

# FAIR HOUSING

*A review of the law for landlords and property managers*

PRESENTED BY

VERMONT APARTMENT  
OWNERS SERVICES, LLC.

VERMONT TENANTS and THE  
FAIR HOUSING PROGRAM of  
C.V.O.E.O.



# What is Fair Housing?

Fair Housing is a person's right to choose where he or she lives and the right to rent or buy a dwelling *free from discrimination*.

Fair Housing is the right to equal opportunity in housing.



## SOME COMMONLY USED TERMS:

“Familial Status” – The presence of minor children.

“Steering” – Directing or not permitting member of a protected class access to all available rentals. Example – suggesting to a person on crutches/in a wheelchair that a first floor apartment may be more appealing to them than the second floor unit they requested to view.

“Disparate Impact” – Neutral rule that has a greater effect on members of a protected class.



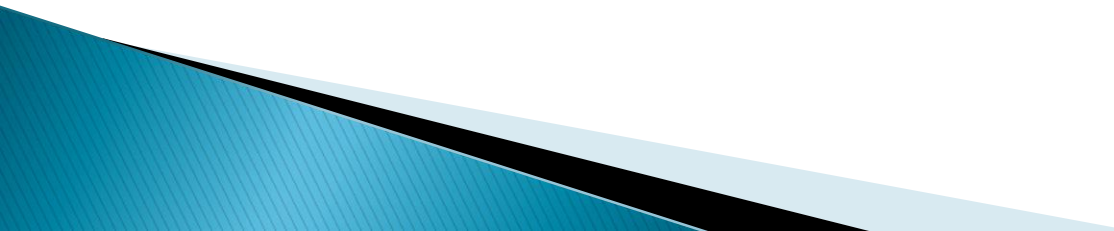
# What is Housing Discrimination?

Housing discrimination is any of the following activities based on membership in a *protected class*:

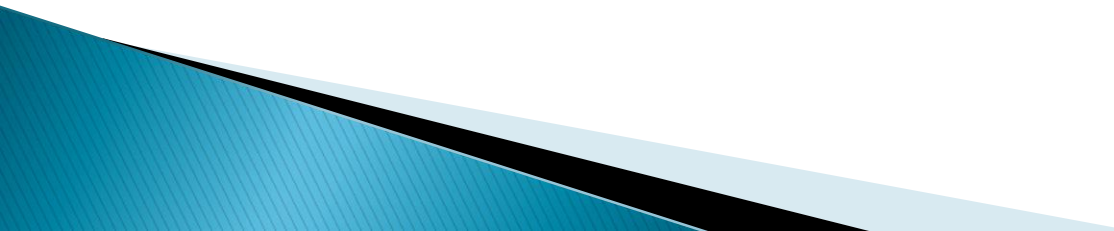
- ▶ Refusal to rent, sell or finance housing.
- ▶ *Setting different terms, conditions or privileges or providing different housing services or facilities.*
- ▶ To make, print or publish any notice, statement or advertisement that indicates any preference, limitation or discrimination.
- ▶ To make false representation regarding availability for sale, inspection or rental.
- ▶ Denying anyone access to a facility or service related to sale or rental of housing (MLS, real estate brokers organization....)
- ▶ Coercing, intimidating, threatening or interfering with any person in housing or for filing or supporting a discrimination charge.

*Vermont Statutes Annotated, Title 9, Chapter 139*

# The 12 Protected Classes: Federal Protections

- ▶ Race
  - ▶ Color
  - ▶ National Origin
  - ▶ Religion
  - ▶ Sex
  - ▶ Familial Status (presence of minor children, pregnant women or people looking to adopt or foster a child)
  - ▶ Disability
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# The 12 Protected Classes: Vermont Protections (in addition to Federal)

- ▶ Age (18+)
  - ▶ Marital Status (married or unmarried)
  - ▶ Sexual Orientation
  - ▶ Gender Identity
  - ▶ Receipt of Public Assistance
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# Is the Property Covered?

- ▶ Civil Rights Act of 1866
  - Race, color and national origin are covered in all instances, even owner occupied buildings.
  - All properties covered, no exemptions
- ▶ Fair housing law is applicable to residential dwellings and not commercial properties such as retail stores and offices. Commercial properties are covered under public accommodations law.
- ▶ Vermont law provides very limited exemptions to other areas of fair housing law.

# Exemptions to VT Fair Housing Law

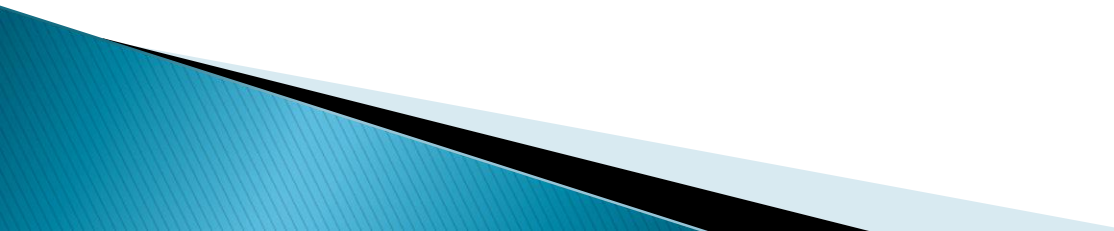
- ▶ **Note**: An exemption would allow you to deny a potential rental applicant because they are a member of a protected class
- ▶ **Caveat**: *Advertising and statements made by landlords and property managers are not exempt from fair housing law even if the property itself qualifies as exempt.*
- ▶ **Exemption**: Houses with three or fewer apartments, but only if the owner or a member of the owner's immediate family lives in one of the apartments.



# Exemptions, continued...

- ▶ **Exemption**: Refusing to rent to a potential tenant under the age of 18.
- ▶ **Exemption**: Religious preference given to tenants of the same religion as that of the religious association which provides or rents rooms for no profit.
- ▶ **Exemption**: Rental units for the elderly which discriminate against families with children, if the housing is occupied only by people over 62 years of age, or if at least one person over the age of 55 resides in each rental unit and the housing complex either provides significant facilities and services or important housing opportunities for the elderly.
- ▶ **Exemption**: Rental units which would be too small for the family desiring to live there, based on applicable occupancy standards. More on this shortly...

# Familial Status Discrimination

- ▶ Housing can not be denied and different rules or terms can not be applied due to the *presence of minor children*.
  - ▶ Families can not be *steered* away from (or towards) certain units or properties.
  - ▶ Rules should be applied consistently to all tenants and not single out families with children.
  - ▶ Reasonable occupancy standards apply. *But what is considered a reasonable occupancy standard?*
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# Occupancy Standards

- ▶ As a general rule, occupancy standards limiting tenants to two people per bedroom or approved sleeping area\*, or following Municipal Occupancy Limits or permits do not violate fair housing law.
- ▶ Rules that limit the number of *children* per unit instead the number of *people* per unit are discriminatory.
- ▶ In reviewing occupancy cases, HUD considers the size and number of bedrooms and other special circumstances.

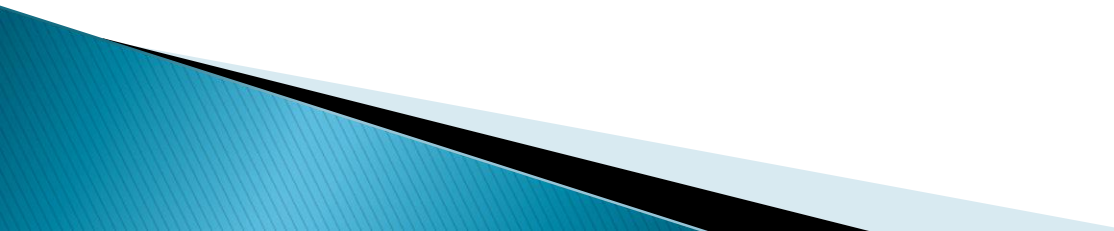
\*Rooms within a unit that are used for sleeping must comply with Fire Safety requirements

# Familial Status Discrimination: Best Practices

- ▶ It is the parents' decision if they want children (even opposite sex children) to share a bedroom.
- ▶ Rules related to noise must bar everyone from making unnecessary loud noises, not just children.
- ▶ Create rules that apply to everyone.
- ▶ Offer services or privileges that apply to everyone, including children.
- ▶ Advertise or describe the unit as it is, rather than who would be a good applicant. Avoid phrases such as: “ideal for singles” or “great place for couples” as these can be interpreted as attempting to exclude children.

# Disability Discrimination

**Defining Disability:** A person is considered to have a disability if any of three criteria apply:

1. Physical or mental impairment that substantially limits one or more life functions.
  2. A record of having such an impairment.
  3. Someone who is considered by others to have such an impairment.
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# Defining Disability, cont'd

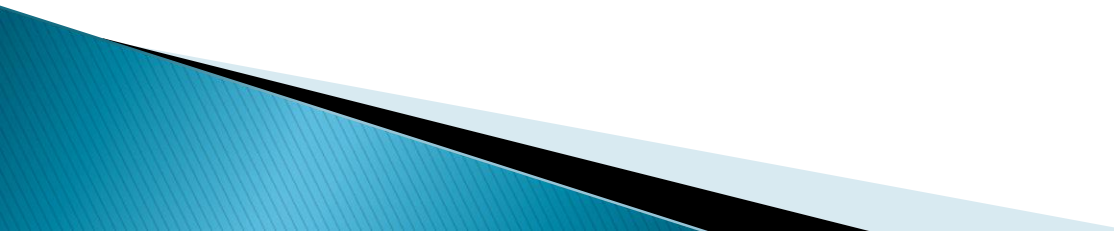
- ▶ Physical or mental *impairment*
  - a condition or disease that affects the mind or the body.
- ▶ That *substantially* limits
  - for a long period of time or to a great degree.
- ▶ One or more *major life functions*
  - walking, talking, breathing, seeing, hearing, self-care, paying bills, etc.

- *Vermont Statutes Annotated, Title 9, Chapter 139*

# Defining Disability, cont'd

- ▶ Record of having a substantial impairment
  - E.g. receipt of SSI, SSDI, etc.
- ▶ Considered by others to have a disability

# Live-in aids for people with disabilities


- ▶ A person with a disability has the right to request a live-in assistance aide.
  - ▶ The income and assets of the live-in aid are not counted against income guidelines for public housing assistance.
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# Reasonable Modifications and Accommodations


*For Occupants with Disabilities*

# A Few Things to Keep in Mind

- ▶ Reasonable modification and accommodation requests are very fact specific that require a case-by-case analysis.
  - ▶ The information provided in the next few slides is for general information purposes only.
  - ▶ Reasonable modification and accommodation requests should be discussed with your attorney if you are unsure whether or not you should grant one.
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# Reasonable Modifications

## What is a Reasonable Modification?

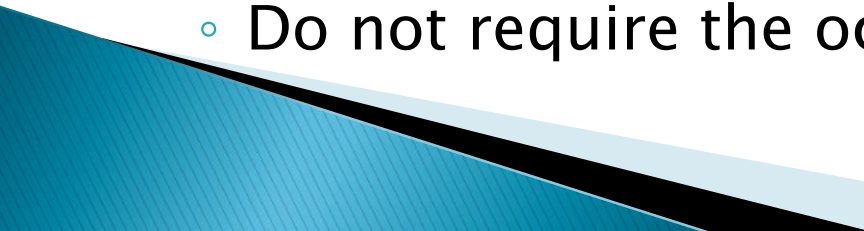
- ▶ A physical change to a rental unit or building that allows disabled occupants the same use and enjoyment as a non-disabled person.
  - ▶ Requested modifications are usually made at the expense of the occupant.
  - ▶ Occupant may have an obligation to restore the unit to its original condition at move out if the owner requests it.
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# Reasonable Modifications

- ▶ Examples of Reasonable Modifications:
  - Widening doorways to make rooms more accessible
  - Installing grab bars in bathrooms
  - Lowering kitchen cabinets to a height suitable for a person in a wheelchair
  - Installing a wheelchair ramp on the exterior of a building
  - Smoke and carbon monoxide detector that flashes

# Reasonable Modifications

## ▶ Best Practices for Owners

- You may request that the occupant provide a reasonable description of the proposed modification
  - You may request that the occupant have the work performed in a workmanlike manner
  - You may request that the occupant secure all applicable permits prior to starting the modification
  - Do not require the occupant to pay an extra deposit
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# Reasonable Accommodations

## What is a Reasonable Accommodation?

- A change to a rule, policy or practice that allows a disabled occupant equal opportunity to use and enjoy a dwelling unit
- Feasible, practical modifications must be made
- If the request creates a fundamental alteration in the business of the owner or is unduly financially burdensome (Undue Hardship), the request may not have to be granted

# Reasonable Accommodations: A Closer Look

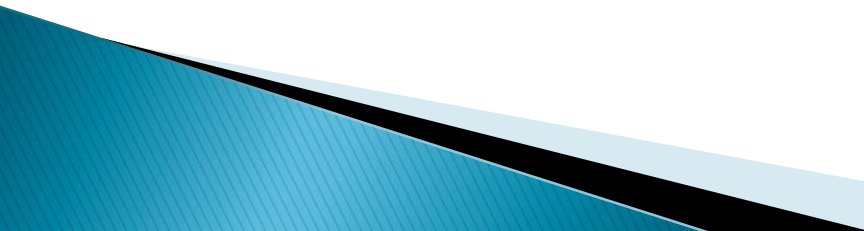
- ▶ What does Reasonable mean?
  - "seems reasonable on its face" or if the request appears to be feasible or plausible
- ▶ What does Undue Hardship mean?
  - The request would create significant difficulty or expense to the owner.
  - Undue hardship refers not only to financial difficulty, but also to requests that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.

# Reasonable Accommodations: A Closer Look, continued

- ▶ What does Fundamental alterations to the business of the owner mean (best described with a couple of examples)?
  - Occupant requests that owner handles their grocery shopping.
    - Granting this request would be a fundamental alteration to your business, unless it is a service you offer for occupants.
  - Occupant requests that owner remove the trash daily from the rental due to difficulty accessing the dumpster.
    - Granting this request might involve an agreement that an onsite maintenance person who routinely passes by the occupant's unit removes a trash bag from the occupant's steps or porch once or twice a week.



# Reasonable Accommodation: A Few Examples

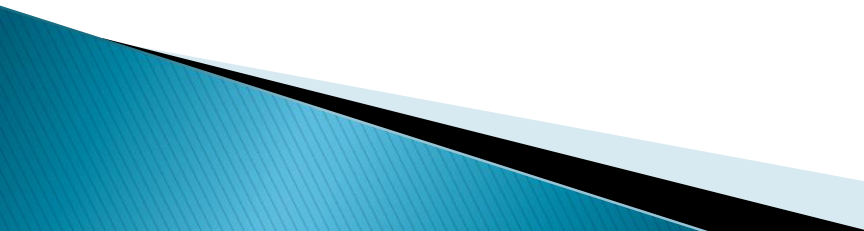
- ▶ Occupant with a physical, mental, or emotional disability request a modification of a "No Pets" policy so that they may have an assistance animal that helps alleviate their disability (no special training is required)
  - ▶ Occupant with a mobility impairment requests an assigned parking or a relocation of an existing assigned space near their entrance door.
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# Reasonable Accommodation: A Few Examples

- ▶ Occupant with a cognitive disability requests that she is allowed to mail her rent check instead of hand-delivering it to the rental office because she is afraid to enter the rental office.
- ▶ Occupant with an aide requests an extra set of keys to easily allow access to their unit.\*

\*While this involves some cost to the landlord, it is not likely that it poses an “undue financial and administrative burden”

# Best Practices for Requests (Modification and Accommodation)

- ▶ Respond to all requests in a timely manner.
  - ▶ Modification/Accommodation requests apply to occupants with physical, mental, and emotional disabilities.
  - ▶ Questions you may not ask:
    - What kind of disability the occupant has
    - Questions that would require disclosure of medical history
    - Whether the person can live independently
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# Best Practices, continued...

- ▶ Questions you may ask:
  - Verification that the occupant has a disability if the disability is not obvious.
  - The modification or accommodation that the occupant is requesting.
  - What the connection is between the disability and the specific modification or accommodation.
- ▶ You can create a form and process for handling reasonable modification/accommodation requests, but cannot require that the occupant use the form to make a request.

# Advertising & Fair Housing Law

# Advertising

## What Vermont Law States:


*“It shall be unlawful for any person ... [t]o make, **print or publish**, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling or other real estate that indicates any preference, limitation or discrimination based on race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.”*

# Advertising, continued...

- ▶ What does that mean?
  - When placing advertisements or denying an applicant you cannot use discriminatory words or statements.
  - Example of Discriminatory Words:
    - Christian home
    - Mature persons
    - Not handicap accessible
    - Ideal for single person
    - No pets, no exceptions
    - Section 8 not allowed

# Advertising, continued...


## Best Practices

- Describe the unit, not the type of occupant you are seeking.
  - If denying an applicant for any reason other than credit, do not disclose the reason. Use "not a good fit" or "unit is already rented" (if the unit is actually already rented)
  - Review all advertising that others are placing on your behalf – If a current occupant is advertising for a sublettor or roommate, the owner could be held liable for discriminatory statements used.
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# Tenant Screening

# Fair Housing: Permissible Tenant Screening Criteria

- ▶ Demonstrated ability to pay rent on time
  - ▶ Landlord and/or personal references
  - ▶ Credit checks, including minimum credit score requirements
  - ▶ Criminal History
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- ▶ An applicant may request an opportunity to explain any negative circumstances.
  - ▶ A request for a reasonable accommodation by an applicant cannot be a basis to refuse to rent.
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For more information please contact -



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**Materials and information for this presentation were provided by The Fair Housing Program of CVOEO**