Tennessee Housing Development Agency

Civil Rights & Housing Activities

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964; TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 (FAIR HOUSING); RELATED NON-DISCRIMINATION ACTS & GUIDANCE

Tennessee Housing Development Agency

Purpose of Non-Discrimination Laws

HUD estimates that more than 2 million instances of housing discrimination occur each year, but less than 1% are reported.

Non-discrimination laws protect certain classes of people who have historically faced discrimination:

- In programs and activities receiving Federal financial assistance (Title VI of the Civil Rights Act of 1964);
- In the sale, rental, advertising and financing of dwellings and in other housing-related activities (Title VIII of the Civil Rights Act of 1968, "Fair Housing Act").

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What/Who is Covered by Non-Discrimination Laws?

TITLE VI of the Civil Rights Act of 1964 – prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

- *Age Discrimination Act of 1975* prohibits discrimination under any program or activity receiving Federal financial assistance on the basis of age.

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What/Who is Covered by Non-Discrimination Laws?

Title VIII of the Civil Rights Act of 1968 ("**Fair Housing Act**") prohibits discrimination in the sale, rental or financing of housing because of race, color, religion or national origin."

- Amendments to Title VIII added sex as a protected class in 1974
- Amendments added disability and familial status (presence of children under the age of 18 or pregnancy) as protected classes in 1988

Tennessee Human Rights Act (*Tenn. Code Ann. §§ 4-21-601*)- provides for fair housing based on race, color, creed, religion, sex, handicap, familial status or national origin. *Creed is a set of religious beliefs.*

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Protected Classes

Protected classes are a group of people with a common characteristic who are legally protected from discrimination on the basis of that characteristic.

In programs or activities that receive **federal financial assistance** the following are protected classes under Title VI:

Race, Color & National Origin

In **housing activities**, the following are protected classes under Title VIII & Tennessee state law:

Race, Color & National Origin

AND

Religion/Creed • Sex • Disability • Familial Status

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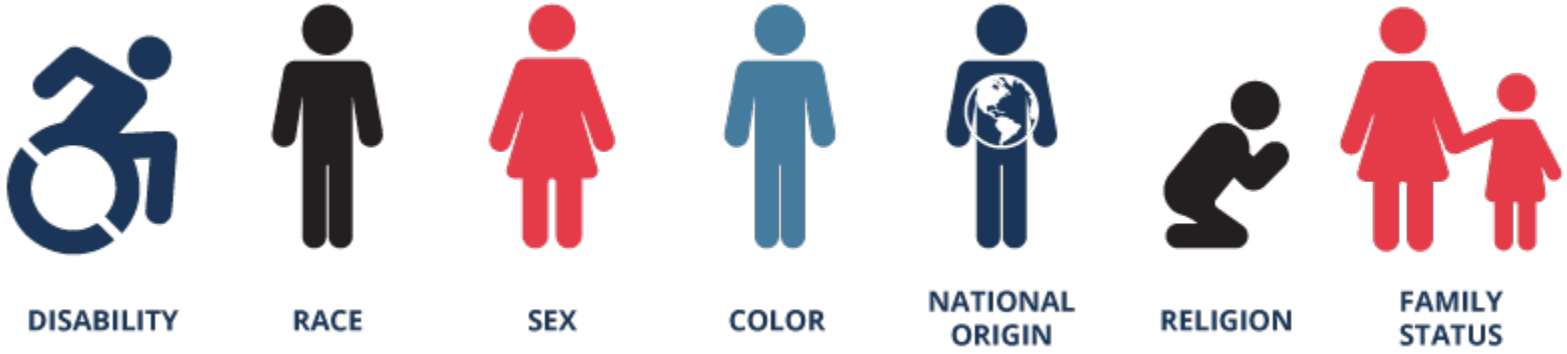
THDA Non-Discrimination Policy

"No staff person or partner of THDA shall engage in discriminatory practices…" and the intent of the policy is to provide guidance to THDA staff in preventing discrimination on the basis of **race, color, religion, national origin, sex, familial status, disability** and "any other class protected under state or federal law in providing services to the public."



Fair Housing Equality Center

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Purpose of Non-Discrimination Training

The Civil Rights Restoration Act of 1987 requires recipients of federal funds, along with sub-recipients and contractors, to comply with civil rights laws in all areas of operation, not just in the particular program or activity that received federal funding.

Training helps ensure that **all THDA employees** (& sub-recipients of THDA's federal funds) are:

1. Aware of and understand the provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), subsequent federal and state non-discrimination regulations & guidance;
2. The minimum requirements to be in compliance with them.

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Discriminatory Practices under Title VI

- Denying a person any program services, financial aid or benefits;
- Providing a different service, financial aid or benefit or providing them in a different manner than they are provided to others;
- Segregating or treating an individual separately in any matter related to receiving a service, aid or benefit.

EQUAL HOUSING OPPORTUNITY

Tennessee Housing Development Agency

Discriminatory Practices under Fair Housing

In the Sale and Rental of Housing, no one may take any of the following actions based on race, color, national origin, religion/creed, sex, familial status or disability:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

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Discriminatory Practices under Fair Housing

In Mortgage Lending: No one may take any of the following actions based on race, color, national origin, religion/creed, sex, familial status or disability:

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan.

EQUAL HOUSING LENDER

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Discriminatory Practices under Fair Housing

It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or disability. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

EQUAL HOUSING OPPORTUNITY

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Disparate Treatment vs. Disparate Impact

Title VI & Title VIII (Fair Housing Act) both prohibit:

- Disparate Treatment (Intentional Discrimination): Actions that result in circumstances where similarly situated persons are treated different because of their race, color, or national origin.
- Disparate Impact (Unintentional Discrimination): The recipient's procedure or practice while neutral on its face has the effect of disproportionately excluding or adversely affecting members of the projected class without substantial legitimate justification.
  - A procedure or practice may discriminate against a given group even if the agency had **no intention** of doing so.

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Sex & Gender Identity ⚥

Equal Access in Accordance with an Individual's Gender Identity (*HUD 24 CFR 5 81 FR 64763*) -ensures equal access for individuals in accordance with their gender identity in:

- Programs funded by HUD's Office of Community Planning and Development (CPD);
- Housing assisted by HUD;
- Housing insured by the Federal Housing Administration (FHA) (includes FHA lending).

- Housing must be made available without regard to actual or perceived sexual orientation or gender identity.
  - Discrimination against a lesbian, gay, bisexual, or transgender (LGBT) person may be covered if it is based on non-conformity with gender stereotypes. For example, if a housing provider refuses to rent to an LGBT person because he believes the person acts in a manner that does not conform to his notion of how a person of a particular sex should act.

- Recent federal court decisions extend the protection of “sex” to include sexual orientation and gender identity.

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Limited English Proficiency

Definition: *Individuals who do not speak English as their primary language; and/or have a limited ability to read, speak, write, or understand English.*

Executive Order 13166 - Persons with Limited English proficiency (LEP) must be afforded a meaningful opportunity to participate in programs that receive federal funds.

To ensure equal access: LEP persons must be notified of the availability of free **oral interpreting services**, and the services must not require friends or family to provide interpretation.

Language Identification Guides are available in all THDA offices (clearly visible at the front desk & with public facing staff).

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THDA Interpretation Procedures

A LEP Encounter Survey (*located on the THDA Intranet*) must be completed for ALL encounters (walk in, phone, etc.) regardless of whether interpretation services or benefits are provided to the LEP person.

THDA has contracted with AVAZA Language Services Corporation for oral interpretation.

- ✓ 120 languages and dialects supported
- ✓ Phone numbers: (615) 534-3400; (800) 482-8292
- ✓ Instructions for using AVAZA & working with LEP persons is located on the THDA Intranet under “Instructions/Tips.”

The THDA website may be translated into more than 100 languages using Google translate.

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Limited English Proficiency

To ensure equal access: **"Vital" written documents** must be translated for LEP language groups that comprise a certain percent/number of the population served. Even where documents are not translated routinely, written notice should be provided in the primary language of the LEP person of the right to receive competent oral interpretation of vital written materials, free of cost.

- ✓ HUD publishes many vital documents for federal housing programs in multiple languages: *https://www.hud.gov/offices/fheo/lep.xml#FHEO*
- ✓ Spanish is the most commonly spoken language, other than English, in Tennessee. THDA is in the process of translating vital written documents from different programs, not available from other sources, into Spanish.
- ✓ Oral interpretation of vital written documents in other less common languages may be offered when needed.

Tennessee Housing Development Agency

Fair Housing & Criminal History

As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort.

- HUD issued guidance in April 2016 addressing how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions.
- The Fair Housing Act prohibits both intentional housing discrimination & housing policies that have an unjustified discriminatory effect based on protected characteristics.
- HUD guidance provides national statistics that show that racial and ethnic minorities face disproportionately high rates of arrest and incarceration.

To avoid creating a policy or practice that could be determined to have a discriminatory effect, housing providers should develop policy to deny housing only when criminal conduct/history presents a demonstrable risk to **resident safety and/or property.**

Tennessee Housing Development Agency

Fair Housing & Criminal History

HUD guidance does not prohibit providers from considering criminal history when making housing decisions, but advises providers to avoid arbitrary and overbroad criminal history-related bans.

HUD recommends using a **three-step burden shifting** standard when evaluating whether a criminal history based policy or practice restricting housing access is appropriate.

1. Prior arrest(s) (without a conviction) does not satisfy the burden of showing a substantial, legitimate, nondiscriminatory interest (i.e. demonstrable risk to resident safety or property). An arrest is not proof that criminal conduct occurred; thus, arrests without conviction are not sufficient grounds for excluding a person from housing.

Tennessee Housing Development Agency

Fair Housing & Criminal History

2. For denials or exclusions based on prior convictions, the provider must be able to prove that a criminal history denial practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest (i.e. protect resident safety and/or property).
   - A blanket prohibition on any person with any conviction record – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden.
   - The HUD guidance states a housing provider must take into account the nature, severity, and age of a conviction.

3. Evaluating Whether There Is a Less Discriminatory Alternative (to denial of housing)
   - Housing providers should consider a person's suitability for housing based upon all factors in the application and not just criminal history.
   - Ideally, housing providers should delay consideration of criminal history until after an individual's financial and other qualifications are verified.

Tennessee Housing Development Agency

Non-Discrimination & Disability

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.

The Americans with Disabilities Act of 1990 ("ADA") prohibits discrimination on the basis of disability by both public and private entities, whether or not they receive Federal financial assistance.

Section 504 and the ADA define the terms "handicap" or "disability" to mean a physical or mental impairment that substantially limits one or more of the major life activities an individual. Included are people who have a record of such an impairment, or are regarded as having such an impairment.

The purpose of these laws is to ensure that covered programs are as accessible to persons with disabilities as they are to non-disabled individuals.

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Fair Housing & Disability

The **Fair Housing Act** defines disability as a physical or mental disability that substantially limits one or more major life activities; a record of such a disability or are regarded as having such a disability.

The Act requires landlords and others to allow a disabled person to make reasonable modifications to a dwelling unit or common use areas, at their expense, if necessary for the disabled person to use the housing. (Where reasonable, the landlord may permit changes only if the person agrees to restore the property to its original condition when s/he moves.)

Reasonable modification examples:

- *Addition of a ramp for wheelchair access into a unit.*
- *Addition of grab bars or other handicap accessible features in a bath or kitchen.*
- *Hearing impaired smoke detector.*

Tennessee Housing Development Agency

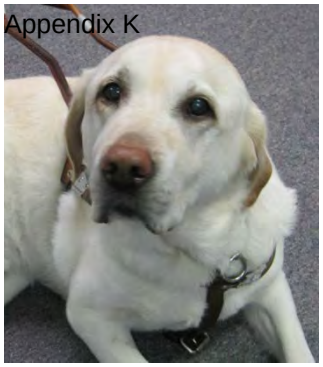
Fair Housing & Disability

The **Fair Housing Act** requires housing providers to make reasonable accommodations in rules, policies, practices or services if necessary for a disabled person to enjoy and/or fully use services offered to other residents and/or the individual dwelling unit.

- A housing provider/landlord may not ask a housing applicant about the existence, nature, and extent of his or her disability, but may request verification of the disability (unless the disability is obvious) and the need for the specific accommodation from a reliable third party who can verify the disability.
- An accommodation may involve a cost to the housing provider, so long as the accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations.

Reasonable Accommodation Examples:

- *Initially occupy or move to a first floor unit when available*
- *Paying rent on a day that corresponds with a disability check*
- *In rental assistance programs, an allowance for an extra bedroom for a caregiver or equipment.*
- *Service, therapy or emotional support animal*



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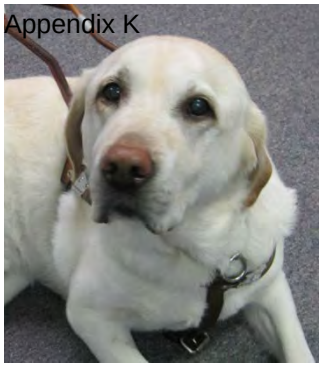
Service & Support Animals

A **service animal** is individually trained to do work/ perform tasks for an individual with a disability (physical, mental or intellectual disability).

- Only dogs and miniature horses (24-36 inches) qualify as service animals.
- States may offer licensure or certification for service animals, but the ADA does not require a license or special certification for an animal to qualify as a service animal.

An **emotional support, comfort or therapy animal** provides companionship, relieves loneliness, and may help with depression, anxiety, and certain phobias, but does not have special training or certification to assist people with disabilities.

- Any type of animal may qualify as a support animal, not just dogs.
- A housing provider may ask for documentation of the presence of a disabling condition (if not obvious) and need for specific accommodation requested (see prior slide).



Tennessee Housing Development Agency

Service & Support Animals

The **ADA** allows individuals with a disability to bring a **service animal** (but not a support animal) into public facilities & accommodations.

The **Fair Housing Act** may allow for either a **service or a support animal** as a reasonable accommodation for an individual with a disability.

Both **service & support** animals:

- Are not pets--no fee or pet deposit may be charged by the business or property.
- Must be "under the control" of the handler.
- The handler is also responsible for their care and clean up (not the property or business owner).
- Handler may be responsible to pay damages if a service or support animal damages property (including housing).

Tennessee Housing Development Agency

Fair Housing & Design Requirements

The **Fair Housing Amendments Act of 1988** requires newly constructed multi-family dwellings with four or more units to provide basic accessibility to people with disabilities, if the building was ready for first occupancy on or after March 13, 1991. The design requirements apply to:

- All units in buildings with elevators;
- Ground floor units in buildings without elevators.
- Multi-story townhouses are exempt from these requirements

The Fair Housing Amendment Act's accessibility requirements are not as strict as Section 504, BUT- the Fair Housing Amendment Act's accessibility requirements apply to a broader number of dwelling units.

Where both the Fair Housing Amendment Act and Section 504 apply to a particular housing facility, the facility must be in compliance with both laws.

Tennessee Housing Development Agency

Fair Housing & Design Requirements

The **Fair Housing Act** requires that "covered multifamily dwelling units" be designed and constructed in such a manner that:

- ✓ The public and common use areas are readily accessible to and usable by handicapped persons;
- ✓ All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs;
- ✓ All premises within covered multi-family dwelling units contain the following features of adaptable design:
  - An accessible route into and through the covered dwelling unit;
  - Light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
  - Reinforcements in bathroom walls will allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Tennessee Housing Development Agency

To Comply with Title VI & Fair Housing

- ✓ Do not engage in discriminatory actions against protected classes.
- ✓ Appoint a Title VI Coordinator
- ✓ Provide Title VI & Fair Housing Training for new employees & periodic training for all employees.
- ✓ Develop a Title VI Policy Statement and post in visible areas
  - ➢ *Posted to THDA Intranet (Non-Discrimination in Services)*
- ✓ Develop a written Title VI Complaint Process & Form
  - ➢ *Posted to THDA Internet*
- ✓ Acquire signed Title VI Assurances from sub-recipients
  - ➢ *This should be part of the monitoring process for THDA sub-recipients.*
- ✓ Include Title VI Assurances in all contracts
  - ➢ *THDA OPS ensures contracts have required language.*

Tennessee Housing Development Agency

To Comply with Title VI & Fair Housing

- ✓ Monitor sub-recipients for compliance with Title VI & Fair Housing.
- ✓ Monitor & report on (Title VI Plan) race, ethnicity and gender of contractors and subcontractors
  - ➢ Promote participation in contracting by disadvantaged business enterprises (DBEs), such as small, women and minority owned businesses by conducting outreach and advertising in local media and minority publications.
- ✓ Monitor & report on (Title VI Plan) race, ethnicity and gender of agency Boards & encourage participation by persons in protected classes.
  - ➢ The inclusion of minorities on planning boards and commissions is critical in establishing an equal access planning system.

Tennessee Housing Development Agency

To Comply with Title VI & Fair Housing

- ✓ Disseminate Title VI & Fair Housing information to the public.
  - THDA maintains Title VI & Fair Housing information on the THDA website.
  - THDA maintains a Title VI explanation & complaint form on the website.
  - Section 8 Rental Assistance distributes Fair Housing & discrimination complaint information to all program beneficiaries & information is available on the THDA website.
- ✓ Evaluate Title VI & Fair Housing activities annually & submit a Title VI Plan to the Tennessee Human Rights Commission annually to report on programs and activities

Examples of Discriminatory Acts

Persons with an identifiable accent do not have their calls about apartments returned. The landlord is returning the calls of others who don't have an identifiable accent.

- *This violates Title VI & the Fair Housing Act's prohibition on discrimination based upon national origin. It is illegal to discriminate because of a person's birthplace, ancestry, culture or language.*

An underwriter for an FHA-insured lender is reviewing a loan application by two males; both incomes are being used as the basis for the applicants' credit worthiness. The underwriter assumes the applicants are a same sex couple and, as a result, denies the application despite the fact that the applicants meet all requirements for the loan.

- *This violates HUD's Equal Access Rule, which prohibits FHA-insured lenders from taking actual or perceived sexual orientation into consideration in determining adequacy of an applicant's income.*

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Examples of Discriminatory Acts

An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow for the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense, and the landlord refuses.

- *This violates the Fair Housing Act's reasonable modification rule. It is unlawful for any person to refuse to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or intended to be occupied by such person if the modifications are necessary to allow the disabled person full enjoyment of the unit. In addition, the landlord may not always condition permission on the renter paying for the modification. The landlord may be responsible if the unit is in an apartment complex with 4 or more units and was built for first occupancy after March 13, 1991, and does not meet all of the accessibility requirements under the Fair Housing Act or if the complex is federally funded (e.g. Section 8 project based or public housing).*

A property manager prohibits children from riding bikes in certain areas of the property but not others.

- *This violates the prohibition on discrimination based upon familial status. Children should not be treated differently than others or singled out. However, the property could limit all residents from riding bikes in a certain area of the property.*

Tennessee Housing Development Agency

Discrimination Complaints

THDA provides a Discrimination Complaint form and explanation on the website.

Staff must notify Laura Swanson of any and all complaints (verbal, written, email) that allege discrimination (even when a complaint is not submitted on the THDA Complaint form).

Tennessee Housing Development Agency

Responsible Agency &Complaints

THDA works with the Tennessee Human Rights Commission (THRC) and HUD to ensure appropriate resolution to all discrimination complaints.

- HUD is the federal agency responsible for enforcing the Fair Housing Act.
  - The federal statute of limitations for filing a complaint is 365 days.
- THRC investigates complaints of discrimination under the Tennessee Human Rights Act.
  - The statute of limitations for filing a complaint with the THRC is 180 days. If the complaint is beyond the 180 days but within 365 days, the THRC will handle intake and forward the complaint to the appropriate HUD office for investigation.
- The statute of limitations for a private individual to file a Fair Housing Act case in federal court is two years.

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https://thda.org/about-thda/fair-housing

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Questions…..