHA protects and promotes residential integration and equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

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National Fair Housing Resources

- ◆ The National Fair Housing Alliance (NFHA)
 - NFHA member organizations are mostly non-profit fair housing organizations that provide assistance with understanding fair housing rights and assist with fair housing enforcement – free of charge to the individual who encounters illegal housing discrimination.

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National Fair Housing Alliance

- ◆ Most NFHA organizations provide:
 - Professional counseling and guidance are available to individuals who encounter discrimination in their search for housing, including informing the consumer of his/her options under FHAA and providing support for the consumer while going through the process of asserting their housing rights.
 - Testing /investigation programs to expose illegal discriminatory practices in apartment rentals and real estate purchasing.

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Contact Information

- ◆ National Fair Housing Alliance
 - 1101 Vermont Avenue, NW
 - Suite 710
 - Washington, DC 20005
 - (202) 898-1661

www.nationalfairhousing.org

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U.S. Department of Housing & Urban Development (HUD)

- ♦ HUD enforcement efforts operate largely through ten "HUB" regional offices, including:
 - *Region I:* Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, & Vermont
 - *Region II:* New Jersey and New York
 - *Region III:* Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, & West Virginia
 - *Region IV:* Alabama, the Caribbean, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina & Tennessee
 - *Region V:* Illinois, Indiana, Michigan, Minnesota, Ohio, & Wisconsin
 - *Region VI:* Arkansas, Louisiana, New Mexico, Oklahoma, & Texas
 - *Region VII:* Iowa, Kansas, Missouri, & Nebraska
 - *Region VIII:* Colorado, Montana, North Dakota, South Dakota, Utah, & Wyoming
 - *Region IX:* Arizona, California, Hawaii, & Nevada
 - *Region X:* Alaska, Idaho, Oregon, & Washington

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Where to Get More Information

- ♦ Check out Fair Housing Resources on the Web

www.nationalfairhousing.org

www.fairhousing.com

www.hud.gov

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Thank You

For your attention and your hard work on behalf of and dedication to those living with HIV/AIDS.

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