

Fair Housing Act

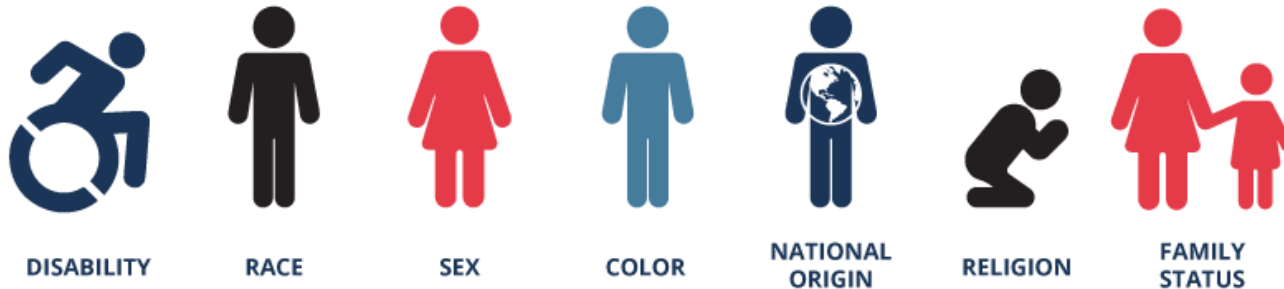


**EQUAL HOUSING
OPPORTUNITY**

THDA SUB-RECIPIENTS & PARTNERS

Fair Housing Act Purpose & Protected Classes

Protects certain classes of people who have historically faced discrimination in the **sale, rental, advertising and financing of dwellings and in other housing-related activities.** (42 U.S. Code § § 3601-3619 & 3631)



The Fair Housing Act & Non-Discrimination

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.



The Fair Housing Act & Non-Discrimination in Sales or Rentals

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/gender, 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.

The Fair Housing Act & Non-Discrimination in Mortgage Lending

In **Mortgage Lending**: No one may take any of the following actions based on race, color, national origin, religion, creed, sex/gender, 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.



Fair Housing & Limited English Proficiency (LEP)

Limited English Proficiency (LEP) individuals do not speak English as their primary language and/or have a limited ability to read, speak, write, or understand English.

FHA prohibits restricting access to housing based on LEP; use of LEP as a pretext for unequal treatment based on race/national origin; selective application of a language-related policy.

Fair Housing & Limited English Proficiency (LEP)

HUD guidance for housing providers: The FHA prohibits actions that are intentionally discriminatory and those that have an unjustified discriminatory effect, even when the provider had no intent to discriminate.

For more information, see HUD's guidance on the FHA & LEP:
<https://www.hud.gov/sites/documents/LEPMEMO091516.PDF>

Sub-recipients of Federal financial assistance are subject to additional LEP guidance under Title VI of the Civil Rights Act.

Reasonable Modification & Accommodation

The FHA makes it unlawful to:

- Refuse to permit, at the expense of the person with a disability, reasonable modifications to existing premises if the modifications are necessary to accommodate a person with a disability to occupy the premises.
 - A landlord may, where reasonable, condition permission for a modification on the renter's agreeing to restore the premises to the condition that existed before the modification.

Reasonable Modification & Accommodation

The FHA makes it unlawful to:

- Refuse to make reasonable accommodations in rules, policies, practices or services to afford a person with a disability equal opportunity to use and enjoy a dwelling.
 - Example: Allowing a service animal (to include animals who provide emotional support) in a housing unit in a property where pets are not allowed.

Fair Housing: Accessible Design and Construction

The Fair Housing Act (as amended) requires “**covered multi-family buildings,**” designed and constructed for first occupancy after March 13, 1991, to be accessible to and usable by people with disabilities.

- Applies to “covered housing” whether or not Federal assistance is involved
- Design and construction requirements at 24 CFR 100.205(c)
- Housing built with federal funding may have additional accessibility requirements (e.g. Section 504)



Fair Housing: Accessible Design and Construction

“Covered Multi-Family Buildings” have 4 or more dwelling units:

- All public and common use areas are subject to the Act’s design and construction requirements.

“Covered Units” within a “Covered Multifamily Building”:

- If at least one elevator, 100% of the dwelling units are subject to the Act’s design & construction requirements.
- If a building has no elevator, 100% of ground floor units are subject to the Act’s design & construction requirements.
- FHA does not require fully accessible units. Rather, FHA requirements allow for easy adaptation for accessibility in individual units.

Fair Housing: Accessible Design and Construction

- Requirement 1:** Accessible building entrance on an accessible route
- Requirement 2:** Accessible common and public use areas
- Requirement 3:** Usable doors (by a person in a wheelchair)
- Requirement 4:** Accessible route into and through the dwelling unit
- Requirement 5:** Environmental controls in accessible locations:
Light switches, electrical outlets, thermostats, etc.
- Requirement 6:** Reinforced walls in bathrooms (to allow grab bars to be installed)
- Requirement 7:** Usable kitchens and bathrooms

Fair Housing: Accessible Design and Construction

Technical Resources

<https://www.fairhousingfirst.org>

<https://www.access-board.gov/>

https://equalrightscenter.org/wp-content/uploads/fha_checklist_single_page.pdf

<https://www.huduser.gov/portal/publications/destech/fairhousing.html>

HUD/DOJ Guidance

https://www.justice.gov/sites/default/files/crt/legacy/2013/05/03/joint_statement_accessibility_4-30-13.pdf

Tennessee State Law

State Law (**Tennessee Code Annotated, 4-21-601, Human Rights, Discrimination in Housing & Financing**)- prohibits discrimination in the sale, rental and financing of housing based on race, color, religion, creed, national origin, sex, familial status & disability.

- TCA 4-21-601 adds **creed** to the protected classes. A **creed** is a set of beliefs, principles, or opinions that strongly influence the way people live or work & may include, but is not limited to, one's religion.
- The **Tennessee Human Rights Commission** is the state jurisdictional agency & responsible for investigating complaints under TCA 4-21-601.

THDA Non-Discrimination in Services Policy Statement

No THDA staff person or partner, including sub-recipients of THDA's federal funds, shall engage in discriminatory practices.

A discriminatory practice occurs any time a recipient of or applicant for a benefit is denied that benefit or has some other negative action taken toward the recipient or applicant because of membership in a protected class.

THDA Non-Discrimination Contract Language

THDA contracts include standard, non-discrimination language/assurances:

- *The Contractor (sub-recipient) hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.*
- *The Contractor (sub-recipient) shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.*

THDA Non-Discrimination Contract Language

THDA contracts also include language/assurances on Equal Opportunity:

- *The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.*

Sub-recipients of THDA's HUD Funding

Sub-recipients of THDA's Federal funds provided by the Department of Housing & Urban Development (HUD) (listed below) are subject to additional requirements under the FHA.

- ✓ HOME Investment Program (HOME)
- ✓ National Housing Trust Fund Program (NHTF)
- ✓ Emergency Solutions Grant Program (ESG)
- ✓ Low Income Energy Assistance Program (LIHEAP)
- ✓ Weatherization Assistance Program (WAP)

Affirmatively Furthering Fair Housing

Section 104(b)(2) of the Housing and Community Development Act of 1974 – requires that each grantee certify that the grant will be administered in conformance with the Fair Housing Act and that the grantee will “affirmatively further fair housing.”

Activities:

- Affirmatively market federally funded housing opportunities & maintain records of those marketing activities. Be mindful of conducting outreach in traditional & minority publications and use Fair Housing logos.
- Increase housing opportunity/choice for protected classes.
- Increase access for people with disabilities through housing design or construction.

Required Recordkeeping- Sub-recipients/Grantees

Sub-recipients/Grantees of THDA's **HUD funding** must keep the following records:

- ✓ Data on the racial, ethnic & gender characteristics of:
 - Applicants, participants & beneficiaries of federally funded housing programs
 - Employees who staff activities funded by THDA's grants
- ✓ Efforts to Affirmatively Further Fair Housing & meet LEP requirements

*Sub-recipients of THDA's federal funds submit required information on non-discrimination activities (Fair Housing, Section 504 & Title VI) through the **Sub-Recipient Non-Discrimination Self Survey form**.*

Responsible Agency & Complaints

U.S. Department of Housing & Urban Development is the federal agency responsible for enforcing the Fair Housing Act.

- Federal statute of limitations for filing a complaint is 365 days.

Tennessee Human Rights Commission (THRC) investigates complaints of discrimination under the TN Human Rights Act.

- 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, THRC will intake and forward the complaint to the appropriate HUD office for investigation.

Questions....

This overview is targeted to key issues and provides general information. Housing professionals are encouraged to seek guidance from an attorney to ensure compliance with all applicable laws and regulations. These websites also may provide helpful information:

HUD Fair Housing & Equal Opportunity

https://www.hud.gov/program_offices/fair_housing_equal_opp

Tennessee Human Rights Commission

<https://www.tn.gov/humanrights/>

Tennessee Fair Housing Council

<http://www.tennfairhousing.org/>

Tennessee Housing Development Agency

<https://thda.org/about-thda/fair-housing-50>