

Fair Housing Center of West Michigan

# FAIR HOUSING FOR SENIORS

*Opening Doors to Housing Choice*




February 17, 2017

## AGENDA

- Introductions
- Overview of FHCWM & Fair Housing
- Senior Housing & Fair Housing
- Reasonable Accommodations & Modifications
- Questions and Answers

## FHCWM OVERVIEW

- Founded in 1980 as a private, non-profit organization (501c3), out of a combined grassroots effort to desegregate schools and integrate neighborhoods.
- Our mission: To prevent and eliminate practices of illegal housing discrimination and ensure equal housing opportunity.




## WHAT IS FAIR HOUSING?

- Fair housing is the right to choose housing free from unlawful discrimination based on protected classes under federal, state and local fair housing laws.
- Fair housing protects against discrimination in any housing transaction including rentals, sales, lending and insurance.



## PROTECTED CLASSES

<ul style="list-style-type: none"> <li>■ Race</li> <li>■ Color</li> <li>■ National Origin</li> <li>■ Religion</li> <li>■ Gender</li> <li>■ Disability Status (physical or mental)</li> <li>■ Familial Status (presence of children)</li> </ul>	<ul style="list-style-type: none"> <li>■ Age (MI Law)</li> <li>■ Marital Status (MI Law)</li> <li>■ Source of Income (Grand Rapids, Holland, Kentwood, Wyoming)</li> <li>■ Sexual Orientation (Grand Rapids, EGR)</li> <li>■ Height &amp; Weight (Kentwood, Wyoming)</li> </ul>
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## WHY FAIR HOUSING MATTERS

- Housing discrimination not only impacts the individual who experienced the discriminatory, degrading, humiliating and no less importantly, illegal conduct or policy, but it also has a huge impact on society.
- Fair housing is good for people, neighborhoods and our community.




### ADVANTAGES OF FAIR HOUSING

- It enhances our community's curb appeal
- Fair housing plants seeds for economic development, talent retention, and more in our community.
- When people feel welcomed, they make themselves at home, invest their resources back into the community, and in turn make it an appealing place for diverse and talented people to come.

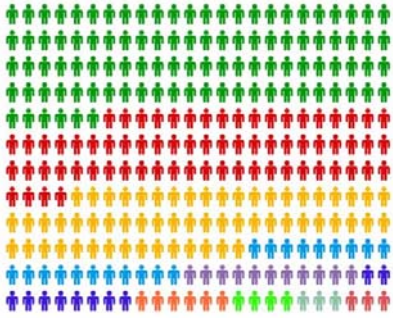


### FHCWM APPROACH

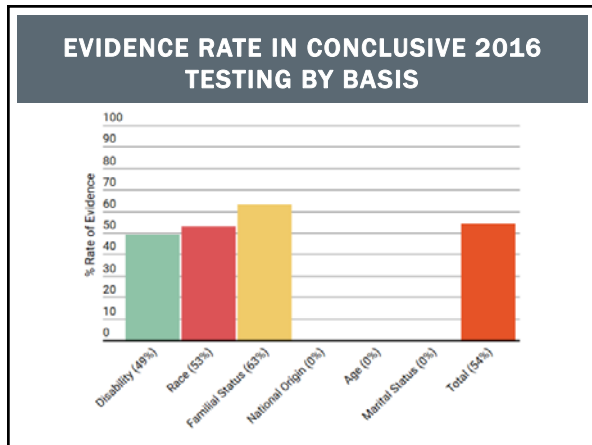
- Through **education, research and advocacy**, we prevent housing discrimination, remove barriers that allow it to persist, and restore housing choice when discrimination happens.
  - Education: Preventing discrimination and promoting an open door to our community
  - Research: Monitoring the state of fair housing and identifying barriers to housing choice
  - Advocacy: Investigating discrimination and protecting housing choice



### 205 FHCWM Cases in 2016



Disability (73)	Race (50)	Familial status (42)
National origin (14)	Income source (8)	Age (7)
Other: retaliation/harassment (4)	Sex (3)	Marital status (2)
Religion (2)		



### SENIOR HOUSING & FAIR HOUSING

- The FHCWM has detected high instances of potential acts of housing discrimination against seniors, which, whether intentional or unintentional, substantially limit housing choice.
- In 2006, the FHCWM undertook a pilot study investigating illegal housing discrimination against seniors in Kent County on the bases of:
  - Race,
  - National Origin, and
  - Disability.

### SENIOR HOUSING & FAIR HOUSING

- The FHCWM detected instances of potential housing discrimination against seniors on the bases of race, national origin and disability in **over one-third** of 300 tests.
- This means that almost **1 out of every 3** minority seniors or seniors with a disability seeking housing may meet an unlawful barrier posed by housing discrimination.


### SENIOR HOUSING & FAIR HOUSING

- FHCWM began contracting with the Area Agency on Aging of Western Michigan, in 2007, through the Kent County Senior Millage, to provide fair housing services specifically for adults 60 and older.




### SENIOR HOUSING & FAIR HOUSING

- Throughout years of investigating fair housing practices for seniors in Kent County, the FHCWM identified many trends and practices of housing discrimination affecting seniors and the senior housing community.
- Also, in 2010, the FHCWM surveyed the use of human models in advertising by senior housing providers for compliance, and identified practices which may unlawfully limit housing choice for seniors on the basis of race, national origin and disability.



### STATE OF SENIOR HOUSING IN KENT COUNTY


- 2016 testing on disability status in Kent County senior housing has revealed evidence of discrimination and/or substantial differences in treatment in **57%** of tests
- Assistance animals and mobility-related requests on the rise; discriminatory advertising still occurring (human models)
- Issues pertaining to medical inquiries and requirements at independent living communities

### EXAMPLES OF DISCRIMINATORY POLICIES/PRACTICES

- Prohibiting mobility aids in dining rooms or common areas
- Requiring seniors with motorized wheelchairs to obtain liability insurance
- Requiring senior applicants to demonstrate or prove that they can live independently
- Prohibiting chore workers, caretakers, or live-in aides...

### EXAMPLES OF DISCRIMINATORY POLICIES/PRACTICES

- Requiring that applications be submitted in person by the applicant
- Limiting housing to single persons or married couples
- Separating residents by age
- Refusing to allow reasonable modifications to unit interiors



### WHAT IS COVERED BY LAW?

- Real Estate Agents
- Individual Landlords
- Management Companies
- Apartment Complexes
- Condominium Associations
- Cooperatives
- Lending Institutions
- Subsidized Housing
- Senior Housing...

### WHAT IS COVERED BY LAW?

Almost all types of senior housing are covered by the Fair Housing Act and have all been found to meet the Fair Housing Act's definition of a "dwelling":

- independent living communities,
- assisted living facilities,
- residential care facilities,
- continuing care retirement communities,
- and skilled nursing homes

### STATUTE OF LIMITATIONS

- **FEDERAL**
  - US Department of Housing & Urban Development (HUD): 1 year
  - Court: 2 years
- **STATE**
  - Michigan Dept. of Civil Rights: 180 days
  - Court: 3 years

### EQUAL ACCESS RULE

- An estimated 1-3 million Americans over 65 are LGBT; by 2030, that number will rise to 3-7 million.
- HUD's Equal Access Rule ensures that its core programs are open regardless of sexual orientation.
- Applicable to HUD programs and housing, including HUD-assisted and HUD-insured projects, such as Sec. 8, HCVs, CDBG grants, Public Housing, etc.

## DISABILITY STATUS

### REASONABLE ACCOMMODATIONS & MODIFICATIONS

*Opening Doors to Housing Choice*

### DISABILITY STATUS

- ▶ "Disabled" is a broad term that covers mental as well as physical disabilities.
- ▶ **Who qualifies as a person with a disability under the Fair Housing Act?**
- ▶ A person with a disability includes:
  - Individuals with a **physical or mental impairment** that **substantially limits** one or more **major life activities**;
  - Individuals who are regarded as having such an impairment;
  - Individuals with a record of such an impairment

### DISABILITY STATUS

- **What is "physical or mental impairment?"**
- Physical or mental impairment includes, but is not limited to, such diseases and conditions as...
  - Orthopedic, visual, speech and hearing impairments,
  - Cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer
  - Heart disease, diabetes, HIV infection, emotional illness, drug addiction (not current, illegal use of drugs) and alcoholism.

### DISABILITY STATUS

- **What Is a “Major Life Activity”?**
- This term should be broadly construed and include those activities that are of central importance to daily life, such as:
  - Seeing, hearing, walking, breathing
  - Performing manual tasks, caring for one's self
  - Learning and speaking
  - And beyond...

Case Examples

### DISABILITY STATUS

- It is permissible for a property to specify no smoking or drinking or other similar behavior, but it is not permissible to discriminate against persons with a health condition or physical problem.
  - Alcoholism and drug addictions can be disabilities under fair housing law but current drinking and drug use is not protected.

### DISABILITY STATUS

- Two key opportunities for people with disabilities to ensure that their housing meets their needs:
  - Reasonable modifications
  - Reasonable accommodations

### REASONABLE MODIFICATIONS

Reasonable modification is a structural or other physical change to the unit or housing structure to provide a person with a disability physical access.

- Examples: a ramp to a building's entrance, lever door handles vs. doorknobs.




Must be allowed in Michigan for the most part; however there are some federal laws which may require landlords to make changes.

### REASONABLE MODIFICATIONS

Examples:

- widening doorways
- installing grab bars
- lowering kitchen cabinets
- adjusting the height of outlets or thermostats
- altering a walkway



New outlets installed at proper height and old ones capped off

### REASONABLE MODIFICATIONS

- The Fair Housing Act requires individuals, corporations, associations and others involved in the provision of housing to allow reasonable modifications
- This includes property owners, housing managers, homeowners and condominium associations



### REASONABLE MODIFICATIONS


Reasonable modifications help people with disabilities to:

- increase safety
- maintain independence
- have equal access to housing amenities and equal enjoyment of their home
- have access to a wider array of housing options
- remain within their homes longer



### REASONABLE MODIFICATIONS

- Reasonable modifications will be an essential tool for seniors and people with disabilities to age in place



### REASONABLE ACCOMMODATIONS

Reasonable Accommodation is a change in any rule, policy, procedure or service if the changes are needed in order for a person with a disability to have equal access and enjoyment of their housing.

- Examples: waiving a "no pet" policy for a person with a disability's assistance animal, allowing a live-in aide, or assigning accessible parking.

### ASSISTANCE ANIMALS

- After receiving a request for a reasonable accommodation to possess an assistance animal, the housing provider must consider the following:
  - 1) Does the person seeking to use and live with the animal have a disability — *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
  - 2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one more of the identified symptoms or effects of a person's existing disability?

### ASSISTANCE ANIMALS

- Where the answers to questions (1) **and** (2) are "yes," the FHAct and Section 504 require the housing provider to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go...
- If the answer to question (1) **or** (2) is "no," then the FHAct and Section 504 do not require a modification to a provider's "no pets" policy, and the reasonable accommodation request may be denied.

### LIVE-IN AIDES & HOME SUPPORT

- The FHAct protects the right of seniors with disabilities to request reasonable accommodations to any policies or practices that might otherwise hinder their ability to receive the care or aid that they need.
- A housing provider may request appropriate documentation to establish the need for the aide or services, as with any other reasonable accommodation request.

LIVE-IN AIDES & HOME SUPPORT

Examples of common reasonable accommodations relevant to aides or in home support include:

- Not subjecting helpers or aides to “guest” or “visitor” policies that limit the times and/or duration of stay
- Providing the tenant an additional key for their helper/aide
- Moving the tenant to a larger unit to accommodate the aide without a rental increase

REASONABLE ACCOMMODATIONS

- Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?
- Yes, if the request was not made by or on behalf of a person with a disability.
- Yes, if there is no disability-related need for the accommodation.
- Yes, if the request is not reasonable...
- “Reasonable” is not defined...

WHAT IS REASONABLE?

- Will the requested RA impose an **undue financial** and **administrative burden** on the housing provider?
- Will the request **fundamentally alter** the nature of the provider’s operations?

WHAT IS REASONABLE?

- What is a “fundamental alteration?”
- A fundamental alteration is an accommodation or modification that alters the essential nature of the provider’s operations.
- The determination of **undue financial** and **administrative burden** must be made on a case-by-case basis involving various factors, such as:
  - Cost of the requested RA
  - Financial resources of the housing provider
  - Benefits that the RA would provide to requester
  - Availability of alternative accommodations that would effectively meet their needs.

WHAT IS REASONABLE?

- If the request is not granted because it is not reasonable, the housing provider *must discuss whether there is an alternative accommodation* that would effectively address the disability-related need. If the alternative would effectively do so, the provider must grant it (barring an undue burden or fundamental alteration).

WHAT IS REASONABLE?

- NOTE: Providers should be aware that seniors with disabilities typically have the most accurate knowledge about the functional limitation posed by their disability; and
- An individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred RA is reasonable.




### RA/RM INFORMATION REQUIREMENTS

- A housing provider is entitled to obtain information that is necessary to evaluate whether a requested reasonable modification or accommodation may be necessary because of a disability.



### RA/RM INFORMATION REQUIREMENTS

- The amount of information that can be requested by the housing provider depends on whether or not the individual's disability is obvious or known, and whether or not the disability-related need is readily apparent or known



### INFORMATION REQUIREMENTS: DISABILITY AND DISABILITY-RELATED NEED

- If a disability is not obvious, what kinds of information may a housing provider request in support of an RA?
- A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability.
- However...

### INFORMATION REQUIREMENTS: DISABILITY AND DISABILITY-RELATED NEED

- **Non-obvious or unknown disability**
- A housing provider may request information that:
  - (1) is necessary to verify that the person meets the Fair Housing Act's definition of disability
    - Can usually be provided by the individual (e.g., proof that an individual under 65 receives SSI or SSDI benefits).
    - A doctor or other medical professional, peer support group, non-medical service agency, or reliable third party who is in a position to know about the individual's disability may also provide verification.

### INFORMATION REQUIREMENTS: DISABILITY AND DISABILITY-RELATED NEED

- **Non-obvious or unknown disability**
- A housing provider may request information that:
  - (2) describes the needed modification, and
  - (3) shows the relationship between the person's disability and the need for the requested modification.
    - Examples: a letter from the requester, an OT Home Evaluation, a letter from a medical provider, etc.

### INFORMATION REQUIREMENTS: DISABILITY AND DISABILITY-RELATED NEED

- **Oblvious or known disability**
- If the need for the requested RA/RM is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the RA/RM.
  - **Example:** An applicant with an obvious mobility impairment who uses a motorized scooter asks the housing provider to permit her to install a ramp at the entrance of the apartment building. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested modification are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested modification.



### INFORMATION REQUIREMENTS: DISABILITY AND DISABILITY-RELATED NEED


- **Oblvious or known disability**
- If the need for the RA/RM is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.
  - **Example:** A deaf tenant asks his housing provider to allow him to install extra electrical lines and a cable line so the tenant can use computer equipment that helps him communicate with others. If the tenant's disability is known, the housing provider may not require him to document his disability; however, since the need for the electrical and cable lines may not be apparent, the housing provider may request information that is necessary to support the disability-related need for the requested modification.

### INTERACTIVE PROCESS

- A reasonable modification or accommodation request should trigger an "interactive process", which is a call for meaningful dialogue and action
- A request may happen in many different ways
  - In writing
  - In person
  - Over the phone
  - Through a friend, family member, or caregiver
- A person does not need to use the term "reasonable modification" or "accommodation"

### INTERACTIVE PROCESS

- A senior may make a request for a RA or RM at any time; it does not have to be before they move in
- Requests should be handled on a case by case basis
- There is not a limit on the number of requests that a person can make



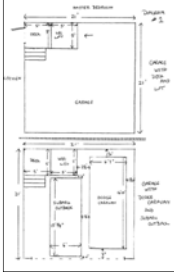
New beveled threshold and lever handle installed to make unit entry accessible

### RM INTERACTIVE PROCESS

- The RM interactive process should work toward establishing:
  - What the requested modification is and how it is connected to the person's disability
  - Who will do the modification (i.e. will the tenant arrange for the work to be done, or will the landlord arrange for the work to be done?)
  - When the modification will be made
  - Who will care for the modification
  - Will it be have to be restored when the resident moves out

### RM INTERACTIVE PROCESS


- A housing provider may require that a request for a reasonable modification include a description of the proposed modification both before changes are made to the dwelling and before granting the modification.
- This description may be provided to a housing provider either orally or in writing depending on the extent and nature of the proposed modification.



Proposed wheelchair lift in condominium garage

### GUIDANCE FOR APPLICANTS AND RESIDENTS

DO	DON'T
<ul style="list-style-type: none"> <li>■ Get approval before making any modifications</li> <li>■ Establish how the requested modification is related to your disability</li> <li>■ Ensure that work is performed in a workmanlike manner</li> <li>■ Provide appropriate documentation</li> </ul>	<ul style="list-style-type: none"> <li>■ Make modifications without obtaining necessary building permits</li> <li>■ Assume that the housing provider will pay for the modification or its upkeep</li> </ul>

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## RA & RM PROCESS RESOURCES

- FHCWM Guide - Requesting an assistance animal, grab bar, or other change to your housing?
- FHCWM Report - Fair Housing for Seniors in Kent County
- HUD FHEO Notice on Service and Assistance Animals for People with Disabilities
- HUD & DOJ Joint Statements on RA & RM
- Fact Sheet: Writing Support Letters (for medical professionals)
- [www.fhcwm.org/homeseekers](http://www.fhcwm.org/homeseekers)
- <http://www.fhcwm.org/publications>



## HOW CAN YOU HELP?

- Remember - what happened when?
- Record - write down names, addresses, phone numbers of involved parties and witnesses; note dates, times and comments; keep copies of any advertising, letters, emails, etc.
- Report - call the FHCWM; we can walk you and/or your clients through a series of questions to learn more and provide next steps.

## WHAT CAN THE FHCWM DO TO HELP?

- Assist applicants, residents and housing providers with reasonable modification requests.
- Sample forms and documents for:
  - Residents and applicants
  - Housing providers
  - Medical providers
- Provide references and expertise for housing providers responding to reasonable modification requests
- Help applicants and residents gather documents, draft requests, and correspond with the housing provider
- Investigate and work to resolve claims of unlawful refusal to allow a reasonable modification

## QUESTIONS?

- Fair Housing Center of West Michigan
  - Visit our office at 20 Hall Street SE, Grand Rapids, MI
  - Call (616) 451-2980 or 1-866-389-FAIR(3247)
  - Visit our website at [www.fhcwm.org](http://www.fhcwm.org)
  - E-mail [contact-us@fhcwm.org](mailto:contact-us@fhcwm.org)
- Liz Keegan, Director of Education & Outreach
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