



## Fair Housing: It's For All of Us



This booklet gives general information only. It does not give advice about your particular situation. If you need legal advice, contact the local legal services office.

If you have an impairment, disability, language barrier, or otherwise require an alternative means of reading this guide, please contact Opportunities for Otsego.



**Fair housing** is the right to choose **housing** free from unlawful discrimination. Federal, state, and local **fair housing** laws protect people from discrimination in **housing** transactions such as rentals, sales, lending, and insurance.

Fair Housing laws prohibit discrimination in housing because of a person's:

- Race or Color
- National Origin
- Religion
- Sex/Gender
- Familial Status (families with/without children)
- Marital Status
- Disability
- Age
- Sexual Orientation
- Military Status
- Victims of domestic violence or dating violence
- Source of lawful income

These are considered **protected classes**.

**What can't be done when renting or selling based on a protected class:**

- Refuse to rent or sell a house or apartment,
- Refuse to negotiate for housing with one individual but do so with another,
- Deny that a house or apartment is available when it is,
- Set different conditions or privileges for sale or rental,
- Provide different services or facilities,
- Advertise or make any statement that indicates preferences based on race, color, national origin, religion, sex, familial status, age, or disability.

**Specific to Mortgages**

When buying a home, it is against the law for a lender to do the following based on any of the protected classes:

- Refuse to make a mortgage loan,
- Fail to provide information about loans,
- Set different terms on the loan, such as a higher interest rate or extra fee,
- Discriminate in appraising a property's value.

**The Fair Housing Act protects families with children**

Fair Housing laws give families with children under age 18 specific protection from discrimination in housing.

Families with children under age 18 include:

- Children living with legal custodians or an adult(s) designated to care for the children,
- Pregnant women,
- People in the process of securing custody of children, such as adoption.

In addition to protections provided by the federal Fair Housing Act, it is illegal to:

- Refuse to rent or sell a home or apartment to a family because they have children,
- Require an additional security deposit or charge families with children a fee that is not required of other residents of the apartment, mobile home park, etc.,
- Segregate families with children to certain areas of the housing complex, apartment, mobile home park, etc.,
- Limit the use of the housing complex's pools, elevators, and/or other services to adults only – although, reasonable safety rules are permissible,
- Evict a family after a baby is born or adopted unless legal occupancy requirements are in effect.

### **When can families with children be excluded from housing?**

Fair Housing laws allow “housing for older persons” to exclude families with children.

Housing for older persons is strictly defined:

- All the people living in the housing complex, including both spouses, must be age 62 or older; OR
- 80% of all the units in the complex must be occupied by at least one person age 55 or older; OR
- The housing is funded “for older persons” by the state or federal government.

### **Additional Protection if you have a disability**

People with disabilities have protection under the Fair Housing Amendments Act.

Disabilities covered under the Act:

- Hearing,
- Mobility,
- Visual impairments,
- Recovering alcoholic,
- Chronic mental illness,
- AIDS or AIDS-related complex,
- Mental retardation.

A tenant has the right to make reasonable modifications to the apartment or common areas at his/her own expense. The landlord must allow these modifications, but is not responsible for paying for them. It is the tenant's responsibility to return the apartment to its original condition when moving out. A landlord must also make reasonable exceptions to the building rules, such as allowing a guide/service animal when pets are otherwise not permitted.

## **Fair Housing protections against discrimination based on sex**

The Fair Housing law states that sellers, landlords, realtors, lenders, etc., may not decide where a person will be able to live because he/she is a man or a woman.

In addition to the general protection provided by the Act, it is illegal to:

- Rent, sell, or negotiate for housing with women on a different basis than with men,
- Refuse to acknowledge as income any alimony or child support payments received by a divorced man or woman,
- Require, directly or by implication, sexual favors in exchange for housing or real estate-related transactions,
- Sexually harass homebuyers or tenants.

## **Fair Housing protections against discrimination based upon religion**

The Fair Housing Amendments Act says that discrimination based on religion is illegal in the sale or rental of most housing. This means that, in addition to the general prohibitions in the Act, it is unlawful to:

- Question a potential purchaser or renter about his/her religion or religious affiliation in connection with the purchase, sale, or rental of housing;
- Advertise or publish a preference for selling or renting housing to persons of a particular religion, unless permitted by law;
- Refuse to rent or sell a home or apartment to a person of a particular religion or religious affiliation.

Religious organizations can give preference to their members in the sale, rental, or occupancy of non-commercial housing or lodges, as long as membership in the religion is not restricted on the basis of race, color, or national origin.

## **Fair Housing protections against discrimination based upon lawful source of income**

The New York State Human Rights Law was amended in April 2019 to protect New Yorkers from discrimination based on lawful source of income. This law applies to nearly all types of housing in New York State.

Sources of income discrimination is often directed at those whose lawful income comes from sources other than a paycheck, including Social Security payments, any form of government assistance, or child support.

Discriminatory behavior may occur in ways that are difficult to perceive. The following examples may be evidence of source of income discrimination:

- A landlord refuses to include a household members' Social Security income when calculating eligibility for an apartment;
- A landlord raises the rent advertised because of an applicant's source of income;
- A landlord insists that a potential tenant provide proof of employment in order to apply for an apartment.

## Real World Questions: What is and is not discrimination

**Q: Can I be turned down for having bad credit?**

A: Yes. Your credit history is a legal method for a landlord to judge who may be a reliable tenant. However, a landlord should be requiring a credit report from all applicants.

**Q: Can a landlord exclude a person with a seeing eye dog?**

A: No. A landlord must make reasonable accommodations for a person's disability. This includes allowing a seeing eye dog or other service animal if the landlord has a No Pets Allowed policy.

NOTE: comfort animals are not the same as service animals.

**Q: May a landlord screen out a person in a wheelchair because he recently painted his apartments and is concerned the wheelchair may damage or mark the walls?**

A: No. A landlord may protect himself from damage to the property by requiring all tenants to pay security deposits. However, it is illegal to require a security deposit from anyone that is more than one month's rent.

**Q: Can a landlord show preference to couples or men because he would like tenants who are able to do gardening and/or repairs?**

A: No. However, in certain circumstances, a landlord may request that a tenant be responsible for reasonable gardening and/or repairs.

**Q: Can a landlord require unmarried tenants to be income-qualified on their own but allow married tenants to combine incomes for qualification?**

A: No. A landlord must have one set of criteria for qualifying. He/She must

allow unmarried applicants to combine their incomes to qualify if he/she allows married applicants to do so. He/She may ask both applicants to sign the lease.

**Q: Can a landlord make rules governing the conduct of children?**

A: No. A landlord may make rules governing the conduct of tenants in general and he/she must apply those rules in a consistent manner. A landlord may have certain rules that affect children if the rules relate to health and safety.

**Q: Can a landlord limit the number of children in each apartment?**

A: No. A landlord may limit the number of occupants in each apartment but he may not specifically limit the number of children. Occupancy limits are set by state and local building codes.

**Q: Can a landlord restrict families with children under 18 years old to downstairs units, out of concern for the safety of the young children?**

A: No. A landlord may not in any way restrict where tenants live based on the presence of children in the household.

**Q: Can a landlord raise the rent when an additional person is added to the unit?**

A: Yes. However, any additional charge should be related to the added cost of having the additional person in the unit. If the charge is not rationally-based, then it could be considered by the courts to be a proxy for discrimination against families with children or unmarried couples (for example). Any reasonable additional charges must also be stated in the lease.

**Q: Can a landlord restrict the age or sex of children sharing a bedroom?**

A: No. Not only may a landlord not restrict this, but he/she should not inquire about the age or sex of the children, except to ascertain if they are over the age of 18.

**Q: Can a landlord restrict a tenant's visitors if he thinks they look "shady"?**

A: No. A landlord may not limit a tenant's right to freely use their home. A landlord can, however, restrict unlawful activity on the property and should contact the police to report unlawful incidents.

**Q: Does a landlord have to rent to the first qualified applicant?**

A: No. A landlord may take applications from more than one applicant and choose among the qualified applicants, as long as he/she does not use prohibited criteria to screen them.

**Q: Does a landlord have to continue renting to single men and young people if he's had problems with these groups in the past?**

A: Yes. A landlord may not refuse to rent to a person of a protected class, even if he's had previous negative experiences.

**Q: Can a landlord maintain an "adults only" complex?**

A: No. Families with children are a protected class under federal law. However, the landlord could find out if his complex qualifies for exemption as a housing for older persons complex.

## Filing a Fair Housing Complaint

If you have been trying to buy or rent a home or apartment and you believe your civil rights have been violated, you can file your fair housing complaint by contacting:

- **New York State**  
**Division of Human Rights**  
44 Hawley Street, Room 603  
Binghamton, New York 13901  
Telephone No. (607) 721-8467  
eFax: (518) 473-2955  
Complaint Form: <https://dhr.ny.gov/complaint#file>
- **Civil Rights Bureau**  
**New York State Office of the Attorney General**  
28 Liberty Street  
New York, NY 10005  
Telephone: (212) 416-8250.  
Fax Number: (212) 416-6030  
email address: [civil.rights@ag.ny.gov](mailto:civil.rights@ag.ny.gov)  
Hotline Number: 1(800) 771-7755  
Hearing Impaired: 1(800) 788-9898
- **U. S. Department of Housing and Urban Development**  
New York and New Jersey Office  
26 Federal Plaza  
New York, N.Y. 10278  
(800) 496-4294  
<https://portalapps.hud.gov/AdaptivePages/HUD/complaint/complaint-details.htm>  
Website - [www.hud.gov](http://www.hud.gov)
- **United States Department of Justice**  
**U.S. Department of Justice**  
**Civil Rights Division**  
950 Pennsylvania Avenue, N.W.  
Housing and Civil Enforcement Section, NWB  
Washington, DC 20530-0001  
(202) 514-4713  
<http://www.justice.gov/actioncenter/submit-complaint>





