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- ✓ sign in with the course facilitator before the course begins or, if a Livestream class, complete the electronic Affidavit of Completion after the class.
- ✓ be present in the course during all instruction periods
- ✓ complete the electronic Evaluation after the class.
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# **Fair Housing & Property Management – Drilling Deeper**

## **Student Handout**

Disparate Impact & Criminal Background Checks

Advertising Considerations

Showing & Leasing

Screening & Approval Process

Familial Status Considerations

Disability Considerations

Complying with Fair Housing & Avoiding Fraud

Eggshell Skull Rule

Techniques to Avoid Complaints

**REQUEST FOR REASONABLE ACCOMMODATION  
AND/OR MODIFICATION TO RENTAL UNIT**

**DATE:** \_\_\_\_\_

**NAME OF RESIDENT or APPLICANT:** \_\_\_\_\_

**ADDRESS OF PROPERTY/UNIT:** \_\_\_\_\_

You have requested a reasonable accommodation or reasonable modification with regard to your housing.

**1. Do you consider yourself to have a disability? NOTE: 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.**

Yes    No    I don't know

**2. Please describe the reasonable accommodation and/or modification you are requesting (check all that apply):**

I am requesting the following reasonable accommodation (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): \_\_\_\_\_

\_\_\_\_\_

I am requesting the following reasonable modification to the premises (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): \_\_\_\_\_

\_\_\_\_\_

**3. Please describe how the requested accommodation or modification is necessary *because* of your disability.**

**You do not need to disclose any medical information or the nature or severity of the disability; we simply need to know how your requested accommodation and/or modification is necessary and related to your disability.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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If we need additional information to evaluate your request, we will let you know. If we will need to seek verification of either the existence of the disability or the disability-related need for the accommodation and/or modification you have requested, we will ask that you identify a third-party who has familiarity with your disability in a professional setting to complete a verification form we will provide. You will also be asked to sign a release allowing said third-party to respond to the verification request.

**I hereby state that all of the information provided by me in this Request Form is true to the best of my knowledge and understanding.**

---

Resident or Applicant Signature Date

# **REASONABLE MODIFICATIONS AND ACCOMMODATIONS POLICY**

## **1. EQUAL HOUSING OPPORTUNITY POLICY.**

We provide rental housing on an equal opportunity basis. Consistent with this policy, we welcome persons with disabilities to our community and will not discriminate against any person because of his or her disability, or his or her association with anyone with a disability. In addition, we know that it may sometimes be necessary for persons with disabilities to be able to make modifications to their surroundings or to have accommodations made in our practices or procedures to enable them to fully enjoy and use their housing, and we have created the policy described herein to meet that need.

## **2. PURPOSE OF POLICY.**

A resident or applicant may be entitled under state and federal fair housing laws to a reasonable accommodation and/or reasonable modification when needed because of a disability of the resident, the applicant, and/or a person associated with a resident or applicant, such as a member of the household or frequent guest. The reasonable accommodation and/or reasonable modification must be necessary for the individual with the disability to have an equal opportunity to fully use and/or enjoy housing services offered to other residents and/or the individual dwelling unit. We will grant requests for accommodations or modifications that are reasonable and necessary because of a disability, would not impose an undue financial or administrative burden on our operations, and do not fundamentally alter the nature of services or resources we provide as part of our housing program.

## **3. DEFINITIONS.**

**A. Disability.** The Federal Fair Housing Act defines a person with a disability to include: (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; or (3) individuals with a record of such an impairment.

**B. Reasonable Modifications.** 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. These are typically structural changes to interiors and exteriors of dwellings and to common and public use areas, which are necessary to accommodate a person with a disability. Depending on the nature of the request, reasonable modifications are typically granted at the expense of the person requesting them.

### **C. Reasonable Accommodation.**

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 areas.

## **4. REQUESTS FOR REASONABLE MODIFICATIONS.**

**A. Generally.** If you are a resident or an applicant (i) with a disability, or (ii) with someone associated with you who has a disability, you have the right to request a reasonable modification to your dwelling or the common areas, in accordance with fair housing laws, if such modifications may be necessary to allow you to have an equal opportunity to fully use and/or enjoy your dwelling.

**B. Reasonable Modification Expenses.** Expenses for reasonable modifications, and restoration expenses, if applicable, of such modifications, shall be allocated in accordance with state and federal fair housing laws.

**C. Permission Required, Evaluation of Disability.**

If you would like to request a reasonable modification to your dwelling or the common areas of the community that is necessary because of a disability, you must first obtain permission from us. We prefer that you use the attached “Reasonable Accommodation and/or Modification to Rental Unit” form, but you are not required to use this form. If you would like or need assistance in completing this form, please let us know, and we will be glad to provide assistance. Whether you use our form or your own form of request, we will need to know what specific modification is being sought. In addition, if the disability or the disability-related need for the modification is not obvious, we may ask for information that is reasonably necessary to evaluate the disability-related need for the modification; however, we will only request information necessary to evaluate your request, and all information will be kept confidential.

**D. Reasonable Assurances.** Depending on the modification requested, we may require you to provide reasonable assurances that the modification will be done in a workmanlike manner and that any required building permits will be obtained. In some cases, any third-party retained to perform the modification may also have to be approved in writing by us, and be properly licensed and insured. During and upon completion of the modification, we may inspect the work in connection with our overall property management responsibilities. We will not increase your security deposit as a result of a modification request. However, when applicable, if you fail to restore the interior of the dwelling to its original condition, excluding normal wear and tear, at the end of the tenancy, we may assess the cost of restoration against your security deposit and/ or final account upon move-out.

**E. Restoration Reimbursement.** At the end of your tenancy, you may be responsible to restore the interior of your dwelling to its pre-modification condition at your expense, depending on the nature of the modification. Again, depending on the modification, we may request that you deposit sufficient funds for that restoration in an interest bearing escrow account to ensure any required restoration can be completed. Regardless of modification, you will remain responsible to pay for damage to your dwelling in excess of ordinary wear and tear.

**F. Alternative Modification.** Depending on the circumstances, we may not be able to grant the exact modification you have requested and we may ask to discuss other alternatives with you.

**5. REQUESTS FOR REASONABLE ACCOMMODATIONS.**

**A. Generally.** We will make reasonable accommodations in our rules, policies, practices, and/or services, to the extent that such accommodations may be reasonably necessary to give you, as a disabled person, an equal opportunity to fully use and enjoy your dwelling, and the public and common areas of the premises, and as otherwise required by law.

**B. Request for Accommodation, Evaluation of Disability.** If you would like a reasonable accommodation that is necessary because of a disability, please submit a request to us, preferably using the attached “Reasonable Accommodation and/or Modification to Rental Unit” form, but you are not required to use this form. If you would like or need assistance completing this form please let us know and we will be glad to provide assistance. Whether you use our form or your own form of request, we will need to know what accommodation is being sought. In addition, if the disability is not obvious, we may ask for information that is reasonably necessary to evaluate the disability related need for the accommodation. We will only request information that is reasonably necessary for us to evaluate your request, and we will keep all information you provide confidential.

**C. Alternative Accommodation.** Depending on the circumstances, we may not be able to grant the exact accommodation you have requested and we may ask to discuss other alternatives with you.

**6. OWNER RESPONSIBILITY.**

We will respond to all requests for a reasonable accommodation and/or modification in a timely manner. If we deny your request for a reasonable modification and/or accommodation, we will explain the reason for our denial and we will discuss with you whether there are alternative accommodations and/or modifications that we could provide that would meet your needs. We also are committed to entering into an interactive dialogue with you in relation to any request, and therefore agree to speak with you in relation to any request so that you have sufficient opportunity to provide us with any information you believe is relevant to our evaluation of your request for the modification(s) and/or accommodation(s).

**7. AMENDMENT TO POLICY.**

This policy may be amended and updated at any time upon written notice to you. In addition, in the event of any conflict between this policy and/or state, local or federal law, the provisions of such law shall control.

**[End of Form]**

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**REASONABLE ACCOMMODATION and/or  
MODIFICATION VERIFIER AUTHORIZATION FORM**

Dear \_\_\_\_\_ (Verifier)

The landlords represented by Excalibur Homes, LLC provide reasonable accommodations and/or modifications to our residents with disabilities who have a disability-related need for the reasonable accommodation and/or modification. A reasonable accommodation is a change, exception, or adjustment made to a rule, policy, practice or service ***that is necessary because of a disability*** for the resident to have an equal opportunity to use and/or enjoy an apartment community.

A “reasonable modification” is a physical and/or structural change to the dwelling and/or common areas ***that is necessary because of a disability*** for the resident to have an equal opportunity to fully use and/or enjoy an apartment community. The signed release below authorizes you to provide the information requested on this form relating to the resident’s/applicant’s request for an accommodation and/or modification due to a disability.

**Name of Resident(s) or Applicant(s) (print):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Request for Reasonable Accommodation and/or Modification (what specific accommodation and/or modification is the Resident or Applicant requesting?):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Signature of Resident or Applicant:**

*By signing this Verification Form, the person identified above has authorized the verifier identified below to provide answers to the questions below to the best of his/her knowledge, solely for the purpose of determining the disability-related need for the accommodation and/or modification requested.*

**[End of Form]**

**REASONABLE ACCOMMODATIONS and/or  
MODIFICATIONS VERIFICATION FORM**

Dear \_\_\_\_\_ (Verifier)

\_\_\_\_\_ is a resident or applicant related to a rental property which our company manages for the landlord. They have requested an “accommodation” and/or a “modification” to the property and/or lease related to a disability. The resident’s or applicant’s authorization to release this information is attached or enclosed.

Please answer the following questions so that we can assess and respond to their request.

1. Is this Resident/Applicant disabled? State and federal laws define a person with a disability to include individuals with a physical or mental impairment that substantially limits one or more major life activities. This definition does not include the current illegal use of controlled substances.

Yes   No   I don’t know

2. Please describe in what manner this disability substantially limits one or more of the Resident’s/Applicant’s major life activities

(Do NOT reveal the specific NATURE OR SEVERITY of the individual’s disability):

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3. Does this Resident/Applicant need the accommodation and/or modification requested above to alleviate one or more symptoms of the person’s disability so that the person can have an equal opportunity to use and/or enjoy his/her housing?

Yes   No

4. If yes, please describe how this accommodation will enable the Resident/Applicant to use and/or enjoy this housing.

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5. Do you have (or have you in the past had) a therapeutic relationship with regard to this person's disability **for purposes other than verifying the stated need for an assistance animal in housing as a reasonable accommodation to that disability?**

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6. Are you licensed in Georgia?

Yes No, I am licensed in \_\_\_\_\_ (state)

My profession is not required to be licensed

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Name and professional title of Verifier

---

Signature of Verifier Date

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Address

Telephone

**PLEASE RETURN THIS FORM TO:**

Excalibur Homes, LLC

2855 Marconi Dr. Ste 310 Alpharetta GA 30005

Email: pm@excaliburhomes.com

Phone: 678-825-1400

**[End of Form]**

**RESPONSE TO REQUEST FOR A REASONABLE  
ACCOMMODATION AND/OR REASONABLE MODIFICATION**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Resident or Applicant:

On *(date)*, you requested a reasonable accommodation and/or modification to the dwelling located at Unit No. at *(street address)* in *(city)*, Georgia, *(zip code)*.

**We have approved your request, as follows (check all that apply):**

**We will grant the following accommodation(s):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**We will allow the following modification(s):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**The foregoing modification shall be made    at your expense    at our expense.**

**Other:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**After careful consideration, we have not approved your request because (check all that apply):**

Based on the information provided it does not appear that you are a person with a disability within the meaning of the Fair Housing Act.

The accommodation and/or modification you requested is either not reasonable and/or not necessary because:

We have concluded that the specific accommodation and/or modification that you are requesting will impose an undue financial and administrative burden on our operations or will create a substantial risk of harm to you or to other persons in the community.

We have concluded that the specific accommodation and/or modification you have requested will fundamentally alter the nature of services or resources that this community provides.

Based on the information provided, it does not appear that the accommodation and/or modification you have requested is related to your disability.

Based on the information provided, it does not appear that the accommodation and/or modification you have requested is necessary to allow you an equal opportunity to use and enjoy your housing.

Other:

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If you feel we have made this decision in error, or if there is additional information you would like to provide us that you believe is relevant to our decision, we would like to discuss this matter with you. Please feel free to contact [name of housing representative] to schedule an appointment. Note that if there are alternative accommodations and/or modifications that you believe would be equally as effective as the accommodation or modification we are unable to provide, we are happy to consider those as well in a follow up discussion.

---

**Date**

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**Owner or Owner's Representative Signature**

**[End of Form]**

# How to Steer Clear of Steering

(From [www.fairhousingcoach.com](http://www.fairhousingcoach.com))

Contrary to popular belief, housing segregation remains alive and well not just in specific regions of the U.S. but across America. So concluded HUD upon completing its most recent review of the state of fair housing in the U.S. “Real estate agents and rental housing providers recommend and show fewer available homes and apartments to minority families, thereby increasing their costs and restricting their housing options,” concludes the 2013 report.

HUD also found that the problem exists in both the home buying and rental markets. Specifically, the report found that, as compared to white renters who contact a rental agent:

- African Americans are told about 11 percent fewer units and shown 4 percent fewer units;
- Latinos/Hispanics are told about 12 percent fewer units and shown 7 percent fewer units; and
- Asian Americans are told about 10 percent fewer units and shown 7 percent fewer units.

Surprised? How can this continue to happen in a country where housing discrimination and segregation have been illegal since 1968, you may wonder.

Part of the answer is that while overt discrimination has become relatively rare, more subtle forms of discrimination continue to thrive. And as they continue over time, they perpetuate institutional segregation. Of course, these subtle forms of discrimination are every bit as illegal as the overt kind. The problem is that they're also much harder to detect and root out. And because these forms of discrimination are so subtle, it's easy for property owners, managers, and leasing agents who are otherwise committed to equal housing principles to engage in them unintentionally and inadvertently.

This month's lesson deals with one of the most widespread and pernicious forms of subtle discrimination: steering. First, we'll explain what steering is and how it occurs. And then we'll set out seven rules to ensure that your leasing agents don't engage in conduct that constitutes steering. We'll finish up the lesson with the *Coach's Quiz* so you can see how well you learned the material.

## WHAT DOES THE LAW SAY?

The federal Fair Housing Act (FHA) bans discrimination on the basis of race, color, religion, sex, handicap (disability), familial status, or national origin. (To avoid having to list these traits over and over again, we'll refer to them collectively as “protected characteristics”). Also keep in mind that federal FHA requirements are minimum standards and that many states have adopted their own fair housing laws that extend protections to other protected characteristics, which may include:

- Sexual orientation;
- Gender identity;
- Source of income;
- Criminal record;
- Political belief;
- Creed; and/or
- Military status.

Forms of unlawful discrimination include, among other things:

- Refusing to sell, rent, or negotiate for the sale or rental of, or otherwise make available, or deny housing to a person on the basis of protected characteristics [FHA, Section 3604(a)];
- Offering different and less favorable terms, conditions, or privileges of the sale or rental of housing due to a person's protected characteristics [FHA, Section 3604(b)];
- Making notices and statements or engaging in advertising for the sale or rental of housing that indicate a preference on the basis of protected characteristics [FHA, Section 3604(c)]; and

- Making discriminatory misrepresentations about the availability of housing [FHA, Section 3604(d)].

Steering may run afoul of any one or combination of Sections 3604(a), (b), (c), and/or (d), depending on the situation. It occurs when a landlord tries to influence rental prospects' choice in housing based on their protected characteristics. Steering is illegal because it limits prospects' choices and denies them the opportunity to buy or rent the housing they choose. Practiced on a wider basis, steering also maintains or creates segregation across apartment communities, neighborhoods, towns, cities, and wider communities.

Part of what makes steering so widespread is how easy it is to conceal. And those very same qualities make it easy to commit accidentally. Nobody would object to the principle that housing providers refrain from trying to influence a person's housing choices on the basis of protected characteristics. But applying this no-influence principle to real-life situations is very tricky. After all, aren't leasing agents *supposed* to provide prospects with information about the apartment so they can decide whether it's suitable for them?

Steering is all about balancing these competing dynamics. Nobody is suggesting that leasing agents be banned from providing information and answering questions about a property so that prospects can decide whether renting it is right for them. The key to avoiding steering is ensuring that leasing agents don't carry out these information-sharing responsibilities in a way that influences the prospect's decision on the basis of his or her particular race, color, etc. And that's easier said than done. The seven lessons below will enable you to help your leasing agents steer clear of steering.

## 7 RULES FOR HELPING LEASING AGENTS AVOID STEERING

### Rule #1: Don't Tell Prospects Where to Rent Based on Protected Characteristics

Steering isn't always subtle. Sometimes it's as obvious as a punch in the face. The two most common forms of overt steering:

- Making verbal remarks like "we don't lease to Black people" or "we don't have anything suitable for kids or people with disabilities"; and
- Displaying apartments on the basis of protected characteristics such as not showing any units on "adults-only" floors to prospects with young kids.

While these things are enough to make any fair-minded landlord cringe, regrettably, they still happen. And rest assured that if any of your leasing agents were to engage in that kind of conduct, fair housing testers will eventually catch them. At that point, you'll be looking at not just liability but also potential punitive damages running into six- or even seven figures.

**Example:** An Atlanta real estate firm and its leading agent had to pay \$160,000 to [settle](#) steering charges for showing white testers homes in predominately white neighborhoods and Black testers homes in Black neighborhoods. The smoking gun: The agent allegedly told one tester, "I wasn't sure where to take you because I couldn't tell over the phone whether you were white or Black."

### Rule #2: Don't Try to Influence Prospects' Choices Based on Protected Characteristics

A more common form of steering is to say things to discourage prospects from renting from you (or where in the building to rent from you) or encouraging them to rent from somebody else on the basis of their protected characteristics. Examples of things leasing agents should never say (all of which come from actual HUD cases where landlords were found guilty of steering):

- "I think there are other apartment communities in town that cater more to kids";
- "We have a few apartments in the back of the building for people with wheelchairs"; and
- "I wouldn't be comfortable renting in this neighborhood if I were a young single woman."

### Rule #3: Don't Tell Prospects Where They'd Be "Comfortable"

Notice the word "comfortable" in the last bulleted example above. One of the most common forms of steering is seeking to influence prospects' choices based on where they'd be most comfortable. The problem is what the word "comfortable" implies.

The critical assumption that's dangerous to make and even more poisonous to act upon is that people are more "comfortable" and "compatible" with people of their own race, color, etc. Accordingly, telling prospects that they'd be uncomfortable in your community or more comfortable somewhere else suggests that you're trying to influence them on the basis of their protected characteristics. This conduct constitutes illegal steering even when leasing agents genuinely believe they're acting in the prospects' best interests.

Another variation on the theme is seeking to protect residents from discriminatory neighbors, for example, by deliberately not telling a Jewish family about an otherwise suitable vacancy to protect them from the virulently antisemitic neighbor next door. Giving bigots, racists, anti-Semites, and the like veto power over who can lease from you makes you a co-conspirator in discrimination.

### Rule #4: Don't Answer Discriminatory Questions or Heed Discriminatory Demands

In some cases, the impetus for steering comes not from the leasing agent but the prospect considering the property. One form of this is when a prospect asks questions about, say, the race or color of residents in the community—for example, where a white prospect asks, "Are there any Black people living here?" A more subtle way to pose the question is for prospects to ask a leasing agent, "Do you think I'd be comfortable (*there's that word again*) in this community?"

Prospects who ask these kinds of questions are probably either: (1) testers sent to monitor your community's compliance with the FHA; or (2) genuine racists or bigots. In either case, make sure that leasing agents don't take the bait. Specifically, make sure they understand that discussing the protected characteristics of other residents with a prospect is a form of illegal steering, even when the prospect brings up the topic.

Note that the same principles apply when a prospect makes discriminatory demands, such as insisting on being shown only units on floors where none of the residents are of a particular race, color, etc.

The best practice for these situations is to have the leasing agent politely decline to answer the discriminatory question or heed the discriminatory demand and tell the prospect of your community's commitment to fair housing and refraining from discrimination. It's also a best practice to script the leasing agent's "we-don't-discriminate" reply. Language to consider:

"I'm sorry but I'm afraid I can't answer that question. Please understand that ABC Community is an equal housing opportunity provider committed to complying with all federal, state, and local fair housing laws. ABC does not discriminate against any person because of race, color, religion, national origin, sex, familial status, disability, or [other personal characteristics protected by state or local fair housing law]."

In some cases, the leasing agent may even be able to explain why the prospect's question or demand is discriminatory and persuade him or her to rephrase or retract it.

If instead of a direct question about a protected class, prospects ask whether they'd be comfortable renting from you, instruct leasing agents to turn the question around and ask the prospect what he or she means by "comfortable." If the prospect's response is nondiscriminatory and not based on the characteristics of the people in the community or neighborhood, the leasing agent can proceed to answer the question. But if the prospect's response suggests any discriminatory biases, such as, "I'm comfortable with young people" or "I'm uncomfortable around kids," they should refuse to answer and recite the above statement.

### Rule #5: Don't Limit Prospects' Choices Based on Their Kids' Safety

Leasing agents must understand that it's not their responsibility to try to talk prospects out of making unsound decisions about where to rent. This instinct of leasing agents to want to protect prospects against themselves is most likely to manifest itself when prospects want to rent apartments that would be



unsafe for their young children—for example, units located on an upper floor or right next to a pool with no lifeguard.

A 1992 in-house legal [memorandum](#) from HUD’s Fair Housing Division clearly states that denying or trying to discourage families with children housing on the basis of safety is illegal steering. According to the memo, the FHA requires “housing providers to make all units, including units on upper floors and units with balconies, available to families with children.” It also bans the practice of making families with children sign waivers of liability not required of other residents.

**Example:** In 2017, the U.S. Department of Justice (DOJ) accused the owner and operator of a New Hampshire community of using the safety argument to steer the mother of an infant child away. According to the complaint, the community had a safety policy of placing families with children under the age of 10 in first-floor units only. And since no first-floor units were available, they turned the mother away rather than showing units that were available on the upper floors. Rather than risk a trial, the owner and operator agreed to shell out \$25,000 to settle the case.

While ruling out the practice of not showing apartments to families with children on the basis of safety, the HUD memo goes on to say that it’s okay for housing providers to make “factual statements about perceived hazards of their property,” as long as:

- Those statements are “truthful and not misleading”;
- The statements don’t indicate a “preference, limitation, or discrimination” based on familial status; and
- An “ordinary listener” wouldn’t interpret the statements as discouraging families with children from deciding to live in the apartment community or building.

**Coach’s Tip:** The 1992 HUD memo also clarifies that the FHA doesn’t ban housing providers from imposing “reasonable health and safety rules designed to protect minor children in their use of facilities associated with the dwellings,” such as requiring adult supervision of young children using a swimming pool without a lifeguard.

## DEEP DIVE

### Steering & Schools

While it might seem like the most natural and innocent thing in the world, discussing neighborhood schools with rental prospects can be a steering liability minefield. That’s because phrases such as “a school with low test scores” or “communities with declining schools” have become code words for racial and other differences to the extent there’s a correlation between the quality of the schools and the racial or ethnic composition of the neighborhood. Similarly, praising the schools in one neighborhood while discretely saying nothing about the schools in another may have the same steering effect.

With this in mind, the National Association of Realtors (NAR) has devised best practices for avoiding steering when discussing schools. And while the recommendations are targeted to real estate brokers, many of them also work for leasing agents on how to avoid steering when talking to prospects about the quality of schools in the neighborhood, including:

- Offer facts, not opinions or personal judgments;
- Keep a list of websites and other sources of objective information about the schools in your area to which you can refer prospects so they can make their own judgments; and
- Ask prospects to clarify their criteria; for example, if they ask whether the schools are “good,” have them describe the standards they believe makes a school good so you can point them to appropriate sources of information.

### Rule #6: Don’t Exaggerate a Property’s Drawbacks

Another common way to exert improper influence is to draw attention to or exaggerate the drawbacks or flaws of your property. Such behavior, which runs contrary to the leasing agent’s mission to make your

community look good, is powerful evidence of a motive not to rent to the prospect. And when that prospect has one or more protected characteristics, it strongly suggests that discrimination is the driving force behind that motive.

**Example:** The owner of an Arizona community is determined to maintain a peaceful and quiet “adult” community to attract retirees. Recognizing that categorically refusing to rent to prospects with children is illegal, the owner comes up with a plan to discourage them from doing so by creating a list of all the things that make the property unsuitable for young children. It then instructs leasing agents to go through the list with all prospects that have young kids. Result: The owner—and leasing agents who actually implement the plan—have committed illegal steering.

## Rule #7: Don't Direct Prospects to Particular Buildings or Areas Based on Protected Characteristics

One particularly egregious, institutional, and still common form of steering is to assign prospects or residents to a particular section of a community or floor of a building because of a protected characteristic. Examples can range from limiting all residents with wheelchairs and/or families with children under a particular age to the ground floor to actual segregation and maintaining separate buildings for Black and white residents. If you don't believe these things actually happen nowadays, we can cite literally dozens of cases to persuade you otherwise. Here are just a couple of recent examples:

**Example:** In May 2020, the DOJ filed a [lawsuit](#) against a Georgia management company for allegedly steering elderly and disabled African-American rental prospects away from Cedarwood Village, a predominantly white housing complex for elderly persons and persons with disabilities, and to Cedartown Commons, a predominantly Black general occupancy complex.

**Example:** In January 2021, the DOJ charged a Massachusetts housing authority of steering African-American prospects away from three overwhelmingly white properties that it manages and steering white applicants from two of its disproportionately Black properties in an effort to keep all of these communities racially segregated [United States v. J & R Associates (D. Mass.)].

## TIME OUT!

### Give Your Marketing Materials an FHA Audit

You may be engaging in steering without realizing it by including language or images in your marketing materials that indicate preferences on the basis of protected characteristics. Statements like “No Children” or “Singles Only” are obvious examples. However, indications of discriminatory preference may be far more subtle, such as characterizing a property located in a predominately white area as being “traditional” or even noting that it’s located next to a particular church. Here’s a list of marketing Do’s and Don’ts that comes straight out of HUD guidelines:

#### Steer Clear of Discriminatory Marketing

DO	DON'T
<p>*Describe the property using factual and objective terms like:</p> <ul style="list-style-type: none"> <li>○ Two bedrooms</li> <li>○ Walk-in closets</li> <li>○ Spectacular views</li> </ul> <p style="padding-left: 40px;">*Describe the amenities:</p> <ul style="list-style-type: none"> <li>○ On-site fitness facilities</li> <li>○ Community pool</li> <li>○ Basement storage</li> </ul> <p>*Include a disclaimer noting that you don’t discriminate on the basis of race, color, religion, sex, familial status, disability, national origin, and any additional personal characteristics protected under the fair housing laws of your state</p> <p style="padding-left: 40px;">*Use the fair housing logo</p>	<p>*Describe what you’re looking for in a renter, such as:</p> <ul style="list-style-type: none"> <li>○ Great for young couple</li> <li>○ Single adults preferred</li> </ul> <p style="padding-left: 40px;">*Describe the people in the neighborhood:</p> <ul style="list-style-type: none"> <li>○ Catholic neighborhood</li> <li>○ Large Hispanic community</li> </ul> <p>*Describe the neighborhood in terms of churches, synagogues, or other landmarks that could suggest a preference for or against people with a protected characteristic</p> <p style="padding-left: 40px;">*Include an explicit preference or limitation based on a protected characteristic, such as:</p> <ul style="list-style-type: none"> <li>○ No children</li> <li>○ Christians only</li> </ul>

# Fair Housing Complaint Process

## Step 1 - Intake

1. Anyone can file a complaint with HUD at no cost. Fair housing complaints can be filed by any entity, including individuals and community groups. Those that file fair housing complaints are known as complainants. Those against whom fair housing complaints are filed are called respondents.
2. Fair housing complaints can be filed with HUD by telephone (1-800-669-9777), mail, or via the Internet. Follow this link to fill out a fair housing complaint form [online](#).
3. After HUD has received the initial information, an intake specialist will contact the complainant and interview him or her to collect facts about the alleged discrimination. Initial interviews are normally conducted by telephone. The intake specialist will then review the allegations to determine whether the matter is jurisdictional.
4. If HUD has the authority to investigate, it will file the complaint. If the allegations do not fall within HUD's jurisdiction, for example if the complaint does not allege housing discrimination, HUD cannot accept the complaint and must close the case.
5. If the alleged discrimination occurred within a state or locality in HUD's Fair Housing Assistance Program\*, HUD will refer the complaint to that agency. That agency must begin to work with the complainant within 30 days, or HUD can take the complaint back.

## Step 2 - Filing

1. If HUD accepts the complaint for investigation, the investigator will draft a formal complaint on HUD's standard form and provide it to the complainant, typically by mail. The complainant must sign the form and return it to HUD.
2. Within 10 days after receipt of a signed complaint, HUD will send the respondent notice that a fair housing complaint has been filed against him or her along with a copy of the complaint. At the same time, HUD will send the complainant an acknowledgement letter and a copy of the complaint.
3. Within 10 days of receiving the notice, the Respondent must submit to HUD an answer to the complaint.

## Step 3 - Investigation

1. As part of the investigation, HUD will interview the complainant, the respondent, and pertinent witnesses. The investigator will collect relevant documents or conduct onsite visits, as appropriate.
2. HUD has the authority to take depositions, issue subpoenas and interrogatories, and compel testimony or documents.

## Step 4 - Conciliation

1. The Fair Housing Act requires HUD to bring the parties together to attempt conciliation in every fair housing complaint. The choice to conciliate the complaint is completely voluntary on the part of both parties. Any conciliation agreement signed by HUD must protect the public's interests.
2. If the parties sign a conciliation agreement, HUD will end its investigation and close the case. However, if either party breaches the agreement, HUD can recommend that the U.S. Department of Justice (DOJ) file suit to enforce the agreement.

## Step 5 - No Cause Determination

1. If, after a thorough investigation, HUD finds no reasonable cause to believe that housing discrimination has occurred or is about to occur, HUD will issue a determination of "no reasonable cause" and close the case.

2. A complainant who disagrees with that decision can request reconsideration of the case by sending a letter to the Director of the Office of Enforcement, FHEO, 451 7th Street, SW, Room 5214, Washington, DC 20410.
3. Upon receipt of a request for reconsideration, HUD will notify all of the parties that the request has been received and invite them to submit any additional evidence pertinent to the investigation.
4. HUD will review all of the materials from the investigation and any additional evidence that the parties provide.
5. HUD will then inform the parties if the Department has affirmed its finding of "no reasonable cause" or instead has decided to re-open the complaint. If HUD decides to re-open the complaint, it will resume investigation and conciliation. If HUD affirms its finding of "no reasonable cause", HUD can take no further action on the complaint.
6. If the complainant disagrees with HUD's determination that there was no reasonable cause to believe that discrimination occurred or was about to occur, the complainant can file a civil court action in the appropriate U.S. district court.

#### **Step 6 - Cause Determination and Charge**

1. If the investigation produces reasonable cause to believe that discrimination has occurred or is about to occur, HUD will issue a determination of "reasonable cause" and charge the respondent with violating the law. HUD will send a copy of the charge to the parties in the case.
2. After HUD issues a charge, a HUD Administrative Law Judge (ALJ) will hear the case unless either party elects to have the case heard in federal civil court. Parties must elect within 20 days of receipt of the charge.

#### **Step 7A - Hearing in a U.S. District Court**

1. Within 30 days after either party elects to go to federal court, DOJ will commence a civil action on behalf of the aggrieved person in U.S. district court.
2. If the court finds that a discriminatory housing practice has or is about to occur, the court can award actual and punitive damages as well as attorney's fees.

**OR**

#### **Step 7B - Hearing before a HUD ALJ**

1. If neither party elects, a HUD ALJ will hear the case. An attorney from HUD will represent the aggrieved party before the ALJ.
2. When the ALJ decides the case, the ALJ will issue an initial decision.
3. If the ALJ finds that housing discrimination has occurred or is about to occur, the ALJ can award a maximum civil penalty of \$16,000, per violation, for a first offense, in addition to actual damages for the complainant, injunctive or other equitable relief, and attorneys' fees.
4. Within 15 days of the issuance of the ALJ's initial decision, any party adversely affected by the ALJ's initial decision can petition the Secretary of HUD for review.
5. The Secretary of HUD has 30 days after the initial decision to affirm, modify, or set aside the ALJ's initial decision, or remand the initial decision for further proceedings. If the Secretary does not take any action within 30 days, the decision will be considered the Department's final decision.
6. After the Department has issued a final decision, any party aggrieved by the Department's final decision can appeal to the appropriate court of appeals.