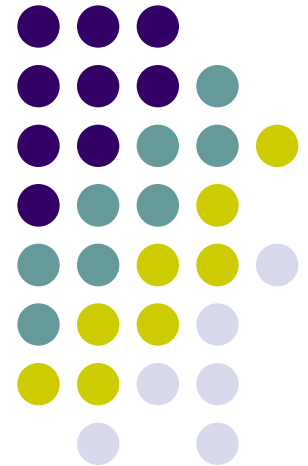
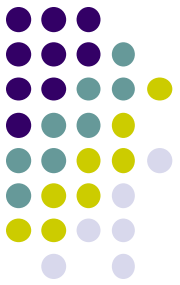


Fair Housing 101

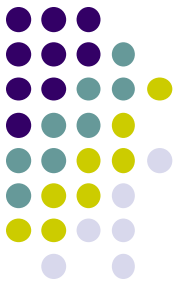
Fair Housing & Civil Rights
Conference
April 6, 2022





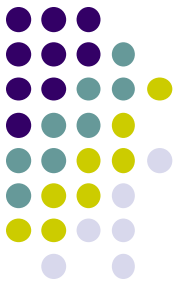
Introduction & Overview

- Basic principles of housing discrimination law
 - Who is protected?
 - What conduct is prohibited? What affirmative rights do tenants have?
 - Whose conduct is regulated?
- Theories of Liability
- Common Issues



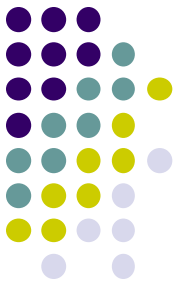
BASIC PRINCIPLES

What Constitutes Unlawful Discrimination?



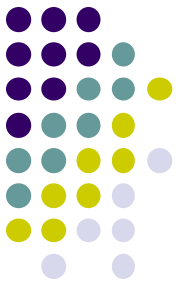
- For conduct to violate the antidiscrimination laws, there must be three things:
 - An act +
 - An injury or harm suffered +
 - Connection to a protected class

The Fair Housing Act – Title VIII of the Civil Rights Act of 1968



- Federally Protected Categories:
 - Race
 - Color
 - National Origin
 - Religion
 - Sex – incl. sexual orientation & gender identity
 - Familial Status (families with children)
 - Disability (called “handicap” by the statute)

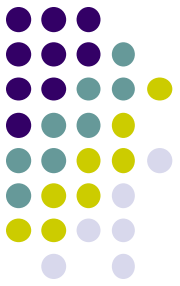
The Massachusetts Fair Housing Act, M.G.L. Chapter 151B, §1



- Additional Protected Categories in Massachusetts:
 - Marital status
 - Age
 - Sexual Orientation
 - Gender Identity and Expression
 - Military or Veteran Status
 - Ancestry
 - Receipt of Public Assistance
 - Incl. Housing Subsidies or Rental Assistance
 - Genetic Information

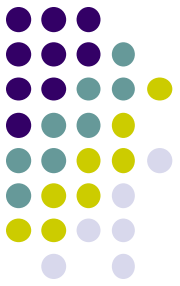
Connecticut Fair Housing Laws

Con.Gen.Stat. 46a-64c



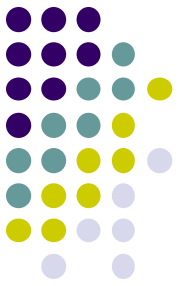
- Additional Protected Categories in Connecticut
 - Marital Status (except an unmarried unrelated man and woman)
 - Age (except minors)
 - Lawful Source of Income
 - Sexual Orientation
 - Gender Identity and Expression
 - Ancestry

New York State Executive Law 1



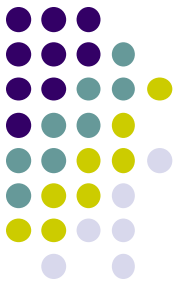
- Race
- Creed
 - *Except:* A religious institution can, under certain circumstances, limit the sale or rental of housing to a member of the same religion to further its religious principles.
- Color
- National Origin
- Sex
 - *Except:* Single-sex housing accommodations such as female- or male-only dormitories at a college are permitted.
- Age
 - *Except:* Housing accommodations restricted to people 55 years old or older are permitted;
 - *Except:* Housing discounts to people 65 years or older are permitted.

New York State Executive Law 2



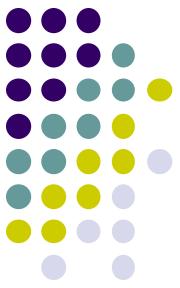
- Disability
 - *Except:* Housing discounts to people with disabilities are permitted.
- Marital Status
- Military Status
- Family Status
- Sexual Orientation

Vermont Fair Housing Laws: 9 V.S.A. § 4503



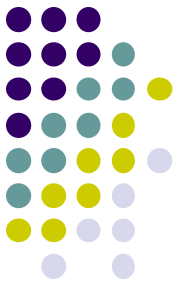
- Additional Protected categories in Vermont
 - Sexual Orientation
 - Gender Identity
 - Age
 - Marital Status
 - Receipt of Public Assistance
 - (Vermont explicitly protects against discrimination in land use decisions.)

Putting Them Together: All Protected Categories Under Federal and MA State Fair Housing Laws



- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Marital Status
- Disability
- Age
- Sexual Orientation
- Gender Identity and Expression
- Military/Veteran Status
- Ancestry
- Public Assistance
- Housing Subsidies
- Genetic Information

Conduct that Violates the Fair Housing Laws



- Refusing to rent or sell
- Imposing different terms and conditions
- Steering
- Giving false information about a unit's availability
- Discriminatory statements (including ads!)
- Refusing to grant reasonable accommodations or modifications
- Threatening, coercing or intimidating (retaliation)

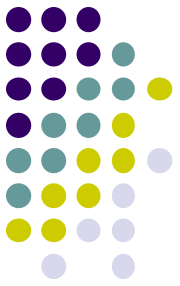




Tenant Selection Criteria

- Cannot be based on the protected categories
- Should be uniformly applied
- Criteria should be about ability to be a “good” tenant:
 - Can afford the rent, with or without assistance
 - Often measured through credit reports or tenancy histories
 - Can follow the (legal) terms of the lease, with or without assistance – e.g., maintain apartment in sanitary condition, not be unreasonably loud, not cause property damage, otherwise comply with lease and laws
 - Often measured through tenancy histories or criminal record histories

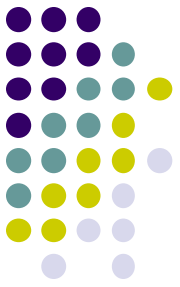
ALL tenant selection criteria must be responsive to Reasonable Accommodations considerations and concerns about selection policies that have a disproportionate impact on protected classes



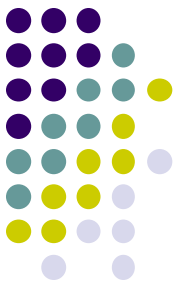
Who Must Comply?

- Anyone who has the ability to commit a prohibited act, and
- Is not subject to an exemption (e.g., small landlords)

Covered Properties (Massachusetts as an Example)

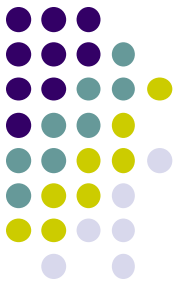


- Properties (“dwellings”) are covered unless exempted
- Federal FHA:
 - Owner-occupied 4 unit
- Massachusetts:
 - Owner-occupied two family
 - Property with three apartments or less, one of which is occupied by an elderly or infirm person for whom the presence of children would be a hardship



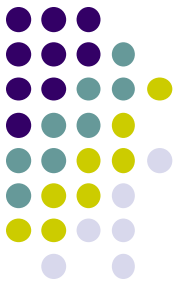
No exemption

- No exemption for race or national origin
 - a separate federal civil rights statute applies
- No exemption for receipt of public assistance, rental assistance, or housing subsidy program (MA)
- There may also be no exemption for sex, age and disability under the Mass. Equal Rights Act
- All advertisements and statements are subject to state and federal fair housing laws with no exemptions

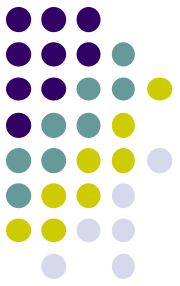


THEORIES OF LIABILITY

Disparate treatment

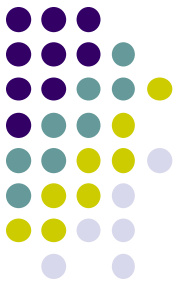


- Housing practices motivated by considerations of race, color, religion, sex, handicap, familial status, or national origin (or other protected characteristics protected by state law) are unlawful housing discrimination

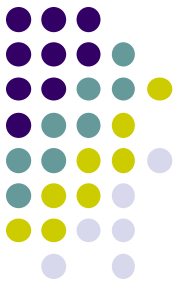


Disparate impact

- An apparently neutral decision has a disproportionate effect on members of a protected class.
 - Neutral lease terms
 - Credit policy
 - Occupancy standards
 - Screening for criminal record or tenancy history

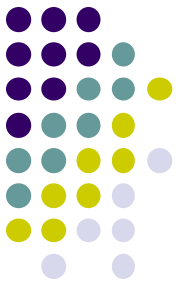


COMMON DISCRIMINATION ISSUES

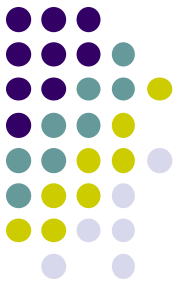


Race and National Origin Discrimination

Race and National Origin Discrimination

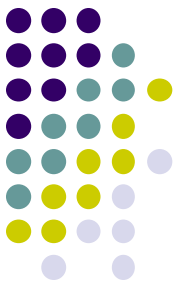


- Denials of housing
- Segregation and lending discrimination
 - Redlining and reverse redlining
 - Siting of affordable housing
 - Environmental justice issues
- Disparate impact and issues related to criminal records and eviction histories
- Threats and harassment based on national origin or race – for example, against undocumented tenants or AAPI tenants



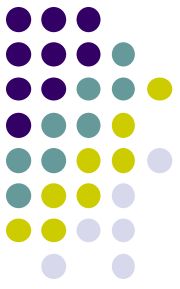
Reentry Issues

Reentry & criminal records



“Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population. Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers. **While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability).**”

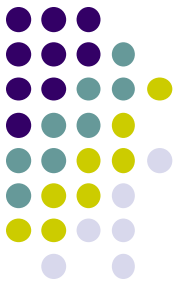
-HUD, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (Apr. 4, 2016)



Application

- Blanket bans are likely to have a impermissible disparate impact
- Intentionally treating people with similar criminal histories differently on the basis of race or national origin violates

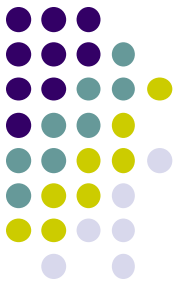
Housing and CORI



What is a CORI (“Criminal Offender Record Information”)?

- A record kept by MA of every criminal court appearance in state courts
- When charged with a crime in MA, there is a CORI even if dismissed or not guilty
- Housing Providers have different levels of access (PHAs have a higher level)
- PHAs have specific requirements as to reasons they **must** deny admission and reasons for which they **may** deny admission.

Housing and CORI



Individuals with a CORI have a right to:

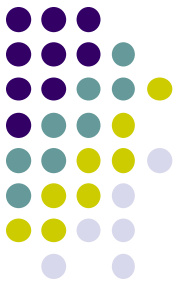
- Get a copy of their CORI, try to fix mistakes on their CORI, try to seal records

Sealing does not happen automatically – Eligibility to apply for sealing:

- After 7 years for felonies; After 3 years for misdemeanors
- Sealing waiting periods begins at release of incarceration or custody
- If no incarceration, clock begins at the conclusion of court proceedings

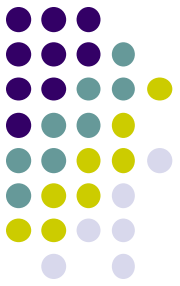
Any housing provider can get a CORI to evaluate applicants for rental or lease of housing. They can only get:

- PHAs can get more detailed information than private landlords (who can get 10 years following disposition or incarceration for felony convictions and 5 years for misdemeanors)
- Also include information on some serious crimes (murder, manslaughter, sex offenders)
- Pending criminal charges, included cases that are continued without a finding

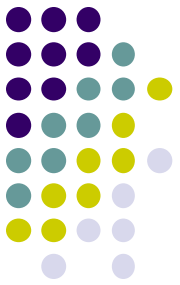


Language Access

Language Access



- Lack of meaningful language access can be a significant barrier to obtaining or maintaining housing
- Federally funded agencies are required to ensure language access – including providing interpretation and/or translation where necessary
- The denial of language access (esp. in federally assisted programs and activities) can constitute national origin discrimination



LEP Defined

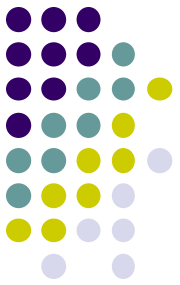
- Individuals with **Limited English Proficiency (LEP)** are defined as those “who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.” (*From: Federal Limited English Proficiency website.*)

Language Access Plan

Typical Key points...

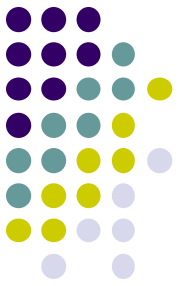
- “I-Speak” cards.
- Signage in lobbies.
- Translated vital documents or Babel notice.
- Free interpretation service for clients.
 - Children should not be asked to interpret for parents
 - Hearings – legal implications.
- TTY/Video Relay – TTY (preferred term) number on email signatures & cards.



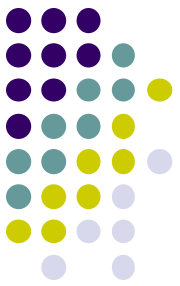


Familial Status and Lead Paint Discrimination

Familial Status Discrimination

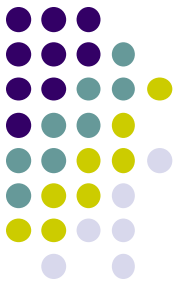


- Often comes up in three main ways:
 - Lead paint
 - Noise
 - Occupancy standards



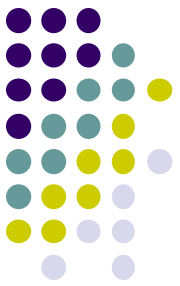
Lead Paint Discrimination

- It is illegal to refuse to rent to a family with a child under the age of 6 because they have a child under the age of 6—even if there is lead paint present in the rental unit.
- Massachusetts Lead Paint Law
 - Requires removal/covering of lead paint hazards in homes built before 1978 where children under the age of six live.
 - Lead paint hazards include loose lead paint and lead paint on windows and other surfaces accessible to children.
 - Owners are responsible for complying with the law, including owners of rental property and those living in their own single family home.
 - Financial help is available through tax credits, grants and loans.
- Applies even to two-family, owner-occupied building!



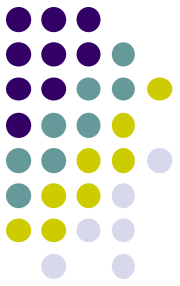
Noise Issues

- Denying a family with children an apartment because of concerns they will be “too noisy” or cause damage to the apartment
- Evicting a family for noise complaints where other tenants are not evicted for noise or afforded opportunities to cure

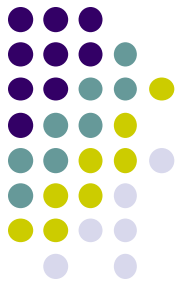


Occupancy Standards

- Occupancy standards are sometimes raised as a reason to deny a family with children (e.g., “I don’t think this apartment is ‘big enough’ for you”)
- Not usually accurate. Occupancy Standards (105 CMR 410.400) require:
 - 150 sq ft of floor space for 1st occupant + 100 sq ft for each additional.
 - Rooms used for sleeping purposes shall contain at least 70 square feet for 1st occupant and 50 square feet for each additional occupant



Section 8/Housing Subsidy Discrimination



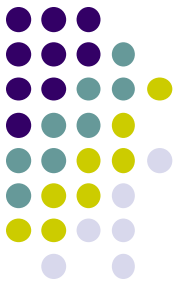
Section 8 and Public Assistance Discrimination

- It is illegal to refuse to rent to someone because they receive Section 8 housing assistance - **No exceptions!**
- It is illegal to state a discriminatory preference against someone participating in a housing subsidy program
 - i.e. “Section 8 need not apply”
 - Particular agency as special case
- It is illegal to refuse to rent to someone because of their receipt of public assistance
 - i.e. receipt of social security benefits
- It is **NOT** illegal to refuse to rent to someone because, regardless of source, his or her income (including rental subsidy such as Section 8) is not enough to afford the rent

Pilot Program to Address SOI Discrimination in Massachusetts

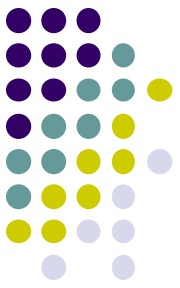


- New program funded by DHCD and run by Massachusetts fair housing agencies (Mass. Fair Housing Project, Community Legal Aid, Suffolk University, and SouthCoast Fair Housing)
- Goals
 - Increase awareness that voucher discrimination is illegal in Massachusetts
 - Provide legal advice and representation to tenants facing housing discrimination

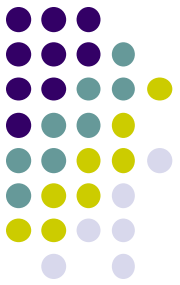


Elders and Fair Housing

Senior or Retirement Housing

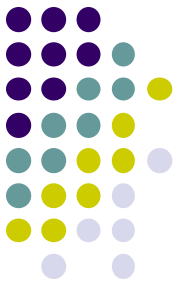


- Age is a protected category under State Law
 - It does not protect minors (18 or under)
- According to Massachusetts General Laws c.151B s.4:
 - Housing intended for persons 55 and over or 62 and over must register once every two years with the Department of Housing and Community Development (DHCD)
 - Housing intended for persons 55 and over or 62 and over shall comply with Federal law – Housing for Older Persons Act of 1995 (HOPA) 42 U.S.C. 3601
- Discrimination against the elderly based on perceptions re their ability to “live independently”



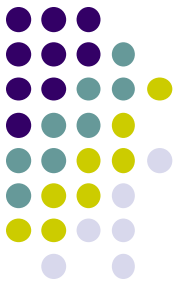
Disability Discrimination

Disability – Who is covered?



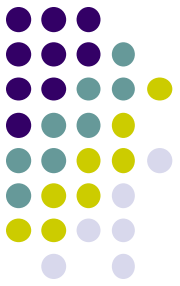
- Persons who have a **physical or mental impairment that substantially limits one or more major life activities**
 - Caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working...
- Persons who have a **history** of such an impairment; or
- Persons who are **regarded as** having such an impairment.

When might a tenant not be entitled to an accommodation?

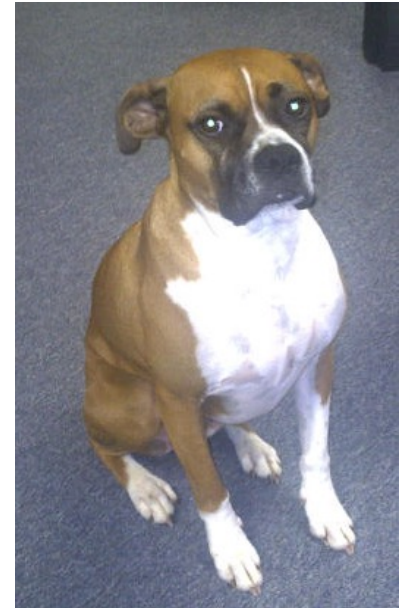


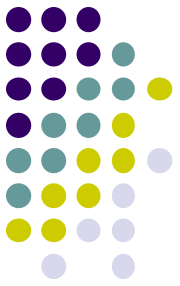
- If a tenant does not have a disability
(Note: definition of person with disability excludes “current, illegal use of or addiction to a controlled substance”)
- If a tenant does not provide verification of disability upon request (and the disability is not readily apparent)
- If the request is not related to the disability
- If the request is not “reasonable”:
 - Would impose Undue Financial or Administrative Burden
 - Would result in a Fundamental Alteration
 - If tenant poses a Direct Threat (and no accommodation can eliminate or significantly reduce threat)

Reasonable Accommodations



- A change in rules, policies, practices, or services to afford equal opportunity to use and enjoy dwelling
- Housing providers **must** make reasonable accommodations for persons with disabilities **when** requested at expense of landlord
 - i.e. designated parking spots, assistance animal, change in rent date, preserve tenancy after lease violation where reason for violation is addressed, or transfer to a different unit
- Not required to make changes that would fundamentally alter the program or create undue financial and administrative burden
- ***Can be requested at any time – in any way or format***



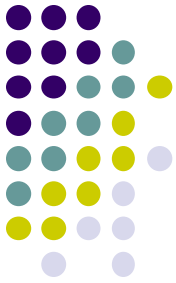


Reasonable Modifications



- Housing providers **must** allow persons with disabilities to make reasonable modifications
- Structural modifications are made to allow persons with disabilities the full enjoyment of the housing and related facilities
 - i.e. install a ramp into a building, lower entry threshold of a unit, install grab bars in bathroom
- Expense on tenant unless it is publicly funded housing or a building w/ 10 or more units, then landlord must pay

Documentation can be requested if the disability isn't obvious... But the landlord can't require the use of any particular form.



Reasonable Accommodation/Modification Disability Verification Form

Name: _____
Address: _____
Phone: _____

The person named above has a disability defined as a **physical or mental impairment** that **substantially limits** one or more **major life activities**. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, operation of muscular skeletal system, seeing, learning working, breathing, speaking and hearing.

The impairment is:

- Physical (specify): _____
 Mental (specify): _____
 Both (specify): _____

The major life activity substantially limited is: *(check all that apply)*

- Caring for oneself Seeing Breathing
 Performing manual tasks Learning Speaking
 Walking Working Hearing
 Operation of muscular skeletal system Other *(please specify)* _____

In my opinion, allowing _____ to _____
Name Accommodation/Modification to be granted
_____ is a reasonable accommodation/modification of her/his

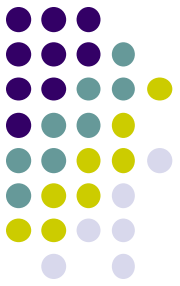
disability that provides her/him with an equal opportunity to use and enjoy her/his housing

because: _____

Signed: _____

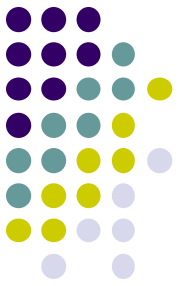
Printed Name: _____ Date: _____

The Interactive Process:

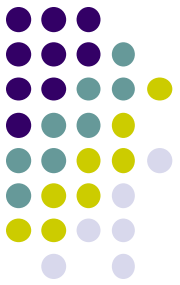


- Once the request for a reasonable accommodation has been made:
 - Would making that RA place “an undue financial or administrative burden” on the party from whom it is being requested?
 - If housing provider believes it would: should not simply deny! Initiate an **Interactive Process** to determine what, if any, accommodation might be more realistically provided.
 - **Clarify:** What are the **actual** difficulties with the RA that is being requested?
 - What **alternative accommodations** might **meet the needs** of the individual requesting the RA?
 - Commitment to **collaboration, good faith and creativity.**

Special Situation for Massachusetts: Marijuana – still in transition

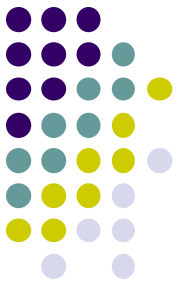


- Recreational marijuana.
 - Subject to no smoking rules
 - Federal vs. Massachusetts state regulations (**Federal/Section 8 = termination**)
- Medical marijuana.
 - Federal vs. Mass. state regulations (**Federal/Section 8 = termination**)
 - Reasonable accommodations may be available but complicated situation given difference in federal and state law.
 - May need to consider alternatives to smoking – such as a nebulizer or edibles.



Sex Discrimination

Forms of Sex Discrimination



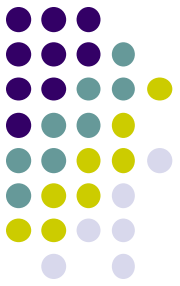
- Sexual harassment by landlords and/or their agents
- Evictions due to domestic violence
- Discrimination based on sexual orientation or gender identity – “because of sex” (Bostock v. Clayton County; EO 13988)

Housing Rights for Victims of Domestic Violence



- Domestic violence includes physical, verbal, emotional, psychological, financial, & sexual abuse between members of a family or household, as well as between individuals involved in an intimate relationship.
- **Federal fair housing laws & state anti-discrimination laws:**
 - Grant some protection to victims of domestic violence, stalking, dating violence, or sexual assault.
- **Massachusetts Law MGL c 186 s 23-29:**
 - Specific protections to individuals who are victims of domestic violence, rape, sexual assault and stalking, including:
 - right to break a lease or have locks changed (with documentation); and
 - to not be evicted or refused as an applicant to an apartment based on use of their rights.

VAWA



- VAWA creates affirmative rights and protections for
 - Survivors of domestic violence, dating violence, sexual assault and stalking regardless of sex, gender identity, or sexual orientation
 - Who live in federally funded subsidized housing

Housing Protections for victims of domestic violence, dating violence, sexual assault, and stalking: 34 U.S.C. § 12491

HUD regulations on VAWA's housing protections: 24 C.F.R. § § 5.2001-5.2011



Core VAWA Protections

- People protected by VAWA:
 - Cannot be denied of admission
 - Cannot be denied assistance
 - Cannot be terminated from participation in a housing assistance program
 - Cannot be evicted from housing

Housing Protections for victims of domestic violence, dating violence, sexual assault, and stalking

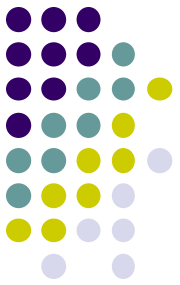
34 U.S.C.A. § 12491(b)(1)

Sexual Orientation & Gender Identity



- 2012 – Equal Access Rule
- January 20, 2021 – EO 13988:

“Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. . . . People should be able to . . . secure a roof over their heads without being subjected to sex discrimination. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.”
- February 11, 2021 – HUD memo – effectively immediately, FHEO to accept complaints of gender identity or sexual orientation discrimination as falling under “sex” discrimination

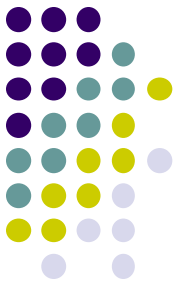


Harassment / Hostile Housing Environment

Harassment & hostile housing environments

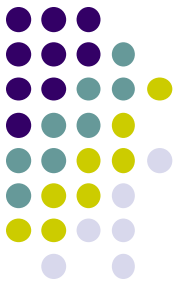


- Harassment can occur based on any protected class (e.g., sexual harassment, racial harassment, disability-based harassment)
- Harassment may be perpetrated by:
 - Housing provider
 - Housing provider's agents (e.g., maintenance staff)
 - Other tenants
- Landlords may have a duty to affirmatively act to protect tenants against known harassment
 - Tenant notify landlord
 - Landlord take action to “correct”



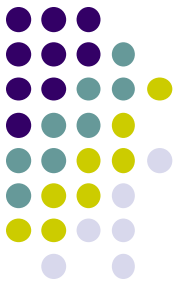
Affirmatively Furthering Fair Housing (AFFH)

Affirmatively Furthering Fair Housing



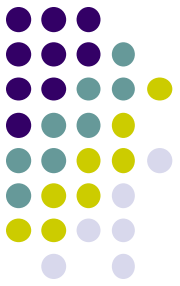
- One of the two main mandates to HUD of the FHA: to end illegal housing discrimination and to affirmatively further fair housing.
- Aim is to address historical patterns of segregation:
“...taking ***proactive steps beyond simply combating discrimination*** to foster more inclusive communities and access for all persons protected by the fair housing act...”

AFFH & HUD – Brief Historical Overview

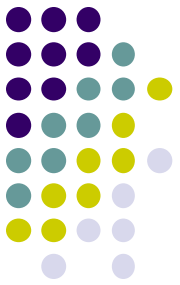


- 1969 – Romney creates program linking federal funding to development of affordable housing – abandoned in 1970
- 1970s-1980s – limited enforcement; HUD supported PHAs facing lawsuits for furthering segregation
- 1980s – Certification of AFFH required by CDBG statute
- 1990s – Consolidated Plan & AI created
- 2015 – AFFH regulation
- 2020 – “Preserving Neighborhood and Community Choice” (PCNC)”
- 2021 – AFFH IFR

AFFH, Now



- HUD grantees required to certify that they will affirmatively further fair housing
 - Defined as “taking meaningful actions to address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.”
- HUD grantees may engage in fair housing planning to support their AFFH certifications, but no specific form of planning required



Thank you

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