

# Fair Housing for Seniors in Kent County

## A Guide for Senior Housing Providers



Fair Housing Center  
of West Michigan

Fair Housing Center of West Michigan  
2011

*Kent County  
Senior Millage*

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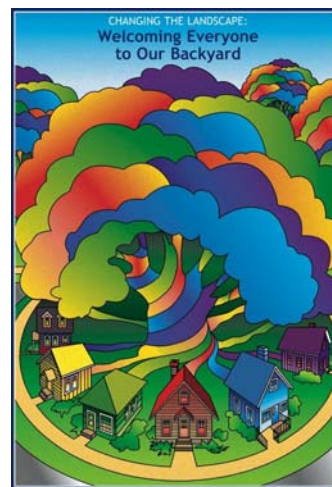
## Table of Contents

Introduction .....	1
About the Fair Housing Center of West Michigan.....	2
Fair Housing Laws in Kent County .....	3
Civil Rights Acts of 1866 .....	4
Federal Fair Housing Act and Fair Housing Amendments Act of 1988.....	5
Michigan Elliott-Larsen Civil Rights Act of 1976.....	7
Persons with Disabilities Civil Rights Act of 1976.....	8
Local Fair Housing Ordinances .....	10
Exemptions .....	11
Religious Exemption .....	11
Senior Housing Exemption and Housing for Older Persons Act.....	12
Fair Housing Policies and Practices.....	15
Policies within Senior Housing .....	17
Practices Unique to Congregate Senior Housing .....	18
Fair Housing Testing for Differences in Service or Treatment.....	20
Fair Housing and Advertising.....	23
Use of Human Models .....	25
Fair Housing Rights of Persons with Disabilities.....	28
Reasonable Accommodations and Modifications .....	29
Accessibility .....	32
Summary and Conclusion .....	34
Appendix .....	36
Fair Housing Best Practices for Senior Housing Providers	
Fair Housing Resources	

# Introduction

As the population of seniors 60 and older in Kent County rapidly increases, the need for fair, affordable, safe, and adequate housing for seniors consequently rises at a rapid rate. According to the National Association of the Area Agencies on Aging, one of the most important decisions older adults make is their choice of housing. Their future contentment, comfort and even safety may depend on careful consideration of all the housing options available to them.<sup>1</sup>

Unfortunately, seniors' housing options are often limited by many barriers that interfere with housing choice, including affordability, availability and accessibility. Taking into account these significant barriers to housing choice, it is imperative that seniors do not face additional unnecessary or unlawful barriers, such as housing discrimination, which further limit access and opportunity. For these reasons, illegal housing discrimination against seniors in Kent County must be identified, addressed and eliminated in order to afford them access to housing that not only meets their needs but also fulfills the meaning of home.



The Fair Housing Center of West Michigan (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. This pilot study revealed substantial levels of evidence of housing discrimination against minority seniors, and provided the basis for a contract in 2007 between the FHCWM and the Area Agency on Aging of Western Michigan, through the Kent County Senior Millage, to provide fair housing services specifically for adults 60 and older. After four (4) consecutive years of investigating fair housing practices for seniors in Kent County and providing fair housing services to seniors, the FHCWM identified many trends and practices of housing discrimination affecting seniors and the senior housing community, the results of which are summarized in this report. Specifically, in 2010, the FHCWM surveyed the use of human models in advertising by senior housing providers for compliance with fair housing laws, and identified several practices which may unlawfully limit housing choice for seniors on the basis of race, national origin and disability. Further, in line with the results of the pilot study, the FHCWM detected instances of potential housing discrimination against seniors on the bases of race, national origin and disability in over one-third of its conclusive investigations from 2007-2010. This means that almost one out of every three (3) minority seniors or seniors with a disability seeking housing may meet an unlawful barrier posed by housing discrimination.

The prevalence of housing discrimination against seniors proves significantly more injurious in light of the growing population of minority seniors and soon-to-be seniors in Kent County. According to the Community Research Institute, the population of White adults aged 45-64 in Kent County increased by 48% from 1990-2002 while the population of Black and Hispanic

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<sup>1</sup> Robinson, Holly. *Housing Options for Older Adults: A Guide to Making Housing Decisions*. Washington, DC: National Association of Area Agencies on Aging, n.d. 1. Print.

## Introduction

adults aged 45-64 increased by 78% and 213% respectively.<sup>2</sup> In response, the demand for housing by a growing minority senior population must be met by a supply of housing for seniors which promotes and provides fair and equal access to all. All persons who qualify for the housing should be afforded equal opportunity; this not only benefits those seeking housing, but also makes good business sense.

The FHCWM issues this report in order to highlight fair housing issues as they pertain to seniors, outline documented instances of potential housing discrimination against seniors, offer practical guidance on compliance with fair housing laws, and ultimately promote fair housing opportunity for all seniors throughout Kent County. It is the hope of the FHCWM that this report will increase awareness of fair housing rights and responsibilities as well as promote practices and choices that create open, diverse communities.

### **ABOUT THE FAIR HOUSING CENTER OF WEST MICHIGAN**

The Fair Housing Center of West Michigan is a private, non-profit organization established in 1980 to ensure equal housing opportunity as guaranteed under federal, state and local fair housing laws. That purpose is accomplished through the FHCWM's continuing operation of programs directed at enforcement and education based on Title VIII of the 1968 Civil Rights Act (Amended 1988), commonly referred to as the Fair Housing Act, which prohibits discrimination based upon race, color, religion, sex, national origin, handicap, and/or familial status; the Elliott Larsen Civil Rights Act which further prohibits discrimination based upon marital status and age; and local ordinances prohibiting discrimination based upon gender preference and public assistance recipient status.

Among its enforcement-oriented activities, the FHCWM's top priority is to assist homeseekers in the investigation and resolution of complaints of illegal housing discrimination through the use of comparison testing, research and investigation, and cooperation with enforcement agencies. In addition to individual complaints, the FHCWM actively monitors the nature and extent of existing housing discrimination through periodic market surveys, utilizing comparison testing and other market research. Information obtained is often used as evidence to support independent complaint actions with appropriate authorities. The FHCWM has developed and participated in education programs designed to increase the housing industry's understanding of fair housing laws and responsibilities and has trained more than 2500 sales, rental, and lending agents in their obligations under existing fair housing laws. The FHCWM also provides technical advice to housing consumers and educates homeseekers about recognizing discriminatory practices and the legal remedies available to correct such practices.

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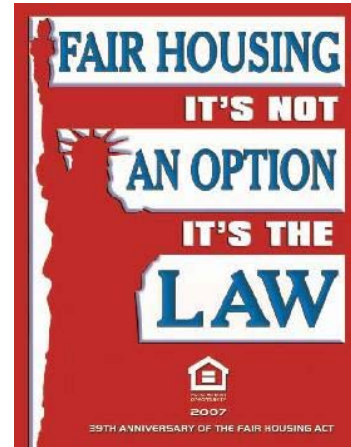
<sup>2</sup> Grand Rapids Community Foundation, et al. "Emerging Trends: Healthy Seniors." 2004: 5. Print.

# **Fair Housing Laws in Kent County**

# Fair Housing Laws in Kent County

## INTRODUCTION

Beginning with the Civil Rights Act of 1866, the United States of America has recognized and protected a person's right to choose a home free from unlawful housing discrimination for over 140 years. Currently, federal and/or Michigan fair housing laws prohibit discrimination throughout Kent County in the rental, sale, advertising or financing of housing on the basis of race, color, religion, national origin, gender, familial status (presence of children under 18 or pregnancy), disability, age or marital status. In addition, some local municipalities have enacted fair housing ordinances which expand these protected bases, or "protected classes" as they are called, to provide a wider array of protection, including bases such as source of income, height, weight and sexual orientation. Both homeseekers and housing providers should become familiar with the applicable federal, state and local fair housing laws in order to understand both their rights and responsibilities under such laws.



## CIVIL RIGHTS ACTS OF 1866

Congress passed the Civil Rights Act of 1866 on April 9, 1866, which guaranteed rights of citizenship, including housing rights, regardless of race and color. In particular, the Civil Rights Act of 1866 states the following:

That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, **to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens...**<sup>3</sup> (emphasis added)

Although enacted, the Civil Rights Act of 1866 did not provide a mechanism for enforcement of the law, and, as such, the rights afforded by the law were not widely actualized. The lack of enforcement gave way to the perpetuation of widespread housing discrimination on the bases of race and color. Such housing discrimination went widely unaddressed for over 100 years until the enactment of the Fair Housing Act of 1968. Nonetheless, the Civil Rights Act of 1866 remains on the books, and continues to prohibit housing discrimination on the bases of race and color.

<sup>3</sup> "Thirty-Ninth Congress. Sess. 1. Ch. 31. 1866." *A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774 - 1875*. Library of Congress, n.d. Web. 5 Apr. 2011. <<http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=014/llsl014.db&recNum=58>>.

# Fair Housing Laws in Kent County

## FEDERAL FAIR HOUSING ACT

<sup>4</sup>President Lyndon B. Johnson signed the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) into law on April 11, 1968, exactly one week after the assassination of Dr. Martin Luther King, Jr. The Fair Housing Act of 1968 prohibits discrimination concerning the sale, rental, advertising and financing of housing on the bases of race, color, religion and national origin.<sup>5</sup> In 1974, sex (or gender) was added as a protected class to the Fair Housing Act. In 1988, the Fair Housing Act underwent comprehensive amendments which expanded the prohibited practices and added familial status (presence of children under the age of 18 and pregnancy) and disability as additional protected classes, for a total of seven (7) federally protected classes.<sup>6</sup>



President Johnson signs the Fair Housing Act on April 11, 1968

The Fair Housing Act as amended (hereinafter the “Act”) prohibits discrimination in a variety of transactions, including but not limited to sales, rental, advertising and financing, pertaining to housing properties referred to as “dwellings”.<sup>7</sup> Almost all types of senior housing have been found to meet the Act’s definition of dwelling, including independent living communities, assisted living facilities, residential care facilities, continuing care retirement communities, and skilled nursing homes.<sup>8</sup> Therefore, most senior housing providers will be subject to the provisions of the Act, with many of the same responsibilities as those providing housing to the general public.

The Act prohibits discrimination in a wide array of policies and practices which span nearly all aspects of a housing transaction from initial inquiry to post-acquisition. The covered transactions include, among others, aspects of the following homeseeking processes: calls to inquire about rental rates up to and beyond lease executions, home appraisals up to and beyond home sales, and loan terms and applications up to and beyond loan acquisition. In particular, 42 U.S.C. §3604 of the Act prohibits the following practices, among others:

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<sup>4</sup> <http://www.loc.gov/exhibits/odyssey/archive/09/0912001r.jpg>

<sup>5</sup> “History of Fair Housing.” *U.S. Department of Housing and Urban Development*, n.d. Web. 29 Mar. 2011. <[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/aboutfheo/history](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/aboutfheo/history)>.

<sup>6</sup> “History.” *Fair Housing Accessibility First*. n.d. Web. 29 Mar. 2011. <<http://www.fairhousingfirst.org/fairhousing/history.html>>

<sup>7</sup> Schwemm, Robert G. “Properties Covered by the Fair Housing Act.” *Housing Discrimination Law and Litigation*. Eagan, MN: Thomas Reuters/West, 2001. 9-2. Print.

<sup>8</sup> Tanna, Mira et al. “Selective Marketing: A Report on Senior Housing Providers’ Compliance with the Fair Housing Act Advertising Requirements.” St. Louis, MO: Metropolitan St. Louis Equal Housing Opportunity, 2009. 3. Print.

## Fair Housing Laws in Kent County

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, familial status, or national origin.
- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, disability, familial status, or national origin.
- (c) To 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 that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any person because of race, color, religion, sex, disability, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.<sup>9</sup>

In addition, the Act, at 42 U.S.C. §3604(f) provides additional protections on the basis of disability. Not only does the Act prohibit discrimination against an individual because of their disability, but it also prohibits discrimination against any person because they are associated with and/or may live with a person with a disability (legal guardian, parent or child of a person with a disability, etc.) Specifically, the Act makes the following unlawful:



- (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--
  - (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--
  - (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter.<sup>10</sup>

Furthermore, the Act affords additional rights to persons with disabilities, including the right to reasonable accommodations and modifications as well as design and construction requirements guaranteeing the right to accessible housing. Specifically, the Act at §3604(f)(3) prohibits the following:

- (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case

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<sup>9</sup> 42 U.S.C. § 3604(a)-(f).

<sup>10</sup> 42 U.S.C. § 3604(f)(1)-(2)

## Fair Housing Laws in Kent County

of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

- (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
- (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988<sup>11</sup>, a failure to design and construct those dwelling in such a manner that--
  - (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
  - (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
  - (iii) all premises within such dwellings contain the following features of adaptive design:
    1. an accessible route into and through the dwelling;
    2. light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
    3. reinforcements in bathroom walls to allow later installation of grab bars; and
    4. usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.<sup>12</sup>

For more information on these provisions of the law, see the section of this report entitled, “Fair Housing Rights of Persons with Disabilities”.

In addition to those provisions mentioned above, the Act prohibits others actions which may occur in a housing transaction as the result of a protected class, such as, harassment, intimidation or threats; retaliation; steering; predatory lending; and sexual harassment. The full text of the Act can be found on the website of the U.S. Department of Justice at <http://www.justice.gov/crt/about/hce/title8.php>.

### MICHIGAN ELLIOTT-LARSEN CIVIL RIGHTS ACT

On March 31, 1977, State Act 453 of 1976, or the Elliott-Larsen Civil Rights Act (hereinafter the “ELCRA”), took effect in the State of Michigan. The ELCRA underwent a series of amendments from 1977-1992, with the most recent taking effect on December 7, 1992. The ELCRA, as amended, prohibits discrimination not only in housing, but also in employment, public accommodations, public service, and educational facilities. Specifically regarding housing, the ELCRA prohibits discrimination on the basis of religion, race, color, national origin,

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<sup>11</sup> The Fair Housing Act requires all "covered multifamily dwellings" designed and constructed for first occupancy after March 13, 1991 to be accessible to and usable by people with disabilities. “Frequently Asked Questions”. *Fair Housing Accessibility First*. n.d. Web. 5 May 2011. < <http://www.fairhousingfirst.org/faq/mfhousing.html>>

<sup>12</sup> 42 U.S.C. § 3604(f)(3)

## Fair Housing Laws in Kent County

age, sex, familial status, or marital status. As such, ELCRA expands upon the federally protected classes, adding marital status and age, for a total of nine (9) protected classes throughout the State of Michigan.

Like the Act, the practices prohibited by ELCRA cover a wide variety of housing transactions, and, in many ways, mirror the protections offered by the Act at 42 U.S.C. § 3604(a)-(d). In particular, §37.2502(1) of the ELCRA prohibits that a person engaging in a real estate transaction do any of the following on the basis of religion, race, color, national origin, age, sex, familial status, or marital status:

- (a) Refuse to engage in a real estate transaction with a person.
- (b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.
- (c) Refuse to receive from a person or transmit to a person a bona fide offer to engage in a real estate transaction.
- (d) Refuse to negotiate for a real estate transaction with a person.
- (e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or knowingly fail to bring a property listing to a person's attention, or refuse to permit a person to inspect real property, or otherwise make unavailable or deny real property to a person.
- (f) Make, print, circulate, post, mail, or otherwise cause to be made or published a statement, advertisement, notice, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction.
- (g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.
- (h) Discriminate against a person in the brokering or appraising of real property.<sup>13</sup>



Although ELCRA does not prohibit housing discrimination on the basis of disability, those protections are offered by the Persons with Disabilities Civil Rights Act of 1976 of the State of Michigan which was enacted simultaneously with ELCRA and provides for almost identical prohibited practices.

### PERSONS WITH DISABILITIES CIVIL RIGHTS ACT OF 1976

On March 31, 1977, State Act 220 of 1976, or the Persons with Disabilities Civil Rights Act (hereinafter the "PWDCRA"), took effect in the State of Michigan in conjunction with ELCRA. Like ELCRA, the PWDCRA underwent a series of amendments from 1977-1998, with the most

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<sup>13</sup> Elliott-Larsen Civil Rights Act. § 37.2502(1)(a)-(h).

## Fair Housing Laws in Kent County

recent taking effect on March 12, 1998. Like ELCRA, the PWDCRA, as amended, prohibits discrimination on the basis of disability not only in housing, but also in employment, public accommodations, public service, and educational facilities.

The housing discrimination prohibited by PWDCRA mirrors those practices prohibited ELCRA and the Act, but, just as the Act, also protects protected beyond just the individual with a disability. In particular, § 37.1502 of the PWDCRA states the following:

Sec. 502. (1) An owner or any other person engaging in a real estate transaction, or a real estate broker or salesman shall not, on the basis of a disability of a buyer or renter, of a person residing in or intending to reside in a dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter, that is unrelated to the individual's ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids:

- (a) Refuse to engage in a real estate transaction with a person.
- (b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.
- (c) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction from a person.
- (d) Refuse to negotiate for a real estate transaction with a person.
- (e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, fail to bring a property listing to a person's attention, refuse to permit a person to inspect real property, or otherwise deny or make real property unavailable to a person.
- (f) Make, print, circulate, post, or mail or cause to be made or published a statement, advertisement, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect to a real estate transaction.
- (g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.

Furthermore, and again similar to the Act, PWDCRA at § 37.1506(a) provides additional protections and rights pertaining to reasonable modifications and accommodations and accessibility. The accessibility requirements of PWDCRA, although less specific, directly result from the Act. Specifically, PWDCRA states the following:

- (1) Sec. 502. (1) An owner or any other person engaging in a real estate transaction, or a real estate broker or salesman shall not, on the basis of a disability of a buyer or renter, of a person residing in or intending to reside in a dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter, that is unrelated to the individual's ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids:

- (a) Refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with

## Fair Housing Laws in Kent County

a disability if those modifications may be necessary to afford the person with a disability full enjoyment of the premises. In the case of a rental, the landlord may, if reasonable, make permission for a modification contingent on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

- (b) Refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person with a disability equal opportunity to use and enjoy residential real property.
- (c) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, fail to include all of the following features:
  - i. The dwellings have at least 1 building entrance on an accessible route, unless that is impractical because of the terrain or unusual characteristics of the site.
  - ii. The public and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.
  - iii. All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.
  - iv. All premises within covered multifamily dwellings contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and kitchens and bathrooms designed so that an individual in a wheelchair can maneuver about the space.

### LOCAL FAIR HOUSING ORDINANCES

In addition to federal and Michigan fair housing laws, three cities within Kent County have adopted a fair housing policy to their code of ordinances to affirm a commitment to fair housing and also to broaden the number of protected classes within their respective jurisdictions. The three cities are as follows: City of Grand Rapids, City of Kentwood, and City of Wyoming. Each city adds three unique protected classes to their jurisdiction, thereby extending fair housing rights beyond those assured by federal and state fair housing laws. In addition to Michigan and federal protected classes under fair housing law, housing discrimination is prohibited in the City of Grand Rapids on the basis of source of lawful income, public assistance recipient status<sup>14</sup> or gender orientation<sup>15</sup>, and in the Cities of Kentwood<sup>16</sup> and Wyoming<sup>17</sup> on the basis of height, weight, or source of income.

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<sup>14</sup> §9.362 “Policy”. Grand Rapids, Michigan, Code of Ordinances >> TITLE IX—POLICE REGULATIONS >> Chapter 160 - DISCRIMINATION IN REAL PROPERTY TRANSACTIONS.

<http://library.municode.com/index.aspx?clientId=12116&stateId=22&stateName=Michigan>

<sup>15</sup> § 1.347 “Civil Rights Defined”. Grand Rapids, Michigan, Code of Ordinances >> - TITLE I—ADMINISTRATION >> Chapter 8 - BOARDS AND COMMISSIONS >> ARTICLE 3. - COMMUNITY RELATIONS COMMISSION >>

# Fair Housing Laws in Kent County

## EXEMPTIONS

Senior housing, while decidedly distinct from the housing market as a whole, still remains under the purview of federal, state and local fair housing laws; however, the Act and ELCRA do allow for a limited number of narrow exemptions from certain provisions which directly impact senior housing options. Such exemptions include a narrow exemption for religious organizations and private clubs and a specific exemption to the familial status provisions for qualifying senior housing providers. These exemptions are discussed in further detail below.

### Religious Organization Exemption

A large sector of the senior housing available in the West Michigan area is provided by or in conjunction with a faith-based organization, which is distinct from the housing market as a whole. While West Michigan does have a statistically high number of faith-based senior housing providers, this trend is not unique to our community. In fact, religious organizations pioneered continuing care retirement communities (CCRCs) to provide lifetime care for seniors without families<sup>18</sup> and remain major providers of senior housing throughout the nation. Directly impacting this unique aspect of senior housing, the Act contains a narrow exemption to allow a religious organization to exercise a preference on the basis of that religion in its noncommercial dwellings. For example, a non-profit, non-commercial housing facility established by the Catholic Church for the purpose of housing retired nuns or members of Catholic religious orders may meet the terms of the exemption. Specifically, the language of the Act regarding the religious organization exemption, at § 3607(a), reads as follows:

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.<sup>19</sup>

Furthermore, ELCRA provides a similarly narrowly construed exemption on the basis of religion, which reads as follows:

Sec. 505. (1) A condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of religion, race, color, national origin, age, sex, familial status, or marital status is void, except a limitation of use as provided in section 503(1)(c) or on the basis of religion relating to real

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<sup>16</sup> Sec. 74-201. "Definitions." Kentwood, Michigan, Code of Ordinances >> PART 2 - CODE OF ORDINANCES >> Chapter 74 - BUILDINGS AND BUILDING REGULATIONS >> ARTICLE 6. - FAIR HOUSING >>

<http://library.municode.com/index.aspx?clientId=13498&stateId=22&stateName=Michigan>

<sup>17</sup> Sec. 42-53. "Unfair housing practices". ARTICLE II. DISCRIMINATION. Division 2. Fair Housing.

[http://library1.municode.com/default-test/home.htm?infobase=10150&doc\\_action=whatsnew](http://library1.municode.com/default-test/home.htm?infobase=10150&doc_action=whatsnew)

<sup>18</sup> Robert G. Schwemm & Michael Allen, For the Rest of Their Lives: Seniors and the Fair Housing Act, 90 IOWA L. REV. 121, n.93 (2004) (citing LAWRENCE FROLIK, RESIDENCE OPTIONS FOR OLDER OR DISABLED CLIENTS, § 8.01, at 8-2 (1997 & Supp.2002)).

<sup>19</sup> 42 U.S.C. § 3607(a).

## Fair Housing Laws in Kent County

property held by a religious institution or organization, or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.<sup>20</sup>

As noted above, the exemption is quite limited and is only available with respect to religious discrimination in noncommercial dwellings operated by a religious organization or by a nonprofit institution operated in conjunction with a religious organization, and then only if membership in the religion is not restricted on account of race, color or national origin.<sup>21</sup> It proves important to note that such religious organization exemption does not allow for discrimination on the basis of any other protected class. Furthermore, no reported federal fair housing case has yet excused discrimination on the basis of religion on the grounds that the housing provider was eligible for such exemption.<sup>22</sup>

### Senior Housing Exemption (Housing for Older Persons)

In the passage of the Act, Congress recognized and affirmed the unique need for senior housing communities and established a specific exemption from the familial status provisions of the Act for “housing for older persons”. The purpose of the “housing for older persons” exemption is to insure that the Act’s familial status prohibitions do not unfairly limit the housing choices of elderly persons.<sup>23</sup> Specifically, Congress recognized “that some older Americans have chosen to live together with fellow senior citizens in retirement-type communities” and “appreciate the interests and expectation these individuals have in living in environments tailored to their specific needs.”<sup>24</sup> The exemption for “housing for older persons” under the Act applies only to the familial status provisions of the Act, and does not allow such housing to discriminate on the basis of any other federal, state or local protected class.

The “housing for older persons” exemption under the Act includes three specific and separate definitions of senior housing. In particular, housing that meets the Act’s definition of “housing for older persons” is exempt from the law's familial status requirements provided that:

1. HUD has determined that the dwelling is specifically designed for and occupied by elderly persons under a Federal, State or local government program, or
2. It is occupied solely by persons who are 62 or older, or
3. It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.<sup>25</sup>

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<sup>20</sup>Elliott-Larsen Civil Rights Act. Act 453 of 1976. 31 March 1977. § 37.2505(1). Print.

<sup>21</sup> 42 U.S.C. § 3607(a).

<sup>22</sup> Schwemm, Robert G. "Properties Covered by the Fair Housing Act." *Housing Discrimination Law and Litigation*. Eagan, MN: Thomas Reuters/West, 2001. 9-13. Print.

<sup>23</sup> Schwemm, Robert G. "Familial Status Discrimination." *Housing Discrimination Law and Litigation*. Eagan, MN: Thomas Reuters/West, 2002. 11E-31. Print. (citing HUD Preamble II, 24 CFR, ch. 1, subch. A, app.I, 54 Fed. Reg. 3252 (Jan. 23, 1989) (citing statement of Sen. Karnes at 134 Cong. Rec. S10465-66 (1988))

<sup>24</sup> Schwemm, Robert G. "Familial Status Discrimination." *Housing Discrimination Law and Litigation*. Eagan, MN: Thomas Reuters/West, 2002. 11E-31. Print. (citing U.S. House of Representatives, Committee on the Judiciary, Report 100-711: the Fair Housing Amendments Act of 1988 at 80-81, 86-88, 90, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (1988))

<sup>25</sup> 42 USC § 3607(b)(2)(A)-(C) and “Senior Housing: What you should know...” U.S. Department of Housing and Urban Development. n.d. Web. 11 July 2011.

<[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/seniors](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/seniors)>.

## Fair Housing Laws in Kent County

Most of senior housing throughout West Michigan, including condominium associations and public and private senior communities, falls under the third of the three (3) definitions: housing for persons “55 and older”. To further clarify this definition, HUD enacted the Housing for Older Persons Act (herein “HOPA”)<sup>26</sup> in 1995 to replace the original definition of “55 and older” set forth in the Act. HOPA applies to many different types of housing facilities and communities, including, but not limited to, condominium associations; cooperatives; property governed by a homeowners' or resident association; municipally zoned areas; leased property under common private ownership; mobile home parks; and manufactured housing communities.<sup>27</sup>

The HOPA regulations contain three (3) major requirements, found at 24 CFR § 100.305-100.307, all of which must be met in order to qualify for the applicable exemption. These requirements, in summary, are as follows:

1. In order for a housing facility or community to qualify as housing for older persons under Sec. 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.<sup>28</sup>
2. In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older.<sup>29</sup>
3. A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.<sup>30</sup>

If a housing provider meets these three (3) requirements, then they may discriminate on the basis of familial status. However, the housing provider may not discriminate on any other protected basis.

Furthermore, ELCRA also contains an exemption for senior housing providers to the familial status and age provisions of the Michigan law; however, such exemption is not entirely congruent with the Act’s exemptions on the basis of familial status and is thus preempted by federal law when any conflict arises. Specifically, ELCRA, at 37.2503, states that the prohibitions of discrimination, as stated in the law, do not apply to the following:

(c) With respect to the age provision and the familial status provision only, the sale, rental, or lease of housing accommodations meeting the requirements of federal, state, or local housing programs for senior citizens, or accommodations otherwise intended, advertised, designed or operated, bona fide, for the purpose of providing housing accommodations for persons 50 years of age or older.<sup>31</sup>

As evidenced above, ELCRA’s definition of “housing for older persons” mirrors the first definition set forth by the Act regarding federal, state and local housing programs for senior

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<sup>26</sup> 24 CFR Part 100. “Implementation of the Housing for Older Persons Act of 1995”.

<sup>27</sup> 24 CFR § 100.304(b)

<sup>28</sup> 24 CFR § 100.305(a)

<sup>29</sup> 24 CFR § 100.306(a)

<sup>30</sup> 24 CFR § 100.307(b)

<sup>31</sup> Elliott-Larsen Civil Rights Act. § 37.2503(1)(c)

## **Fair Housing Laws in Kent County**

citizens, but subsequently directly conflicts with the second and third definitions of the Act which include specific age guidelines. The Act provides exemptions for housing for persons “62 or older” and “55 or older”, and ELCRA’s exemption for housing for persons “50 years of age or older” places more restrictions on families with children than federal laws. As a result, in a situation where any such conflict arises between the definitions, ELCRA, enacted before the Fair Housing Amendments Act of 1988 and HOPA, is preempted by federal law. That is to say, a community that designates itself as housing for persons “50 years of age or older” exempt from the age and familial status provisions of ELCRA may still be found in violation of the familial status provisions of the Act. It proves important to be aware of all applicable laws and understand the relationship between federal, state and local fair housing laws and their exemptions in order to ensure proper compliance.

In order to ensure proper compliance, housing providers should know which laws and exemptions apply to their property or properties according to the geographic location in order to understand both their rights and responsibilities under fair housing law. It is best to provide fair housing training to anyone who interacts with potential and current residents, including property managers and maintenance staff. Fair housing training should focus on risk management related to housing discrimination based on the role or roles the housing provider plays, be it home sales, rental, lending, insurance and/or advertising relating to the sale or rental of a dwelling. Training helps members of the housing industry meet their responsibilities under fair housing law and ensure that homeseekers consistently have equal access to housing choice.

# **Fair Housing Policies and Practices**

# Fair Housing Policies and Practices

## INTRODUCTION

The policies and practices implemented by senior housing providers serve as outward demonstrations of their commitment to fair housing practices. Regardless of intent or commitment to fair housing, sometimes senior housing providers implement written policies that are discriminatory against a certain protected class. This may be in the form of a policy that specifically targets or limits a protected class, or in the form of a seemingly innocuous or neutral policy which, when applied, either imparts a disproportionately negative impact on a protected class or is selectively enforced in a discriminatory manner against members of a particular protected class. As such, it proves imperative that senior housing providers thoroughly review their written policies for compliance with fair housing laws, and that they ensure that such policies are fully understood by all staff and employees and practiced fairly and consistently.

Regarding housing practices, the adherence to fair housing laws is often measured by the consistency and quality of service and treatment provided to homeseekers. The FHCWM recognizes that no two interactions with different homeseekers are exactly the same and that “fair” treatment and “same” treatment are not always synonymous. The FHCWM also recognizes that differences in treatment do not always correlate to a protected class. Fair housing laws do not raise the issue of how well people are treated. If all applicants are treated poorly, that may be bad for business, but it is not, by itself, a fair housing violation. However, significant differences in treatment linked to a protected class, or demonstrated patterns of less favorable treatment to a specific protected class over a period of time, may indicate real or potential fair housing issues.

Differences in treatment are one of the most important concepts to understand when considering fair housing laws. Fair housing laws require that each person be treated equally, which differs from being treated the same. For example, a senior property management office has a policy of printing a daily list of available units and pricing every morning. The policy is to provide each applicant with a copy of the list, thereby providing each person with the same information. However, a person with a visual impairment may not be able to access the information on the printed sheet and the information on the list should be verbally reviewed with that person, or provided in an equally accessible format, in order for them to receive equal treatment. This would be considered making a reasonable accommodation for the person’s disability in order to provide equal access. For more information on reasonable accommodations, please see the subsequent section of this report entitled, “Fair Housing Rights of Persons with Disabilities”.

Therefore, it is best to be as consistent in policies and practices as possible, and meet requests for reasonable accommodations as necessary. All employees that have any interaction with current and potential residents should know and be able to implement the proper policies and practices at all times. Striving to provide consistent quality of service and treatment, as well as consistent information, leads toward fair housing best practices. Further, providing fair housing training to senior housing provider staff and employees not only demonstrates a commitment to fair housing practices and but also affords the knowledge and awareness necessary to ensure fair housing and, ultimately, equal housing opportunity.

# Fair Housing Policies and Practices

## POLICIES WITHIN SENIOR HOUSING

Within Kent County, many seniors seek housing within communities that offer services, leisure activities, and opportunities designated specifically for seniors. Due to a designation as a “senior community”, many such communities may be exempt from the familial status provisions of the Act permitting that they adhere to the rules and regulations set forth by HOPA, as previously discussed; however, such communities remain subject to the remaining sections of federal, state and local fair housing laws, including accessibility requirements and responsibilities to permit reasonable accommodations and modifications. It is important that senior housing providers intending to provide housing specifically for seniors review their policies to ensure compliance with both the regulations of HOPA, but also the other applicable sections of fair housing law, and that they understand their responsibilities under those laws.

In circumstances where senior communities are designated as exempt from the familial status and age provisions of federal and Michigan fair housing laws, they are still liable under the remaining provisions of the Act protecting against discrimination on the basis of race, color, religion, national origin, disability and gender, and also must adhere to ELCRA’s prohibition of discrimination on the basis of marital status. For example, senior housing communities exempt from the familial status and age provisions of federal and Michigan fair housing laws may not limit housing opportunities to “single or married persons” or state an unlawful preference on the basis of religion. As many senior housing providers in the west Michigan area are faith-based, such communities should review their policies to ensure that they comply with federal, state and local fair housing laws, particularly if they wish to meet the religious organization exemption under the Act, as previously discussed.

Throughout Kent County, the FHCWM has consistently identified policy related fair housing issues pertaining to condominium associations designated as senior housing exempt from the familial status and age provisions of federal and Michigan fair housing laws. Condominium communities provide a private, independent housing option for seniors wishing to remain within their own home as opposed to residing within a congregate senior housing community. However, because condominium associations are often private, independent entities there is less standardization, which often leads to lacking compliance with fair housing laws, specifically as found in the written bylaws of the communities. Condominium associations wishing to be designated as “senior housing” exempt from the familial status and age provisions of federal and Michigan fair housing laws should not only ensure that their policies and practices meet the requirements of HOPA, but also that their policies do not contain any unlawful reference to one or more of the remaining protected classes, including marital status. Many Kent County condominium associations were incorporated prior to the passage of ELCRA, the Fair Housing Amendments Act of 1988, and/or HOPA, and, as such, may not have updated their bylaws to reflect the fair housing requirements set forth by those laws. For example, a condominium association incorporated in 1985, prior to the Fair Housing Amendments Act and HOPA, may have lawfully established themselves as a senior community intended for persons “50 and older” consistent with ELCRA. However, upon passage of the Act and HOPA, such age restriction presented an inconsistency with federal fair housing laws whose requirements trump Michigan fair housing laws. In order to comply with federal law and maintain an exemption, the community must establish their intent to house persons at least 55 year of age or older as well as

## Fair Housing Policies and Practices

meet the other requirements of HOPA pertaining to age verification, established intent and record keeping. Members of condominium association boards need be aware that they are considered housing providers under fair housing law and are thus liable to the provisions of those laws.

Finally, senior housing communities, including condominium associations, also need be aware of their responsibility to grant reasonable accommodation or reasonable modification requests made by or on behalf of individuals with disabilities. Condominium associations carry the same responsibility as landlords and property managers to appropriately handle and address reasonable accommodation and modification requests. Such reasonable accommodations and modifications could include a request to accommodate a “no animals” policy by allowing a service or companion animal, a request to modify one’s condominium exterior to add necessary handrails or other physical mobility supports, or a request to allow a live-in care giver who may not comply with the age restrictions set forth by the community’s bylaws. For more information on reasonable accommodations and modifications, please see the subsequent section of this report entitled, “Fair Housing Rights of Persons with Disabilities”.

### PRACTICES UNIQUE TO CONGREGATE SENIOR HOUSING

The unique aspects of congregate senior communities present an equally unique array of real and potential fair housing issues within such communities, as well as unique opportunities for fair and equal housing practices. In particular, the wide variety of housing options available at many senior communities due to the continuum of care system may contribute to a higher propensity for lack of consistency in information or treatment provided to prospective residents, but may also present an opportunity for an increased commitment to and focus on fair housing. Such variety of options often unique to senior communities includes the following:

- Fees
  - Reservation fees
  - Endowment fees
  - Higher application fees (\$150 or above)
- Services to transition out of homeownership
  - Realty or moving services
  - Home purchase programs
- Continuum of care services
  - Licensed nursing facilities within the housing complex
  - Transitional housing options with varying levels of care
- Costs
  - Rental v. buy-in options
  - Rental rates based on occupancy
  - All inclusive living
  - Significantly higher rental rates than non-senior housing due to available services
- Customer Service
  - Min-stay programs
  - High valued incentives or specials

## Fair Housing Policies and Practices

With so many different options available, senior housing providers face the unique challenge of providing an above average quantity of information as consistently as possible, while recognizing and serving the individual needs of each potential resident. In order to comply with fair housing laws, the FHCWM advises consistency and truthfulness in all transactions. It is the most effective way to insure that all applicants are treated equally. Areas where it is important to be consistent include:

- Information about vacancies and waiting lists;
- Information about qualifications needed to apply or be accepted;
- Information about costs, such as rental rates, security deposits and other fees;
- How much information is actually required concerning credit, references, employment, past income or additional sources of income;
- Information about rental rebates, specials and amenities of the housing;
- Information about rules, policies, regulations or requirements of the housing.
- Information about free meals, visits and ‘stay-cations’ for prospective senior residents.

One way to be consistent is to have the above information written down and available for home seekers help insure that each person receives the same information.

The FHCWM recommends that, unless required to do so by court order or a government agency, housing providers should refrain from recording in any way, the race, color, religion, or national origin of the applicant. Such information, if used to deny equal housing opportunity, could provide a basis for a housing discrimination complaint. In contrast, statements that support an affirmative action and/or equal opportunity policy are appropriate and in keeping with fair housing laws if such statements are made to all applicants and not to a select group of applicants. Any other statements concerning the racial, ethnic, or religious backgrounds of the applicant, the residents, the owners of the development, the neighborhood or the senior community, while by themselves not necessarily unlawful, could provide a basis for a discrimination complaint. Senior housing staff members should understand that they may be asked coded questions regarding ‘who lives here,’ safety or security, or the type of neighborhood when the questioner may be covertly seeking information about the racial makeup of the community that should not be provided.

Employees of the senior housing industry should know that federal and state laws protect them from retaliation by employer/owner if they refuse to follow the employer/owner’s instructions to unlawfully discriminate. In fact, they have standing to bring suit against employers/owners for any attempts to require an agent to violate fair housing laws. Furthermore, incidents of harassment based on race, sex, religion, national origin, age, familial, marital or handicap status by owners, agents, neighbors or other residents are civil rights violations and should be reported to a fair housing agency. Failure to report incidents of unlawful activity may expose the senior housing provider to court actions arising from such activities. It is important to note that other residents in the senior housing may not interfere in the housing transaction either if the interference is due to a protected class. Senior housing providers who display a warm and welcome reception to all applicants, and who themselves believe that full compliance with fair housing laws will help produce better communities, will be less likely to become defendants in a housing discrimination complaint.

# Fair Housing Policies and Practices

## FAIR HOUSING TESTING FOR DIFFERENCES IN SERVICE OR TREATMENT

The quality and consistency of service and treatment offered by a housing provider to prospective and/or current residents often demonstrates their level of commitment to fair housing practices. One method by which the FHCWM obtains information about fair housing service and treatment is a process called fair housing “testing”. From 2007-2010, the FHCWM conducted just under 200 tests pertaining to the service and treatment of senior testers posing as homeseekers by housing providers and agents, and documented significant differences on the bases of race, religion, marital status and disability. In fact, the FHCWM detected instances of potential housing discrimination against seniors in over one-third of its conclusive tests. This signifies that almost one out of every three (3) minority seniors seeking housing in Kent County may meet an unlawful barrier to housing choice solely because of their race, national origin or disability status.

The most commonly accepted definition of fair housing testing is that provided by George Schermer in Guide to Fair Housing Law Enforcement, published by the National Committee Against Discrimination in Housing, as follows:

*“Testing may be described as a way of measuring differences in the quantity, content, and quality of information and service given to customers by real estate firms and rental property managers, attributable to a difference in race (or national origin, religion, or sex - whatever is being tested). Teams of persons as similar as possible in all characteristics except the variable being tested pose as homeseekers. The team members visit the same real estate agency or apartment complex at closely spaced intervals to apply for the same type of accommodations. Each tester records the responses and treatment received in accordance with a prescribed form. Those two reports are then compared.”*

Therefore, testing is a scientific measure of difference based upon objective tester reports.

A “tester” is a person portraying the role of a homeseeker for the purposes of gathering objective, accurate information regarding a housing opportunity. The FHCWM utilizes trained, volunteer testers who independently complete test assignments under the direction and oversight of FHCWM staff. FHCWM testers do not know the basis of the test in which they are participating, nor receive any information pertaining to any real or potential fair housing issues. Rather, testers are assigned a specific date to contact a housing provider, provided relevant contact information for the housing provider, given assumed household and income characteristics, and instructed to obtain information about the availability, rental rate, security deposit and application process for the housing opportunity. The FHCWM often utilizes “matched pair testing” wherein two testers are separately and independently assigned to contact the same housing provider. In such matched pair tests, the FHCWM controls the two testers’ assumed characteristics (family size, income, housing type needed, demographics, etc.) in a way such that the only significant variable is the protected basis (race, color, religion, national origin, disability, familial status, gender, marital status, age, etc). Upon conclusion of the contact with the housing provider, testers complete standardized test forms and a written, objective narrative to accurately document their testing experience. The FHCWM then utilizes side by side comparison of tester report forms and narratives to detect differences.

## Fair Housing Policies and Practices

Using the methodology described above, the FHCWM completed comprehensive testing on the basis of race, utilizing senior testers, at primarily senior housing communities, to survey the fair housing experiences of senior homeseekers within Kent County as it pertains to fair housing practices. As a result of this testing conducted on the basis of race from 2007-2010, the FHCWM identified significant differences in treatment, or patterns of differential treatment, which manifested themselves as grouped into one or more of the four following categories:

1. Quality of service
  - Ex. 1. Black senior tester attended for significantly less time than White senior tester
  - Ex. 2. Agent consistently only offering handshake and introduction to White senior tester and not to Black senior tester
  - Ex. 3. Agent consistently sending a "Thank you" card to the White senior tester and not to the Black senior tester
2. Information requested of the tester by the housing agent
  - Ex. 1. Agent did not request or record contact information of Black senior tester while recording such information for the White senior tester allowing for the potential for follow up contact
  - Ex. 2. Agent did not ask Black senior tester about desired housing options or preferences while requesting such information from the White senior tester
3. Information provided by the housing agent to the tester
  - Ex. 1. Black senior tester told by agent that no units were available or that availability was unknown while White senior tester was told by same agent that there were available units
  - Ex. 2. Black senior tester quoted a significantly higher security deposit amount or application fee than that quoted to the White senior tester
  - Ex. 3. Black senior tester's requests for information about rental rates or application process ignored while such information was provided to the White senior tester
  - Ex. 4. White senior tester offered significant rental specials which were not offered to the Black senior tester (ex. one month free, security deposit waived, etc.)
4. Treatment of tester by the housing agent
  - Ex. 1. Black senior tester not offered a tour of the property while White senior tester received tour
  - Ex. 2. Black senior tester not offered an application while agent offered application to White senior tester
  - Ex. 3. Black senior tester steered to an alternate property
  - Ex. 4. Black senior tester not shown available unit while White senior tester is shown available units

The examples above demonstrate both significant differences as well as less significant differences that, although possibly initially less indicative of a potential fair housing issue, once established as an ongoing pattern present equal concerning outcomes as it pertains to fair housing practices. Therefore, consistency in the housing related information requested and provided by housing providers and their agents and in the quality of service and treatment remains a fair housing best practice.

## Fair Housing Policies and Practices

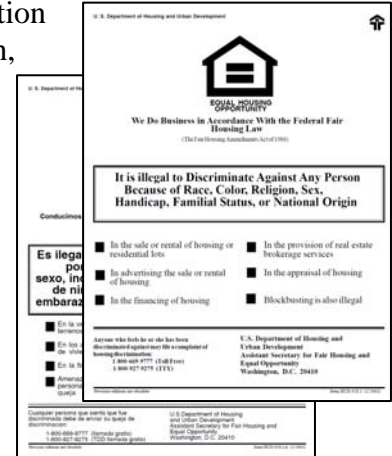
In addition to demonstrated differences in service or treatment, FHCWM testing also revealed instances wherein housing providers made potentially unlawful or discouraging statements pertaining to a protected class. In one such instance, an agent of a senior housing provider told an FHCWM tester that, to live within the community, “You don’t have to be Christian, but it helps”. In another such instance, a housing provider asked a Black senior tester if they had noticed that there were not many Black people living in the complex, and went on to state that a person’s race or nationality did not make any difference, but it was important that anyone living there would be happy. While such statements may not themselves rise to the level of a violation of fair housing law, they may be discouraging to certain individuals not belonging to the specific protected class and may result in a lost housing opportunity for the homeseeker and a lost income opportunity for the housing provider. In housing transactions, just as in other aspects of communication, a first impression is often the lasting impression, and, if unfavorable, may be the only impression. Therefore, under fair housing law, it is often best for agents or housing providers to not make any questions or statements which may unlawfully pertain to a protected class. In some instances, a homeseeker may ask a housing provider questions pertaining to a protected class, such as asking if the agent knows the racial makeup of the community or if there are families living there. Under fair housing, it is best for housing agents to not answer questions from homeseekers which pertain to a protected class, but rather to direct such homeseeker to a neutral data source (such as census data, school district data, etc.) where such information could be obtained.

# **Fair Housing and Advertising**

# Fair Housing and Advertising

## INTRODUCTION

Under fair housing law, housing discrimination includes discriminatory advertising. Both federal and Michigan fair housing laws prohibit discriminatory advertising by making it illegal to make, print, or publish or cause to be made, printed, or published any notice, statement or advertisement which indicates any preference, limitation, or discrimination because of a protected class, or an intention to make any such limitation, preference or discrimination because of a protected class. It is important to note that this applies to written and oral notices or statements, including flyers, brochures, deeds, signs, banners and any document used with respect to a home sale or rental. Affirmatively, the federal law also states that all advertising for the sale, rental or financing of residential real estate should contain the Equal Housing Opportunity slogan, logo or statement, and that all housing providers must post the HUD approved fair housing poster in their place of business. These indicate to the public that the property is available to everyone under the provisions of the Fair Housing Act.



HUD approved fair housing poster

A general rule of thumb to follow in fair housing advertising is to describe the property, not the people. Because of the nature of the protected classes, this helps lower the risk of publishing or uttering a discriminatory statement. Phrases that expressly state limits or preferences based upon a protected class are prohibited (i.e. white family home, no Irish, adults only, no children). Phrases that *imply* a preference or limitation are also prohibited (i.e. restricted, exclusive). Is someone reading the phrases likely to believe that people of a certain protected class will be preferred? How do you decide? There is no absolute test. “If words or phrases are given their common meaning, an ordinary reader would believe that members of a protected class are being discriminated against regarding the housing in question.” Note that terms that describe a type of room or a type of property can be used (i.e., master bedroom, mother-in-law suite, single family home). However, when in doubt, do not run the advertisement without changing the words in question.

Further, the prohibition of discriminatory advertisements includes the prohibition of selective use of human models, a fair housing issue that the FHCWM has identified among senior housing providers throughout Kent County. Human models used in advertising are a direct indication of the people the advertiser is trying to attract. An example of potentially discriminatory use of human models includes using exclusively White models to represent residents or using only senior human models without visible disabilities. As a result, fair housing laws require that human models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area and should indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.<sup>32</sup> See the following section on “Use of Human Models”.

<sup>32</sup> 24 C.F.R. § 109.30(b).

# Fair Housing and Advertising

## USE OF HUMAN MODELS

Using human models in advertising is a marketing tactic often employed by senior housing providers more so than any other housing provider, and the FHCWM has documented instances of selective, discriminatory use of human models throughout Kent County. According to the Metropolitan St. Louis Equal Housing Opportunity Council's 2009 report titled *Selective Marketing: A Report on Senior Housing Providers' Compliance with the Fair Housing Act Advertising Requirements*, "Senior housing also generally offers a more congregative lifestyle than the housing market as a whole, with many senior housing providers offering congregative meals, social activities and, in some cases, shared rooms. As a result, [senior] housing providers often market the sense of community among residents more heavily than among housing providers as a whole. Advertisements for senior housing are replete with models of residents, their family members, and staff / caregivers. The kinds of models senior housing providers employ in their websites, brochures, and advertisements can suggest to the average reader that the housing provider is targeting its marketing towards a particular demographic group."<sup>33</sup>

How the use of human models in advertising can convey a message of identification or welcome is also explained by United States District Judge Robert R. Merhige, Jr., Eastern District of Virginia, as follows:

It requires no expert to recognize that human models in advertising attempt to create an identification between the model, the consumer, and the product. In other words, advertisers choose models with whom the targeted consumers will positively identify, hoping to convey the message that people like the depicted models consume and enjoy the advertised product... Thus, it is natural that readers of the...brochure would look at the human models depicted as representing the kinds of individuals that live in and enjoy [the provider's] apartment complexes. If a prospective tenant positively identified with these models, the message conveyed would be that "I belong in these apartments. 'My kind of people' live there." Conversely, if the prospective tenant reading the brochure saw no models with whom he or she could identify, the reader would obtain a message that "these apartments are not for me or 'my kind.'"<sup>34</sup>

Therefore, human models, if utilized in advertising, should be clearly definable as reasonably representing majority and minority groups in the metropolitan area (including the protected classes of race, color, national origin, gender and disability), meaning that viewers can easily and quickly discern the protected characteristics of the model. It is important to note that intent is not required to prove a violation of fair housing law. To prove racial discrimination in advertising, it is sufficient that "to an ordinary reader the natural interpretation of the advertisements published in the [newspaper] is that they indicate a racial preference in the acceptance of tenants."

Through a project funded by the Kent County Senior Millage, the FHCWM reviewed senior housing marketing materials to survey the use of human models within advertising campaigns

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<sup>33</sup> Tanna, Mira et al. "Selective Marketing: A Report on Senior Housing Providers' Compliance with the Fair Housing Act Advertising Requirements." St. Louis, MO: Metropolitan St. Louis Equal Housing Opportunity, 2009. 1. Print.

<sup>34</sup> Saunders v. General Services Corp., 659 F. Supp. 1042, 1058 (E.D. Va. 1985).

## Fair Housing and Advertising

for 26 senior housing providers within Kent County and discovered startling indications of selective use of human models on the bases of race, national origin and disability. The tests were designed to investigate whether the human models were clearly definable as reasonably representing majority and minority groups in the metropolitan area, and if the human models portrayed persons in an equal social setting, as required by fair housing laws. As a result, the FHCWM detected a vast underrepresentation of seniors of color and those with disabilities. Specifically, the FHCWM counted the number of human models represented in marketing materials by race (Black, White or other) and type (resident, employee or other), and also recorded the number of human models portrayed with a visible physical disability. The marketing materials included promotional brochures, websites, newsletters, DVDs, flyers, inserts, and booklets. The results of the fair marketing tests were determined by compiling the demographics of the human models depicted in the materials by site and then conducting in depth calculation and analysis.

Twenty-two (22) of the 26 tests, or 85%, were determined to reveal evidence of exclusionary marketing on the basis of disability. Explicitly, 12 of the 26 providers did not depict any residents with a physical disability. These 12 housing providers depicted on average 40 residents in the surveyed marketing campaigns, none of which represented persons with visible disabilities. Also, 15 of the 26 tests, or 65%, were determined to reveal evidence of exclusionary and/or discriminatory marketing on the basis of race. In fact, 11 of the 26 housing providers utilized exclusively White human models to represent residents within their advertising campaigns surveyed by the FHCWM. On average, these 11 housing providers depicted 59 residents in the surveyed marketing campaigns, with three (3) depicting over 100 residents, none of which represented seniors of color or of a minority descent.



**Sample advertisement reviewed by FHCWM with exclusive use of White human models**

At the conclusion of the project, the marketing materials surveyed substantially underrepresented Black residents and residents with disabilities indicating, whether intentional or unintentional, an exclusion of minority seniors and those with disabilities from housing opportunities within Kent County. Of the 1,399 models identified as residents, 96% were identified as White and 4% as Black. In comparison, the senior population in Kent County is 5.6% Black and 90.9% White<sup>35</sup>. Also, of the 1,399 models identified as residents, only 47, or 3.4%, were depicted with a physical disability. In contrast, 35% of the senior population in Kent County has a disability<sup>36</sup>. These statistics represent a considerable underrepresentation of Black seniors and seniors with disabilities. As the use of human models in marketing usually represents the target or desired resident, such exclusionary marketing, whether intentional or unintentional, represents a significant barrier to housing choice on the bases of race and disability.

<sup>35</sup> S0102. Population 60 Years and Over in the United States, 2006-2008 American Community Survey 3-Year Estimates, Kent County, Michigan, factfinder.census.gov

<sup>36</sup> American FactFinder, 2008 American Community Survey 1-Year Estimates, Kent County, Michigan, factfinder.census.gov

## **Fair Housing and Advertising**

As a result, in terms of fair housing risk management regarding the use of human models in advertising, a housing provider might adopt a policy prohibiting the use of human models in advertising campaigns or at a minimum, become familiar with the law in order to use models and model graphics legally. As a housing provider, it is best not to solely rely on the advertiser because anyone who is party to publishing the advertisement is liable under law as well. Senior housing providers have been held liable for violating fair housing laws, even though the human models were current residents or the artwork was ‘camera ready’ and not evaluated from a fair housing perspective. Therefore, senior housing providers using human models should take the following into account:

- Information on the breakdown of minority populations from U.S. Census data or other local sources in order to fairly represent both minority and majority groups in the community;
- All of the protected classes covered in the area where the housing is located as well as the social settings shown;
- The size and reach of the campaign to ensure that there are enough photos used to reflect appropriate diversity; and
- The message of the text utilized with the photos in order to fully assess the message and the campaign.

Taking such considerations into account may promote fair advertising practices, and ultimately increase equal housing opportunity.

# **Fair Housing Rights of Persons with Disabilities**

# Fair Housing Rights of Persons with Disabilities

## INTRODUCTION

Federal, state and local fair housing laws provide a broad array of protections and rights for persons with disabilities, including the right to reasonable accommodation and modifications as well as ensuring the construction of accessible housing, in order to promote fair housing equal access to housing choice. Under the federal Fair Housing Act, “disability” is defined as “a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment, even if having recovered; or being regarded by others as having such an impairment, even if untrue”. This definition is very inclusive in order to protect a wide range of persons, including those with physical ailments and emotional or mental illnesses as well as those who do not have a disability but are assumed by others to have a disability. The law provides strong advocacy tools for persons with disabilities, particularly for those needing reasonable accommodations or modifications.

## REASONABLE ACCOMMODATIONS AND MODIFICATIONS

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

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. 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.



Example of a reasonable modification

As previously stated, the Fair Housing Act defines a person with a disability to include 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; and individuals with a record of having such an impairment. According to the *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act* (herein the “Joint Statement”), “the term ‘**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

## Fair Housing Rights of Persons with Disabilities

sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.” The Joint Statement goes on to say that “the term ‘*substantially limits*’ suggests that the limitation is significant or to a large degree. It also states that “the term ‘*major life activity*’ means 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. This list is not exhaustive.”

The Act prohibits housing providers from treating persons with disabilities less favorably than others because of their disability, refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations or modifications. Any person or entity engaging in prohibited conduct may be held liable unless they fall within an exception of the Act’s coverage. According to the Joint Statement, “courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions.”

To show that a requested accommodation may be necessary for a person with a disability, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability. A housing provider may deny a request for a reasonable accommodation or modification if there is no disability-related need for the accommodation or if the request was not made by or on behalf of a person with a disability. In addition, a request may be denied if providing the accommodation is not reasonable – if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the providers operations. This determination is best made on a case-by-case basis, due to a variety of factors that should be taken into account, including the cost of the accommodation, the financial resources of the provider, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester’s disability-related needs.

When a request is refused because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs without a fundamental alteration to the provider’s operations and without imposing an undue financial and administrative burden. This is referred to as engaging in the “interactive process” of a reasonable accommodation, and may require several different levels of correspondence to provide an opportunity for both parties to find an acceptable solution. An interactive process in which the housing provider and the requester discuss the requester’s disability-related need is helpful to all concerned because it often results in the most effective accommodation for the requester that does not pose an undue burden or cause a fundamental alteration for the provider. A fundamental alteration is a modification that alters the essential nature of a provider’s operations. If an alternative accommodation would effectively meet the requester’s disability-related needs, the provider must grant it. It is important to note that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative

## Fair Housing Rights of Persons with Disabilities

accommodation if he or she believes it will not meet his or her needs and the preferred accommodation is reasonable. A failure to reach an agreement or to engage in an interactive process is considered, in effect, a decision not to grant the requested accommodation.

It is important to note that housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of the reasonable accommodations, such as a security deposit or fee for allowing a person with a disability to keep an assistance animal. If the assistance animal causes damage to the property, the housing provider may deduct the cost of repairing the damage from the standard security deposit imposed on all tenants if that is the provider's practice to assess tenants for any damage caused to the premises. Note: The Fair Housing Act does not place a limitation on the kinds of animals that can be considered assistance animals. Each accommodation request and assistance animal is unique to the person making the request. Fair housing cases with assistance animals have involved dogs, cats, birds, snakes, monkeys, kangaroos and guinea pigs, among others. Further, under fair housing laws, it is not required that the assistance animal be certified or professionally trained. Assistance animals include companion animals, or those animals that provide necessary emotional and/or psychological support to individuals with disabilities.



Applicants or residents may request reasonable accommodations or modifications at any time, and they may also request more than one reasonable accommodation or modification. Whenever a resident or applicant makes clear to the housing provider that he or she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of a disability, he or she is making a reasonable accommodation request. This means the request made be made orally or in writing and housing providers must give appropriate consideration to the request even if the requester does not use any forms or procedures for making such a request. An applicant or resident is not entitled to receive a reasonable accommodation or modification unless it is requested by that person or on that person's behalf. The applicant or resident should explain what type of accommodation or modification he or she is requesting, and if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and his or her disability. It is important that housing providers not seek or request information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. Under the Act, it is usually unlawful for a housing provider to ask if an applicant has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability. It is also usually unlawful to ask about the nature or severity of such persons' disabilities.

According to the Joint Statement, housing providers may make the following inquiries, provided these inquiries are made of ALL applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;

## Fair Housing Rights of Persons with Disabilities

- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to person with a particular disability.

If a person’s disability is obvious or otherwise known to the housing provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information pertaining to the requested accommodation. If the need for the accommodation or modification is not known or readily apparent, then the provider may request only the information necessary to evaluate the disability-related need for the accommodation. If the disability is not obvious, the housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act’s definition of disability, (2) describes the needed accommodation, and (3) shows the relationship between the person’s disability and the need for the requested accommodation. The Joint Statement affirms that an individual’s medical records or detailed information are not necessary in most cases and that 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 provide verification of disability. Once it is established that the individual’s condition meets the definition of disability in the Act, the provider should only seek information necessary to evaluate if the accommodation is needed because of the disability. Such information must be kept private and confidential and only shared with those that need the information to assess the reasonable accommodation or modification request.

### ACCESSIBILITY

In addition to providing the right to reasonable accommodations and modifications, the Act established minimum accessibility requirements in order to ensure that housing is open and accessible to persons with disabilities. These requirements, referred to as the “design and construction requirements” are particularly important to understand and recognize as a vast majority of the newly constructed housing in Kent County is designed and intended for the growing senior population. In particular, the Act established that all multi-family (four (4) or more units) housing designed and constructed for first occupancy after March 13, 1991 must meet the accessibility requirements. “Multi-family housing” includes condominiums, apartment buildings, senior housing complexes, assisted living facilities, and time-shares, among others.

Specifically, the Act established the following seven (7) design and construction requirements:

1. Must be an accessible building entrance on an accessible route
  - a. An accessible route means a continuous, unobstructed path connecting spaces within a site (i.e. path from parking areas to the leasing office or apartment building), that can be used and negotiated safely by persons in wheelchairs and those with other disabilities
  - b. An accessible entrance is a building entrance connected by an accessible route to public transit



Example of accessible route from parking area

## Fair Housing Rights of Persons with Disabilities

- stops, accessible parking, passenger loading zones, public streets and sidewalks
- c. Common violations
    - i. Steps at the office or housing entrance without an alternative, accessible entrance
    - ii. Steep entrance walk
    - iii. No accessible connection between the building entrance and parking areas
  2. Public and common use areas must be accessible and usable
    - a. Public and common use areas cover all parts of the housing outside individual units, including parking lots, storage areas, indoor and outdoor recreation areas, lobbies, mailrooms, and laundry areas
    - b. Such areas should be accessible and usable to persons in wheelchairs and those with other disabilities
    - c. Common violations
      - i. No curb cut or ramp from parking area
      - ii. Accessible route from parking area blocked by parked cars
      - iii. Stairs to laundry areas or mailrooms
  3. Doors into and within all premises must be wide enough to allow passage by persons using wheelchairs
    - a. Common violations
      - i. Doorways have less than a 32” nominal opening
      - ii. Some, but not all doors, within the housing unit are accessible
  4. Must be accessible routes into and through housing unit
    - a. Common violations
      - i. Step at primary entry door
      - ii. Exterior door threshold is too high for a wheelchair to traverse
  5. Light switches, electrical outlets, thermostats, and other environmental controls must be in accessible locations
    - a. Common violations
      - i. Switches or thermostat controls are placed higher than 48”
      - ii. Outlets are lower than 15” from the finished floor
  6. Reinforced walls in bathrooms for later installation of grab bars
    - a. Common violations
      - i. Walls are not reinforced during construction
      - ii. Grab bar reinforcement is less than 24” in diameter
  7. Kitchens and bathrooms must be usable, that is, designed and constructed so an individual in a wheelchair can maneuver in the space provided
    - a. Common violations
      - i. Kitchen lacks a 30” x 48” clear floor space in front of sink or stove
      - ii. Bathroom lacks a 30” x 48” clear floor space in front of sink

In order to ensure equal access for persons with disabilities to the growing variety of housing options available to seniors within Kent County, it is imperative that housing providers and their designers, architects and builders understand and adhere to the design and construction requirements of the Act. For more information on the design and construction requirements of the Act, visit the HUD supported Fair Housing Accessibility FIRST website at <http://www.fairhousingfirst.org/>.

# Summary and Conclusion

## Summary and Conclusion

Housing remains one of the most important decisions made by an older adult, and, as result, the ability to obtain fair, adequate, affordable housing is imperative to continued well-being and quality of life for Kent County seniors. The diversity of the senior population and the strong community networks that support the freedom and opportunity of our seniors are amongst Kent County's greatest strengths. Unfortunately, despite over 100 years of fair housing laws, housing discrimination against seniors in Kent County remains prevalent and continues to serve as a significant barrier to housing choice. When illegal housing discrimination interferes with housing choice, it not only takes away housing opportunity, but also damages the community of respect and unity that our seniors deserve. In order to uphold and honor the dignity and value of seniors within Kent County, it proves necessary that our community provides its aging members with fair and equal access to a wide variety of housing opportunities.

A demonstrated commitment to fair housing practices by senior housing providers within Kent County will increase housing opportunity and ultimately strengthen the fabric of our community by allowing open, equal access to housing choice. Such a commitment includes understanding and properly applying federal, state and local fair housing laws; reviewing policies and procedures to remove any unlawful rules or references and to ensure compliance with fair housing laws; providing consistent service, treatment and information to current and prospective residents; advertising in a fair manner that indicates that the housing is available to all seniors; understanding and upholding the rights of seniors with disabilities; complying with the accessibility requirements of fair housing laws; and ultimately making fair housing and equal opportunity priorities within the housing option. A commitment to fair housing practices and removing unlawful barriers to housing choice expands the range of prospective residents and leads to a broad, open housing market. Any senior qualified for the housing should gain equal access to housing opportunity regardless of their race, color, religion, disability status, etc. Therefore, fair housing not only promotes the growth and stability of our community, but also makes practical business sense.

The Fair Housing Center of West Michigan is committed to ensuring that all housing for seniors in Kent County is fair housing.

# Appendix

# Fair Housing Best Practices for Senior Housing Providers

## Fair Housing Laws

- Provide training to anyone who interacts with potential and current residents, including property managers and maintenance staff. Fair housing training should focus on risk management related to housing discrimination based on the role or roles the housing provider plays, be it home sales, rental, lending, insurance and/or advertising relating to the sale or rental of a dwelling.
- Know the applicable federal, state and local fair housing laws based on the location of the property and the services provided.

## Fair Housing Policies & Practices

- Housing providers should thoroughly review their written policies for compliance with fair housing laws, and ensure that such policies are fully understood by all staff and employees and practiced fairly and consistently.
- Provide consistent quality of service and treatment, as well as consistent information.
- Housing providers wishing to be designated as “senior housing” exempt from the familial status provisions of the Act should ensure that their policies and practices meet the requirements of HOPA and that their policies do not contain any unlawful reference to one or more of the remaining federal or Michigan protected classes.
- It is often best for agents or housing providers to not make any questions or statements which may unlawfully pertain to a protected class (i.e. “this is a very diverse area”, “there are/are not many people like you here”, etc.)
- It is best not to answer questions from homeseekers which pertain to a protected class (i.e. about the racial makeup of the community, if there are many families within the community, etc.), but rather to direct such homeseeker to a neutral data source (such as census data) where such information could be obtained.
- Be familiar with local occupancy standards and ensure that any policies in place are not more restrictive than the standards of the municipality where the property is located. Refer to the HUD Memo-Occupancy Standards at [www.fhcwm.org/fhc\\_fhresources.htm](http://www.fhcwm.org/fhc_fhresources.htm).
- Persons with disabilities should be able to view the property and can determine for themselves which housing meets their needs.

## Fair Housing & Advertising

- Prominently place the HUD approved fair housing poster in the rental or leasing office.
- Advertisements should describe the property and not describe the person(s).
- Advertisements should be free of words, phrases, symbols or visual aids which indicate or convey any preference, limitation or discrimination based upon race, color, religion, sex, disability, familial status, marital status, national origin, sexual orientation, source of income or height and weight.
- Although senior communities are exempt from familial status and age protections, it is best to state that the property is a Senior Community and not to advertise any limitations, such as “no children”
- Err on the side of caution. When in doubt about a word or phrase, do not use it.
- Advertisements should use human models and model graphics in a nondiscriminatory way.

## Fair Housing Best Practices for Senior Housing Providers

- If an advertisement contains discounts or promotions, it should not include unlawful discriminatory preferences.
- Any logos or images used in advertisements should be free of unlawful discriminatory preferences.
- Do not assume that language or images used in other advertisements complies with fair housing law.
- Ensure that any advertising or marketing professionals used to develop ads or campaigns understand federal, state and local fair housing laws.
- It is permissible to describe services or facilities that are available at a particular housing unit, such as an apartment complex with a chapel or a senior housing development with kosher meals available.
- Federal regulations expressly provide that an advertiser may include information about the availability of disabled access housing in an advertisement.
  - Examples include the presence of wheelchair ramps or grab bars in the bathroom.
- Advertisements using the legal name of an establishment which contains a religious reference or a religious symbol MAY violate the law unless they include a disclaimer specifying they do not discriminate on the basis of any of the protected classes.
  - “This home does not discriminate on the basis of race, color, religion, national origin, sex, disability or familial status.”
- Refer to HUD’s “Guidance Regarding Advertisements Under §804(c) of the Fair Housing Act” at [www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf](http://www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf)
- Ensure that the “Publisher’s Notice” is included at the beginning of each Real Estate section of any newspaper where an ad is placed.
- All advertising for the sale, rental or financing of residential real estate should contain the Equal Housing Opportunity slogan, logo or statement. These indicate to the public that the property is available to everyone under the provisions of the Fair Housing Act. Equal Housing Opportunity logos are available in a variety of sizes and formats at: <http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm>

### Reasonable Accommodations & Modifications

- It is best NOT to inquire about a person’s disability or a perceived disability unless a request for an accommodation or modification is made.
- Reasonable accommodation/modification requests can be made verbally or in writing; requests should be accepted and addressed regardless of how they are made.
- Reasonable accommodation/modification requests should be evaluated and decided on a case-by-case basis.
- Service, assistance and companion animals are NOT pets and therefore should not be subjected to pet policies, fees or deposits.
- Reasonable modification must be allowed in Michigan for the most part; federal funding at a property may increase the obligation to do so.
- Refer to the DOJ/HUD Joint Statements on reasonable accommodations and modifications at [www.fhcwm.org/fhc\\_fhresources.htm](http://www.fhcwm.org/fhc_fhresources.htm) for examples and more detail.

## Fair Housing Resources

### Fair Housing Laws

Civil Rights Act of 1866	<a href="http://teachingamericanhistory.org/library/index.asp?document=480">http://teachingamericanhistory.org/library/index.asp?document=480</a>
Federal Fair Housing Act	<a href="http://www.justice.gov/crt/about/hce/title8.php">www.justice.gov/crt/about/hce/title8.php</a>
Elliott-Larsen Civil Rights Act	<a href="http://www.michigan.gov/documents/act_453_elliott_larsen_8772_7.pdf">www.michigan.gov/documents/act_453_elliott_larsen_8772_7.pdf</a>
Persons with Disabilities Civil Rights Act	<a href="http://www.mi.gov/documents/act-220-of-1976_8771_7.pdf">www.mi.gov/documents/act-220-of-1976_8771_7.pdf</a>
Grand Rapids Fair Housing Ordinance	<a href="http://library.municode.com/HTML/12116/level2/TIOLRE_CH160DIREPRTR.html">http://library.municode.com/HTML/12116/level2/TIOLRE_CH160DIREPRTR.html</a>
Kentwood Fair Housing Ordinance	<a href="http://library.municode.com/HTML/13498/level3/PT2COOR_CH74BUBURE_ART6FAHO.html">http://library.municode.com/HTML/13498/level3/PT2COOR_CH74BUBURE_ART6FAHO.html</a>
Wyoming Fair Housing Ordinance	<a href="http://library.municode.com/HTML/10150/level4/PTICOOR_CH42HURE_ARTIIDI_DIV2FAHO.html">http://library.municode.com/HTML/10150/level4/PTICOOR_CH42HURE_ARTIIDI_DIV2FAHO.html</a>

### HOPA and the Senior Housing Exemption

HUD's "Senior Housing: What you should know..."	<a href="http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/seniors">http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/seniors</a>
Housing for Older Persons Act	<a href="http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7770.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7770.pdf</a>
HUD's "Questions and Answers" concerning HOPA	<a href="http://www.hud.gov/offices/fheo/library/hopa95.pdf">www.hud.gov/offices/fheo/library/hopa95.pdf</a>
HUD Memorandum on Conversion to Housing for Older Persons under the Act and HOPA (2006)	<a href="http://www.fairhousing.com/include/media/pdf/conversiontohousingforolderpersons.pdf">www.fairhousing.com/include/media/pdf/conversiontohousingforolderpersons.pdf</a>

### Other HUD Guidance

"Reasonable Accommodations under the Fair Housing Act" (2004)	<a href="http://www.hud.gov/offices/fheo/library/huddojstatement.pdf">www.hud.gov/offices/fheo/library/huddojstatement.pdf</a>
"Reasonable Modifications under the Fair Housing Act" (2008)	<a href="http://www.hud.gov/offices/fheo/.../reasonable_modifications_mar08.pdf">www.hud.gov/offices/fheo/.../reasonable_modifications_mar08.pdf</a>
"Guidance Regarding Advertisements Under §804(c) of the Fair Housing Act"	<a href="http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11870.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11870.pdf</a>
Fair Housing Accessibility FIRST	<a href="http://www.fairhousingfirst.org/">http://www.fairhousingfirst.org/</a>



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