Participant Screening and Selection Methodology

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Agenda

- Introduction
- Overview of changes in fair housing laws
- Participant Selection Plans
- Participant Screening Policies
- Exercise
FAIR HOUSING UPDATE AND OVERVIEW
Begin by Asking Three Questions

- Is the person covered?
- Is the property covered?
- Is the behavior covered?

If the answer to all three questions is yes, then the fair housing laws apply.
CIVIL RIGHTS ACT OF 1866
*Is the Person Covered?*

- Outlaws discrimination against anyone who is not Caucasian—African-Americans, Latinos, Native Americans, people from Central and South America, Asians
- States that it is illegal to refuse to enter into a contract with someone if the person would contract with someone who is Caucasian
Is the Property Covered?

- All properties covered, no exemptions
Is the Behavior Covered?

- Cannot refuse to contract with someone if you would contract with someone of the Caucasian race
- Real estate transactions are contracts
- Cannot refuse to contract because the person is not Caucasian
STATE AND FEDERAL FAIR HOUSING LAWS
Is the Person Covered?

- **Federal Fair Housing Act**
  - Passed in 1968 (amended in 1974)
  - Prohibits discrimination based on race, color, national origin, sex, religion

- **State Fair Housing Laws**
  - Race, creed, color, national origin, ancestry, sex
Is the Property Covered?

- **Federal Fair Housing Act**
  - Protected classes—race, national origin, gender, religion:
    - Not covered—single family housing sold or rented without the use of a broker if the private individual owner does not own more than three such single family homes at one time AND the owner does not advertise in a discriminatory way
    - Not covered—owner-occupied four families
    - Not covered—private clubs and religious organizations
Is the Property Covered?

- Connecticut Fair Housing Laws
- Protected classes—race, national origin, gender, religion
  - Not covered—owner-occupied two families
  - Not covered--owner-occupied rooming houses
Is the Behavior Covered?

- Differential treatment—treating people differently because of membership in a protected class
  - Refusing to rent or sell
  - Different terms and conditions
  - Steering
  - Discriminatory statements
  - Discriminatory advertising
Is the Behavior Covered

- **Disparate impact**
  - Neutral rule that has a disparate impact (greater effect) on members of a protected class

- Does the policy have a disproportionate impact on a group of people because of their protected class?
  - Look at statistics

- Is the policy or practice justified?
  - Can the housing provider show that it is necessary to achieve a substantial, legitimate, non-discriminatory interest of the provider?

- Is there a less discriminatory alternative?
Is the Person Covered—Fair Housing Amendments Act of 1988

- Two new protected classes added—familial status and disability
- Definition of familial status
  - Household that includes parents or guardians and children under 18 or someone standing in the place of a parent or guardian
  - Household that includes a pregnant woman
  - Household in the process of obtaining custody of a child under the age of 18
Is the Property Covered—Familial Status?

- **Not covered**—single family housing sold or rented without the use of a broker if the private individual owner does not own more than three such single family homes at one time AND the owner does not advertise in a discriminatory way (federal)

- **Not covered**—Owner-occupied four family (both state and federal)

- **Not covered**—Owner-occupied rooming house (state)
Is the Property Covered—Familial Status?

- Not covered—Elderly housing

  - Housing built and solely occupied by persons 62 or older
  - Housing where at least 80% of units are occupied by at least 1 person 55 or older
Is the Behavior Covered—Familial Status

Examples of illegal behavior

- Refuse to rent or sell to someone because there are children in their household
- Have different terms and conditions for families with children
- Steer families with children
- Require boys and girls to have separate bedrooms
Is the Behavior Covered—Familial Status

- Examples of illegal behavior
  - Requiring a higher security deposit because there are children in the households
  - Steering a family with children away from a town because the schools are failing/low performing
  - Refusing to rent/sell to families with children units that are above the first floor
  - Refusing to allow children to be outside/ride bikes outside
Is the Behavior Covered—Lead Paint

Examples of illegal behavior

- Cannot refuse to rent to families with children under six because there is or may be lead paint in a unit
- Cannot steer families with children under six because there is or may be lead paint in a unit
- Cannot ask a family with children under six if there are children under six
- MUST delead if a family with children under six wants to move into the unit
Is the Behavior Covered—Familial Status

- Disparate impact
  - Neutral rule that has a disparate impact (greater effect) on members of a protected class
  - Occupancy standards
    - Example—two people per bedroom has a disparate impact on families with children
Is the Behavior Covered—Familial Status

- Occupancy standards—better to use square footage of the unit
  - For example, State Building Code Occupancy Standards
    - 150 for one person
    - 100 for each additional person
    - Rooms used for sleeping purposes—70 square feet for one person; 50 square feet if more than one person
    - Measure habitable space
Is the Person Covered—Disability

Three definitions:

- Physical or mental impairment that substantially limits one or more life functions
- A record of having such an impairment
- Someone who is considered by others to have such an impairment
Is the Person Covered--Disability, cont’d

- Physical or mental “impairment”
  - a condition or disease that affects the mind or the body

- That “substantially” limits
  - for a long period of time or to a great degree

- One or more “major life functions”
  - walking, talking, breathing, seeing, hearing, self-care, paying bills, etc.
Is the Person Covered--Disability, cont’d

- Record of having a substantial impairment.
  - E.g. receipt of SSI, SSDI, etc.

- Considered by others to be disabled.

- Person in recovery from drug or alcohol abuse is considered disabled.
Is the Property Covered?

- Disability discrimination
  - Owner-occupied 4-family exempt (federal)
  - Owner-occupied 2-family exempt (state)
  - Property with federal operating subsidies (Section 202, Section 811) have additional obligations
Is the Behavior Covered—Disability

- Cannot refuse to rent or sell to a person because she is disabled or because a member of her household is disabled.

- Cannot have different rules for people who are disabled than for everyone else.

- Cannot steer people who are disabled.
For purposes of the fair housing laws, differential treatment is a failure to make a reasonable accommodation.

Reasonable accommodation is a change in a rule, policy, or practice.

Does not cost money.
Is the Person Covered—Disability

- Person is a threat to the health or safety of others.
  - Do not have to make a reasonable accommodation.
  - Must have evidence this person is a threat to the health of safety of others
Is the Behavior Covered—Disability

- Everyone involved in a real estate transaction must make “reasonable accommodations”
  - Changes in rules, policies or practices.
  - Reasonable—unless it creates a fundamental alteration in the business of the housing owner/manager.
Is the Behavior Covered—Disability

- How to request a reasonable accommodation
  - Does not have to be in writing.
  - If in writing, can get a description of the limitation (e.g. cannot walk more than 75 feet) and a description of the change in rule, policy or practice.
  - Change must be necessary for the person to live in the housing unit.
Is the Behavior Covered—Disability

- For purposes of the fair housing laws, differential treatment is a failure to make a reasonable modification.

- Reasonable modifications mean money—building a ramp, widening a doorway, etc.
Who has to make modifications?

- Owners of housing with federal operating subsidies must make modifications.

- Owners who do not have federal operating subsidies must permit tenants to make modifications at their own expense.
Is the Behavior Covered—Disability

- “Reasonable” Modifications
  - Look at cost to the owner v. usability to the tenant.
  - Bottom line, profit/loss, is not the only consideration.
Disparate Treatment--Disability

- For purposes of the fair housing laws, failure to construct covered multi-family housing built for first occupancy after March of 1991 in accordance with the accessibility requirements of the fair housing laws shall be considered discrimination.
Accessibility Requirements

- Covered multi-family units—
  - All dwelling units in buildings containing four or more dwelling units if the buildings have one or more elevators AND
  - All ground floor units in other buildings containing four or more units, without an elevator.
Is the Person Covered—Conn. Fair Housing Act

- Marital Status
  - Does not protect an unmarried unrelated man and woman

- Sexual Orientation

- Age

- Lawful Source of Income

- Gender identity or expression
Is the Property Covered?

- **Marital status**
  - Not covered--Owner-occupied 2 family

- **Sexual orientation**
  - Not covered--Owner-occupied 4 family

- **Age**
  - Not covered--Owner-occupied 2 family

- **Lawful source of income**
  - Not covered--Owner-occupied 2 family

- **Gender identity or expression**
  - Not covered--Owner-occupied 2 family
FAIR HOUSING UPDATES
Fair housing and criminal records

- HUD guidance—In 2016, HUD’s Office of General Counsel issued guidance on fair housing and criminal records
  - People of color are arrested, convicted, and incarcerated at rates at much higher at rates disproportionate to their share of the general population
  - Having a rule which automatically disqualifies people based on criminal records has a disparate impact on people of color
The fair housing laws and criminal records

Using disparate impact analysis—does criminal record policy survive scrutiny

- No, if criminal record policy is based on arrests because arrests do not show proof of anything
- Possibly, if policy is based on a conviction
- Even if policy is based on convictions cannot have a blanket prohibition based on criminal record, must have a more individualized assessment
The fair housing laws and criminal records

- Policy must distinguish between criminal conduct that indicates a demonstrable risk to resident safety and conduct that does not.

- To determine if criminal record is relevant:
  - Delay consideration of the criminal record until after other screening criteria are used.
  - Analyze nature of the criminal conduct, length of time since the conviction/age of person when convicted, and conduct since conviction.
The fair housing laws and refugee or immigration status

- Civil Rights Act of 1866
  - Prohibits race discrimination in contracting
  - Race is interpreted broadly to include national origin
  - Applies to both citizens and non-citizens
The fair housing laws and refugee or immigration status

- State and federal fair housing laws
  - Includes national origin
  - Connecticut includes ancestry
  - Refugees and non-citizens covered by national origin and ancestry protections
The fair housing laws and refugee or immigration status

- **Behavior covered**—
  - Cannot refuse to rent because person is a refugee or immigrant
  - Cannot refuse to rent because person is not a U.S. citizen
    - Mixed households in federal public housing
  - Cannot ask about legal status unless is federally subsidized
  - Cannot request proof of legal status unless everyone is asked for proof of legal status
The fair housing laws and refugee or immigration status

- **Behavior covered**
  - Cannot have different terms and conditions
  - Cannot steer based on refugee or immigration status
  - Different rules or regulations
  - No discriminatory statements

- Provide protection to people from harassment
The fair housing laws and religion

- Person covered—people of all religious faiths are covered
- Is the property covered—all state and federally subsidized properties are covered
  - Exemption for religious organizations from state and federal fair housing laws
  - Must be owned or operated for a non-commercial purpose, i.e. not charging rent or making money
  - Must only rent to people of the same religion
  - Not applicable to religions that restrict participation based in race, color, or national origin
The fair housing laws and religion

- **Covered behavior**
  - Cannot treat people differently because of religion
    - Cannot refuse to rent because of person’s religion
    - Cannot ask person to identify their religion
    - Cannot ask someone to remove their hijab, burka, keffiyeh, kippah, etc.
  - Cannot threaten or harass someone because of their religion
  - Must protect someone from religious harassment or threats
  - Must accommodate religious rules, e.g. women not allowed to be alone with a man
Gender Identity or Expression

Definition:

- A person’s gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth
  - Does not require that a person undergo gender reassignment surgery

Gender identity can be shown by providing evidence:

- medical history, care, or treatment of the gender-related identity, or
- consistent and uniform assertion of the gender-related identity, or
- any other evidence that the gender-related identity is sincerely held, part of a person’s core identity or not being asserted for an improper purpose
Gender Identity or Expression

- **Covered property**—all state and federally subsidized housing is covered including shelters

- **Covered behavior**
  - Cannot refuse to rent because gender identity does not match gender on birth certificate or other official documents
  - Cannot force someone to use gender on birth certificate
  - Cannot force someone to use name on birth certificate
  - Shelters—must permit person choose shelter based on gender identity, not gender assigned at birth
BREAK 15 MINUTES
PARTICIPANT SELECTION

METHODOLOGY
Covered State Housing Programs

- State subsidized housing programs
  - CDBG Small Cities Program
  - FLEX
  - HOME (state administered federal funds)
  - Housing Trust Fund
  - Rental Housing for the Elderly
  - Congregate Housing for the Elderly
Covered State Housing Programs

- State subsidized housing programs (cont’d)
  - Moderate Rental Housing (including Section 8 moderate rehab and MRD)
  - Affordable (Low Income) Housing
  - Limited Equity Cooperatives
  - Mutual Housing
Covered State Housing Programs

- State subsidized housing programs (cont’d)
  - CHAMP
  - IDASH
  - Homeless Prevention and Response Fund
  - State-sponsored Housing Portfolio
  - Housing Innovations-Homeless Youth
  - Just in Time Funding
Covered Housing Programs

- Federally subsidized housing
  - 811
  - 202
  - Section 8 moderate rehab properties
  - USDA subsidized projects
- Housing choice vouchers
- Not covered—LIHTC
  - But, LIHTC operators must comply with the fair housing laws
Participant selection v. participant screening

- Participant selection—who qualifies to get into housing or on waiting list
  - Controlled by regulation

- Participant screening—how to decide if someone meets selection criteria
  - Should be in administrative plan or ACOP
Selection Policy Components

- Should be in writing
- Procedure for accepting applicants
- Procedure for screening applicants
- Fair housing requirements
- When applicants may be rejected
- Procedures for selecting applicants from the waiting list
State Selection Methodology

- Con. Agencies Regs. §8-37ee-305
- State law requires the use of a point system or random lottery
- Cannot use first come, first served
- Must give reasonable accommodations in a meaningful way
- Must have grievance procedures for those denied
State Point System

- Substandard housing (25 point maximum)
  - Condemned or verified serious housing code violations—25 points
  - Inadequate heating, plumbing or cooking facilities (20 points)

- Living situation (25 point maximum)
  - Living in documented physically or emotionally abusive situation (25 points)
Living situation, cont’d

- Living in temporary housing with others because of conditions beyond applicant’s control (20 points)

- Living in overcrowded conditions in own housing unit (15 points)
State Point System, cont’d

- **Income/rent ratio (15 point maximum)**
  - Currently paying more than 50% of income for rent/housing (15 points)
  - Currently paying between 31-50% of income for rent/housing (10 points)
Optional points

- Resident (10 points)
- If give points for residency, must give an equal number of points for those least likely to apply (10 points)
- HUD has asked DOH to review the Optional Points

Can alter point system with approval from CHFA if it complies with fair housing goals.
State Point System, cont’d

- Tie score and a limited number of units:

  - Use random selection method; or
  - First come, first served (chronological order);
  - Order waiting list first by points, then within each point, by date application was submitted;
  - If one of the people in a tie needs an accessible unit and an accessible unit is available, person who needs the accessible units should get unit.
State Selection Methodology

- Lottery

  - Must determine income eligibility of all applicants;

  - May pre-screen for credit worthiness, etc.;

  - Put all applicants who have no grounds for disqualification in the pool and choose by lottery.
State Selection Methodology

- Waiting list is open all the time
  - Order people using point system or lottery
  - Choose order of people on waiting list at a set period of time, e.g. monthly, quarterly, etc.
Why not use first come, first served?

- Disadvantages members of the protected classes
  - People with disabilities
  - Families with children
  - People who are elderly
  - People who may not be able to get out on a particular day for religious reasons

- Weather may play a role in who gets and submits an application
Federal Selection Methodology

- Must have tenant plan and selection policy in writing in administrative plan or Admission and Continued Occupancy Policy (ACOP)
- Application site must be accessible to people who are disabled and elderly
- Must make reasonable accommodations
- Can use first come, first served if this accommodates people who are elderly, disabled, families with children, and other members of protected classes
Illegal participant selection policies

- Must have legal status
  - Mixed households
- Capable of living independently
- No criminal record
- Residency requirement
- Residency preference—possibly
- Preference for working families
- Preference for veterans—possibly
PARTICIPANT SCREENING POLICIES
Participant selection v. participant screening

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Screening policy components

- Must be in writing
- Demonstrated ability to pay rent on time
- Housing keeping habits based on visits to the applicant’s current residence (problematic)
- Comments from former landlords
- Credit checks
- Occupant selection list subdivided by the number of units available and bedroom size (problematic)
Participant Screening

- Have it in writing, make it available to applicants, be consistent
- Specify when screening will take place
  - At time of application or when name comes up on waiting list
- What will happen during screening
  - Income eligibility—what verification is necessary
  - Categorical eligibility—elderly, disabled, families, etc.
  - Credit history—what is considered bad credit
  - Landlord references
Participant Screening

- Other criteria that housing providers have used
  - Inspection of current residence
  - Drug testing
  - In-person interview
  - All applicants over 18 must be screened
Denial of admission

- Due process

  - Must be notified of reasons in writing and give the right to a hearing
  - If denied because of credit must give notice of which company did the credit screening, must state problems with credit
  - At hearing must give person a chance to address reasons for denial
  - Must allow participant to ask for a reasonable accommodation at the hearing even if reasonable accommodation not previously requested
Waiting Lists—Opening State and Federal Lists

- Use AFHMP to market opening
  - Keep records of how opening was marketed
  - Keep records of requests for RA and how RA was granted
  - Best if application requests information about how applicant learned of waiting list opening

- First come, first served may violate the fair housing laws
Waiting Lists—Opening State and Federal Lists

- Problematic practices
  - All applications must be submitted on-line
  - Must come into HA or rental office to apply
  - Must appear in person to get an application or drop off an application
  - Must show green card or proof of citizenship to get an application
Purging a Waiting List

- Once a year notify all people on waiting list of request to verify information and consequences of not replying;
- After expiration of response period, can purge people who did not respond from waiting list;
- Must have grievance policy included in the notice;
- Reasonable accommodations.
Common Mistakes

- No Tenant Selection Policies
  - 67% of more than 4,000 units in Hartford MSA have no screening policies
  - Tenant screening policies created before 1990 when the laws changed
EXERCISES
Instructions

- Review participant selection and screening policies.
- Determine if any violate the fair housing laws.
- Determine if they are complete.
- Rewrite and correct as necessary.
Selection Policy Components

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