

FAIR HOUSING AND THE LGBTQ COMMUNITY

2/1/2023

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Fair Housing Council of Oregon



Statewide Civil Rights organization



Proactively promote housing justice equity and inclusion



Education and enforcement of Fair Housing Law



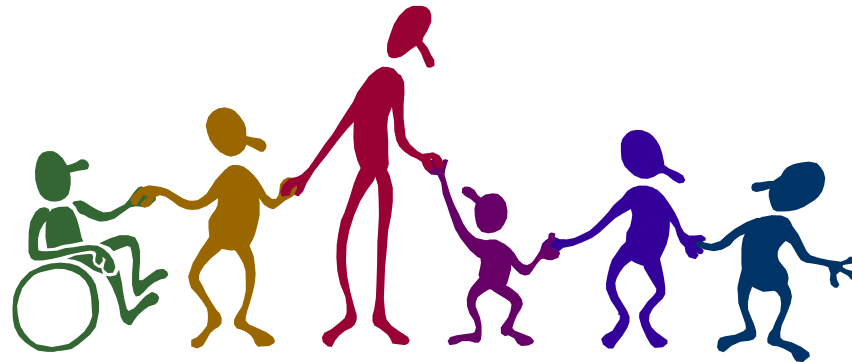
Fair Housing Laws

- Civil rights laws **promoting equal access** to housing
- Makes it illegal for housing providers to **discriminate** against certain groups
- Different than landlord-tenant law



What is discrimination?

Treating a person differently in any housing transaction because that person is a member of a protected class.



Federal Protected Classes

- Race
- Color
- National Origin
- Religion
- Sex
 - DV survivors
 - Sexual Orientation
 - Gender Identity
- Familial Status (families with children)
- Disability



Oregon Protected Classes

- **Marital Status**
- **Source of Income**
 - **Section 8**
 - **Agency rent payments**
 - **TANF, SSI, SSDI***
- **Sexual Orientation and Gender Identity**
- **Local protected classes**

Application of Fair Housing

Who must comply?	FH Laws apply to dwellings
<ul style="list-style-type: none">• Owners/Landlords• Property managers• Maintenance Staff• Homeowners' Assns.• Real Estate Agents• Mortgage Lenders and Financial Institutions• Insurers• Neighbors• Jurisdictions• Advertising media	<ul style="list-style-type: none">• Houses• Apartments (regardless of the # of units)• Condos and floating homes• Mobile homes• Retirement housing, assisted living, etc.• Nonprofit housing and shelters• Possibly motel rooms

Housing providers need to be consistent in how they apply policies, rules, procedures in all stages of the housing process



Limitations of Fair Housing

When is it legal for a landlord to treat one applicant or tenant differently than another?



It is legal for a landlord to treat some *applicants* differently...

Applicants with problem histories:

- Rental references
- Criminal backgrounds
- Credit histories
- Insufficient incomes

Should have consistent criteria and procedures and should review applications in chronological order.

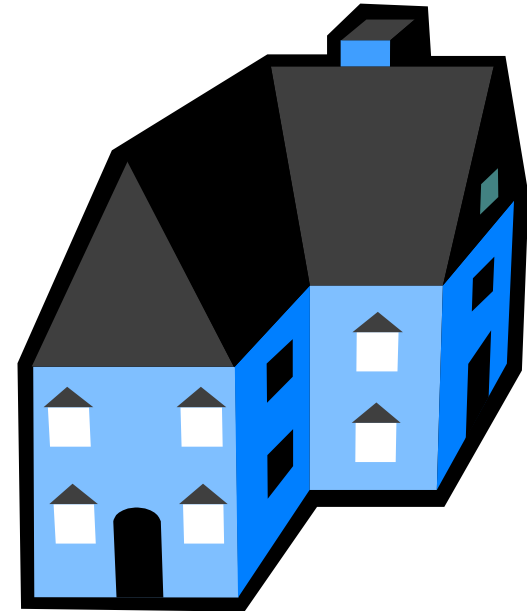
If landlords make exceptions to criteria, it is advisable have a clear policy outlining why. (ex. Completed tenant education)



It is legal for a landlord to treat some *tenants* differently...

Residents who violate their rental agreement:

- Don't pay their rent on time
- Disturb the neighbors
- Damage the property
- Involved in illegal activities



Landlords need to have consistent rules and procedures!





Housing & LGBTQIA+ Rights

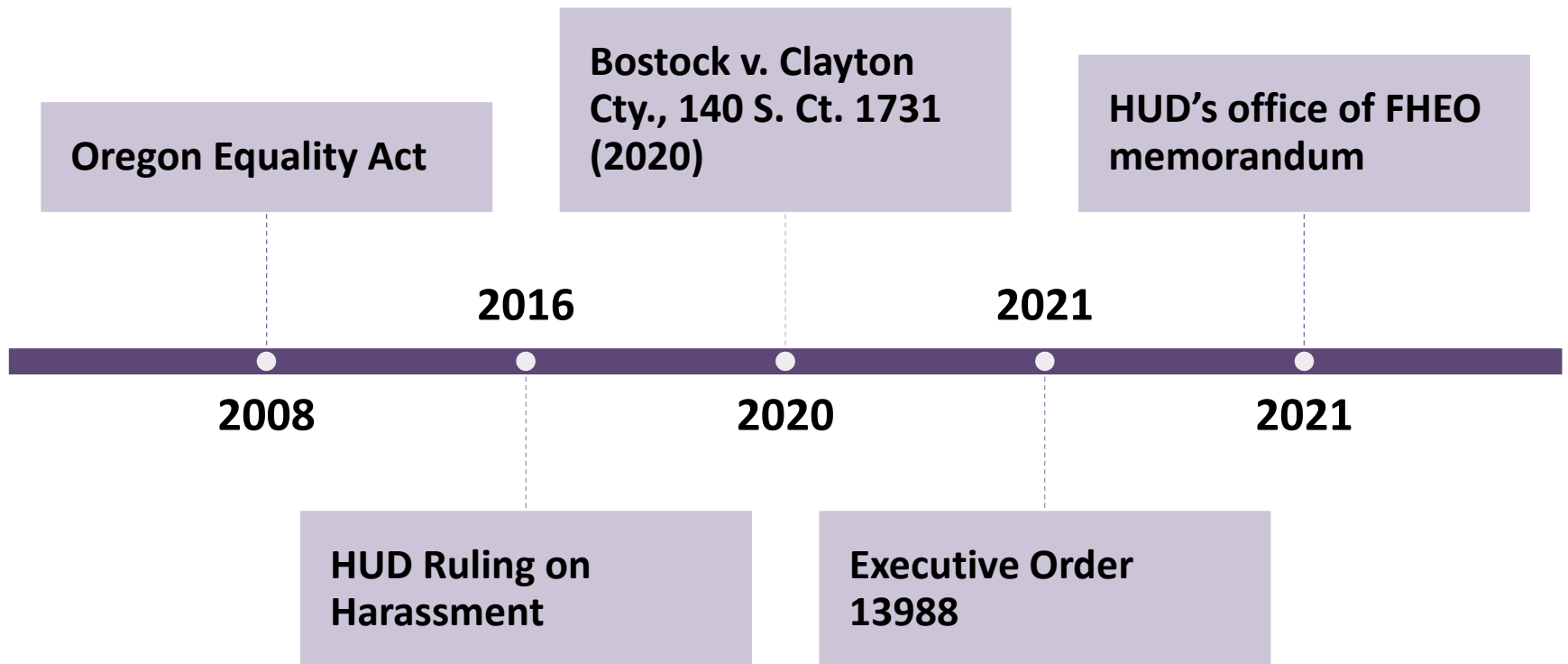


Brief History of LGBTQIA+ Housing Discrimination

- 1957: OR passes 1st fair housing law. LGBTQIA+ not protected.
- 1968: Fed. Fair Housing Act passed
- 1970s: Developing gay rights movement fights housing discrimination – e.g. effort to repeal Miami anti-discrimination ordinance.
- 1988: Measure 8 reversed OR Gov.'s executive order that banned discrimination from state agencies.



Protections for LGBTQIA+ Persons in the Housing Process



Biden Admin. Update

Feb. 11, 2021 *HUD Directive*

- Interprets FHA to **bar discrimination on the basis of sexual orientation and gender identity.**
- Comparable to Title VII of the Civil Rights Act, barring sex discrimination in the workplace.
- **Bostock v Clayton County**

HUD will now:

- **Accept and investigate** all complaints of sex discrimination, including discrimination because of gender identity or sexual orientation.
- **Enforce** FHA against instances of such discrimination.



Other entities also include:

- **State and local jurisdictions funded by HUD's Fair Housing Assistance Program (FHAP)** that enforce the Fair Housing Act through their HUD-certified substantially equivalent laws
- **Organizations and agencies that receive grants through the Department's Fair Housing Initiative Program (FHIP)**



Under the FHA and HUD's Equal Access Rule, it is prohibited for any landlord or housing provider to:

- Discriminate against LGBTQ persons because of their actual or perceived sexual orientation or gender identity
- Deny housing because of actual or perceived HIV/AIDS status

In addition, HUD-funded homeless providers **MUST:**

- Place clients in a shelter or facility that corresponds to the gender with which the person identifies
- *AND* ensure policies do not isolate or segregate clients based upon gender identity.

Red Flags of Discrimination

- Refusal to rent, lease, or finance because of someone's sexual orientation or gender identity
- False or inconsistent information
- Inconsistent policies, rules, procedures
- Discriminatory statements
- Invasive and unnecessary questions
- Discriminatory advertising
- Steering
- Housing staff refuses to use tenant's self-identified pronouns and/or name
- Tenant-on-tenant harassment
 - Harassment not investigated by LL/PM
- Termination notices and evictions



HUD Examples of Discrimination

A housing provider refuses to rent a house to a same sex couple because of their “family composition, ” which is comprised of two individuals of the same sex, rather than two individuals of the opposite sex.



A building manager refuses to authorize repairs to a tenant's unit after observing the tenant's teenage daughter holding hands with her girlfriend. The manager explained that he does not agree with the teenager's "homosexual lifestyle" and that the tenant will need to make the repairs himself.



A tenant is evicted after the housing provider discovers the tenant has dated persons of the same sex and identifies as bisexual.



A maintenance worker employed by a housing provider subjects a female tenant to pervasive harassment because she is a lesbian. Additional discrimination occurs when the tenant reports the harassment to the housing provider who fails to take any action to stop the harassment.



Housing Provider & Shelter Guidance



Self-Identification

At intake, applicants have the right to self-identify their gender and pronouns

- Beware assumptions based on appearance, ability to “pass,” or legal documentation
- Consider barriers to gender-affirming care, such as homelessness and poverty



Gender-Specific Housing

Housing providers are not permitted to segregate residents by gender or to exclude an otherwise qualified applicant because of gender*

**Must show burden of a “strong privacy, health, or safety reason”*

Cannot house only women, or only women and children – “parents with children” must include male parents and male children



Protection of Privacy

- Shelter staff should respect *all* residents' right to privacy
- Concerns related to gender can be addresses through policy adjustments and modifications
 - Single occupant restrooms and bathing facilities

Religious Provider Exemption



Permitted to:

- Reserve shelter/housing for members of the same religion or to give preference to members.
- Discriminate on the basis of gender identity and sexual orientation



**EQUAL HOUSING
OPPORTUNITY**

***IF, however, federal funds are involved,
the housing provider *must* follow the
federal Equal Access Rule and not
discriminate.***



2016 HUD Ruling on Harassment:

“Corrective action may include verbal and written warnings, enforcing lease provisions to move, evict, or otherwise sanction tenants who harass or permit guests to harass.”

“Housing provider ***should follow up*** to make sure the corrective action was effective.”

“Liability arises when the person/entity knew or should have known that a resident was harassing another resident and yet, did not take prompt action to correct and end it.”



If the Harassment ISN'T a Fair Housing Issue...

What is the role of the housing provider?

- Ignore the dispute
- Mediation
- Have consequences for one/both parties
- Combination of strategies
- Other strategies?

If the Harassment IS a Fair Housing Issue...

Landlord should:

- Take prompt corrective action - warning, notice
- Document every step of the way
- Follow up with victim

Failure to act is a violation of FHA



Preventing Harassment

Advisable for housing providers to have resident-on-resident no-tolerance harassment policy and review it at move in

Suggestable for housing providers to use tools like newsletters, brochures, flyers etc. to educate residents about harassment policies and reporting



How are Fair Housing Laws Enforced?

- Most commonly, FHCO is contacted first
 - 2,000 contacts a year
 - Resolve 70% of fair housing issues through advocacy
 - Speak English, Spanish, use Language Bank
 - No income requirements
 - We can help file a complaint with HUD or the Oregon Civil Rights Division (BOLI)
- Investigation
- Enforcers can include BOLI, HUD, State Attorney General's office, US Dept. of Justice and/or an attorney (LASO, civil rights, etc).
- Outcomes



Evaluation, please!



Contact the Fair Housing Council of Oregon for More Information

Mel Keller, Education & Outreach Specialist for South & Mid-Willamette Valley: mkeller@fhco.org

Marlee Baker, Education & Outreach Specialist for Portland Metro & City of Salem: mbaker@fhco.org

WANT TO REPORT DISCRIMINATION OR FILE A COMPLAINT?

Visit enforcement@fhco.org or go to www.fhco.org & click on *Report Housing Discrimination*