

FAIR HOUSING: A GUIDE FOR OWNERS AND MANAGERS OF RENTAL PROPERTY



**METROPOLITAN MILWAUKEE FAIR HOUSING COUNCIL
2024**



INTRODUCTION

One of the most basic freedoms protected by the laws of the United States is a person's right to choose where to live. Unfortunately, many people are denied the housing of their choice for reasons that have nothing to do with their ability to pay rent or be good tenants.

To protect everyone's right to housing choice, the federal government, the State of Wisconsin, and many cities and counties have enacted fair housing laws that prohibit housing discrimination. It is critical for housing providers to understand their responsibilities under these laws in order to maintain fair housing compliance.

This Guide has been developed to provide a general overview of fair housing laws and to provide examples of situations where fair housing issues may arise. It is not intended to recommend specific policies, actions, or give legal advice, but to provide a potential framework that housing providers may use to develop policies and practices that comply with fair housing laws.

Fair housing laws apply to many parts of the housing market, including rental housing, home sales, homeowner's insurance, mortgage lending, the home appraisal industry, and construction of new housing. This Guide focuses on fair housing issues in the rental housing market.

The information in this Guide is relevant to anyone in the business of providing rental housing – whether they own a single rental unit or manage a portfolio of properties. These laws apply to market-rate units owned by private parties, subsidized or “public” housing units, transitional and emergency housing, mobile home parks, assisted living facilities, and other types of specialized rental housing.

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All housing providers must comply with fair housing laws. Many housing providers authorize agents – such as property management companies, individual managers, caretakers, and/or maintenance staff – to conduct some or all of their day-to-day rental management. However, responsibility for complying with the law cannot be delegated. Housing providers may be legally liable for both their own actions and the actions of any agents acting on their behalf. Agents are responsible for their own actions – even when they are following directives from the housing provider.

Fair housing laws, and interpretations of those laws, can change frequently. The information in this Guide is current as of December 2024. Rental housing providers should make continuous efforts to obtain up-to-date information and remain informed about the fair housing laws, and should consult with their own attorney for guidance about how these laws apply to their specific situation.

This Guide does not include information about landlord-tenant statutes, as this is a separate area of law in Wisconsin. For more information about landlord-tenant law, contact the Wisconsin Department of Agriculture, Trade, and Consumer Protection (see the Additional Resources section at the end of this booklet).

This Guide is intended for general informational purposes only and does not constitute legal advice. To ensure that your particular business practices comply with the law, consult an attorney.

FAIR HOUSING LAWS

Federal, state, and local fair housing laws define the activities that constitute illegal housing discrimination.

This Guide outlines the provisions of federal and state fair housing laws. In addition, this Guide describes local housing fair housing ordinances within the Metropolitan Milwaukee Fair Housing Council's primary service area, which currently consists of Brown, Calumet, Winnebago, Outagamie, Dane, Milwaukee, Waukesha, Ozaukee, and Washington Counties.



While many of the requirements of these laws are the same or similar, there are some important variations between them.

Housing providers must comply with all of the laws that are relevant to their geographic location and to the types of housing they own and/or operate.

If you conduct business in areas of Wisconsin outside of the nine counties listed above, be sure to familiarize yourself with any applicable local fair housing ordinances.

Each law described in this Guide includes specific **protected classes** - groups or categories of people who are protected under these laws. All of us are members of multiple protected classes.

In addition, each of these laws delineate **prohibited practices** - actions that are illegal when they are based, even in part, on someone's membership in a protected class.

Federal Fair Housing Laws

There are two federal fair housing laws that apply to the nation's rental housing market.

The federal **Civil Rights Act of 1866 (42 U.S.C. 1982)** states that "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." Under the Civil Rights Act of 1866, housing discrimination on the bases of race and/or skin color is prohibited.

The **Fair Housing Act of 1968 (42 USC 3601 et seq.)** prohibits housing discrimination on the bases listed below::

Race – A person's race or the race of the people with whom a person associates (such as friends, family members, or visitors).

Color – A person's skin color.

Sex – A person's sex, gender identity, or sexual orientation. Harassment or intimidation based on a person's sex, gender identity, or sexual orientation are also prohibited.

National Origin – The country of one's birth and/or the nationality of one's ancestors.

Religion – A person's religious beliefs or denominational affiliation.

Disability/Handicap* – A physical or mental impairment that substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment. Examples of disabilities may include, but are not limited to: degenerative diseases, autoimmune illnesses, limb differences, chronic mental illnesses and psychiatric disabilities, cognitive and developmental disabilities, being HIV positive or having AIDS, brain injuries, and being in recovery from alcohol or substance use disorder.

Familial Status – The presence of children in a household. The federal Fair Housing Act protects households with minor children, households in which someone is pregnant, and households in the process of adopting or obtaining legal custody of children. Housing providers may be able to set occupancy standards for their rental units – policies that limit how many people can live in a unit of a certain size – but these standards cannot be overly restrictive or discriminate against households with children. For more information about creating reasonable occupancy standards for specific rental units, consult an attorney.



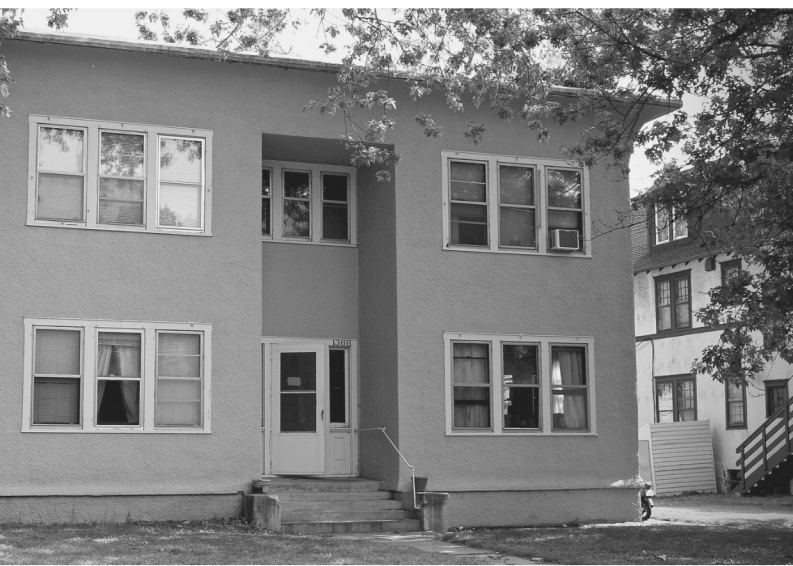
*The federal Fair Housing Act calls this class "handicap." Other fair housing laws use the term "disability."

Wisconsin's Fair Housing Law

The **Wisconsin Open Housing Law** includes all federal protections in the previous section, plus the following additional protected classes:

Age – Persons 18 years of age and older.

Ancestry – The country of one's birth and/or the nationality of one's ancestors.



Family Status – Household composition, including minor children and adult family members related by blood, marriage, or adoption. Households in which a person is pregnant, or in the process of adopting or obtaining legal custody of children, are also protected. Families without minor children – such as two adult relatives residing together – are protected.

Marital Status – Whether a person is married, single, divorced, widowed, or separated.

Lawful Source of Income – A person's legal means of income, including (but not limited to) subsidized income such as Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), unemployment compensation, FoodShare, child support payments, and other legally derived forms of income.

Sexual Orientation – Having an orientation towards heterosexuality, homosexuality, of bisexuality, or having a history of being so identified.

Domestic Abuse, Sexual Assault, and Stalking Victims – Persons who are or have been victims of domestic abuse, sexual assault, or stalking.

Local Fair Housing Ordinances

The **City of Madison Equal Opportunities Ordinance** and **Dane County Fair Housing Ordinance** include these additional protected classes:

Receipt of Rental Assistance - Participants in the Housing Choice Voucher Program (Section 8) or persons who receive other types of rental assistance.

Military Discharge Status – Type of military discharge, whether honorable, general, dishonorable, administrative, or otherwise, held by a former member of the United States military. Dane County's Fair Housing Ordinance also includes protections for persons with active-duty status.

Political Beliefs – A person's opinions concerning the social, economic, and governmental structure of society and its institutions.

Physical Appearance – The outward appearance of any person, irrespective of sex, with regard to hairstyle, beards, manner of dress, weight, height, facial features, or other aspects of appearance.



Student Status – Dane County’s Fair Housing Ordinance defines this category as having or not having standing as an enrollee of a public or private high school, college, university, technical college, accredited trade school, or apprenticeship program. The City of Madison Equal Opportunities Ordinance protects persons enrolled in a public or private high school, college, university, technical college, accredited trade school, or apprenticeship program.

Domestic Partnership – Two adults in a relationship of mutual support, who occupy the same dwelling as a single housekeeping unit, and whose relationship is of a permanent domestic character.

Tenant Union Association – Persons who form or are associated with a tenant union.

Gender Identity – Identifying emotionally or psychologically with the sex other than one’s biological or legal sex at birth; presenting oneself to the public as a member of the biological sex that was not one’s biological or legal sex at birth; being physically and/or behaviorally androgynous.

Genetic Identity (City of Madison only) – Genetic information unique to the individual, including information about genetic tests.

Citizenship Status (City of Madison only) – The immigration status or citizenship of any person.

Homelessness (City of Madison only) – The status of lacking housing, including having a shelter or transitional housing facility as a primary residence.

Nonreligion (City of Madison only) - Atheism, agnosticism, or other disbelief or lack of belief in the existence of God or gods.



Unemployment (City of Madison only) - The status of not having a job or employment.

Status as a Building Code Complainant (City of Madison only) - Persons who have complained to their housing provider, the Building Inspection Division of the City of Madison Department of Planning and Community and Economic Development, Public Health Madison and Dane County, or to any state or local investigatory or enforcement agency within the last six months.



The **City of Milwaukee Equal Rights Ordinance** and **Milwaukee County Fair Housing Ordinance** include these additional protected classes:

Receipt of Rental or Housing Assistance (Milwaukee County only) - Any form of financial contribution from a third party, including but not limited to housing choice vouchers, commonly known as Section 8.

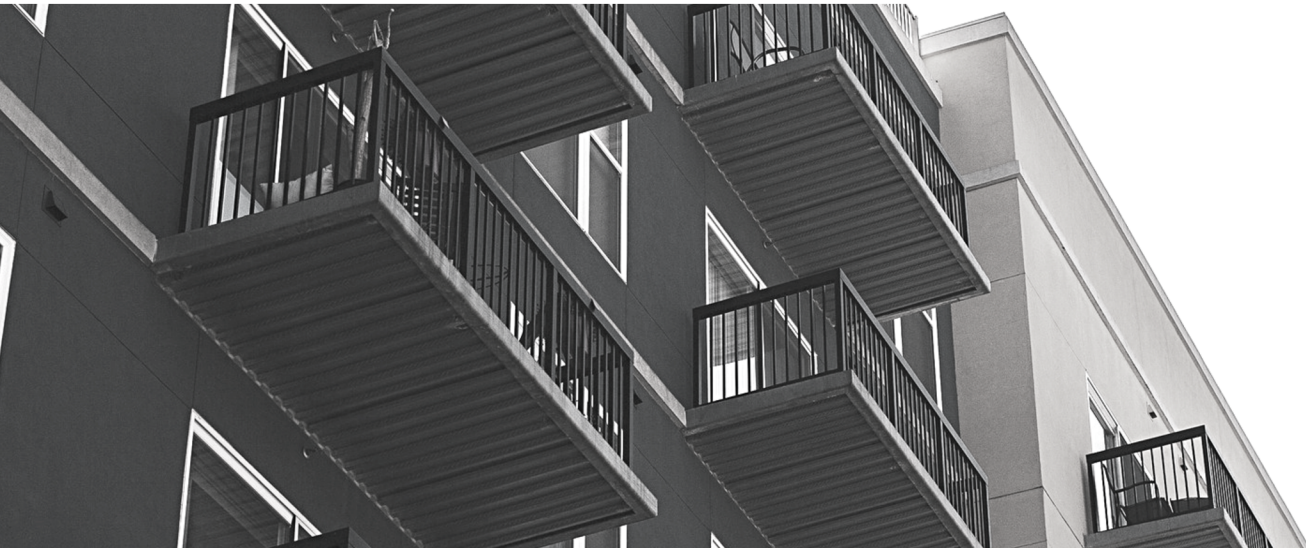
Domestic Partnership - Having status in a domestic partnership.

Genetic Identity (City of Milwaukee only) - Genetic information unique to an individual, including results of genetic tests.

Gender Identity or Expression – A gender identity, appearance, expression, or behavior of an individual, regardless of the individual’s legal or biological sex at birth. This includes external characteristics and behaviors socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns, and social interactions.

Homelessness (City of Milwaukee only) – The status of lacking housing, including being a resident of transitional housing or a supervised temporary living facility.

Military Service (City of Milwaukee only) – Past or present membership in the military.



The Cities of **Appleton, Oshkosh,** and **De Pere** have this additional protected class in their fair housing ordinances:

Gender Identity/Gender Expression – A person’s gender-related self-identity, appearance, expression, or behavior, regardless of the person’s assigned sex at birth.

The **City of Green Bay** has these additional protected classes in its fair housing ordinance:

Gender Identity – A person's internal sense of their own gender, which may be the same as or different from their assigned sex at birth.

Gender Expression - A person's external manifestations of gender, which may be expressed through name, pronouns, clothing, haircut, behavior, voice, body characteristics, or other means.

Gender Nonconformity - Individuals who do not conform to traditional expectations of their assigned sex at birth and/or whose gender expression does not fit neatly into a conventional gender category.

Transgender Status - Individuals whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth.

Past or Present Military Service – Current or past service in a branch of the military.



Prohibited Practices

It is important to understand the type of conduct that is prohibited by fair housing laws. Federal, state, and local fair housing laws prohibit certain actions or practices if they are based – even in part – on a person’s membership in a protected class. The following is a partial list of prohibited practices under the fair housing laws:

1. Refusing to rent housing or negotiate terms of rental. For example, it is illegal for a housing provider to refuse to rent to someone because of that person’s race or religion. Similarly, refusing to give someone the opportunity to submit a rental application because they have a disability may violate fair housing law.

2. Refusing to allow inspection of housing. Refusing to show an apartment to a family because they are Muslim is an example of this prohibited practice.

3. Misrepresenting the availability of housing. It is unlawful to provide untruthful information about availability. For example, telling a prospective tenant that an apartment is no longer available, when in fact it is still on the market, may be a violation of the law.

4. Applying different terms or conditions for rental. Housing providers cannot apply different rental criteria, charge higher fees, require more stringent lease terms, or enforce rules differently based on someone’s membership in a protected class. Potential fair housing violations of this nature may include charging a higher security deposit for a tenant who uses a wheelchair, using more stringent eligibility criteria for applicants of color than for white applicants, or enforcing rules about use of common areas more strictly for families with children than for households without children.

5. Advertising or making any statement that indicates a preference, limitation, or discrimination based on a protected class. The fair housing laws apply to multiple types of advertising, including online advertising, posts on bulletin boards or similar community spaces, outdoor signage (such as ‘for rent’ signs), and print publications such as newspapers, organizational newsletters, and advertising circulars. The prohibition against discriminatory advertising may also apply to word-of-mouth advertising and other verbal statements, as well as to standard rental documents like leases, rental applications, or tenant handbooks.

6. Denying or providing less favorable services and facilities. Examples of this prohibited practice could include forbidding someone with a developmental disability from using the laundry room in an apartment building, or refusing to make needed repairs in units occupied by tenants born outside the United States.

7. Engaging in harassment, coercion, or intimidation. It is illegal to verbally harass tenants based on their race, religion, or other protected class membership, or to employ other forms of harassment, such as making repeated, spurious complaints about a tenant. It is also unlawful to engage in harassment based on sex, gender identity, or sexual orientation. Prohibited sexual harassment includes conduct that creates a hostile environment for the victim (for example, as a result of repeated sexual comments or unwanted “sexting”) or making demands for sexual favors in exchange for something of value (such as completion of repairs in a tenant’s unit).

8. Failing to take corrective action regarding complaints about harassment perpetrated by other tenants or by agents of the housing provider. Housing providers have a responsibility to prevent or stop tenants from being harassed by other tenants or employees when they are aware of the harassment. For example, if a property manager learns that one tenant is being harassed by a neighboring tenant due to their race, the manager has a responsibility to act to protect the fair housing rights of the person being harassed.

9. Steering, which involves restricting or attempting to restrict, by word or action, an individual's housing choices. For instance, it may be unlawful for an apartment manager to direct people of color only to units that have undesirable views of a parking lot or busy highway, while affording white individuals the opportunity to rent units that have attractive views over a park or lake.

10. Segregation by floor, building, development, or community based on membership in a protected class. For example, a housing provider may not limit families with children to units on the first floor of a building, or only to certain buildings within an apartment complex.

11. Refusing to renew a lease or causing the eviction of a tenant.

For instance, it may be unlawful to evict or non-renew a tenant's lease because that tenant has friends of another race come to visit, or because their gender expression changed during their tenancy.

12. Failing to design and construct new multi-family housing built since 1991 in an accessible manner.

Newer multi-family housing developments are required to comply with guidelines regarding physical accessibility. For more information about these guidelines, see the Additional Resources section of this Guide.



13. Refusing to allow reasonable modifications or accommodations for persons with disabilities. This prohibited practice is described in greater detail in the following section.

Additional Protections for Persons with Disabilities

People with disabilities have the right to request and obtain **reasonable accommodations** and **reasonable modifications** in housing situations.

Reasonable accommodations are exceptions or changes to a housing provider's normal rules, policies, or procedures that will allow an individual with a disability an equal opportunity to use and enjoy their home. For example, exceptions to tenant parking policies are a common type of reasonable accommodation. If a housing provider has a policy of not assigning parking spaces, but a tenant with a mobility disability needs a reserved parking spot close to their unit, the housing provider may need to make a reasonable accommodation to that policy to grant the request.

Housing providers may also have to make exceptions to existing pet policies to allow a tenant with a disability to live with a **service or assistance animal** (sometimes called an emotional support animal). Service and assistance animals provide necessary support to individuals with disabilities; they are not pets, and therefore should not be subject to rules and policies regarding pets. Housing providers may have to make exceptions to "no pet" rules for service or assistance animals and waive any pet fees, deposits, or surcharges for these animals.



Reasonable modifications are changes to the physical aspects of housing. As with reasonable accommodations, physical modifications to housing can enable housing consumers with disabilities equal opportunities to use and enjoy the homes they rent. Common examples of reasonable modifications include adding grab bars in a bathroom, placing a handrail or ramp over front steps, installing a smoke alarm that uses a flashing light instead of an audio signal, or widening a doorway. Whether the tenant or the housing provider is responsible for any associated costs will depend on the type of housing involved and the nature of the modification.



When assessing a housing consumer's request for a reasonable accommodation or modification, keep these three key points in mind:

1. The tenant or a member of their household must have a **disability**, and their need for the accommodation or modification must be related to the disability.
2. The requested accommodation or modification must be **necessary** to help the tenant have full use and enjoyment of the premises.
3. The request must be a **reasonable** one. What is reasonable is highly dependent on the specifics of a situation, and therefore requests for accommodation or modifications must be evaluated on an individual basis.

When a housing consumer's disability and/or their need for a reasonable accommodation or modification are not readily apparent, housing providers may be able to request **additional verification of the person's disability and their need** for the requested accommodation or modification.

For more information about this process, consult an attorney.



Exemptions to Fair Housing Laws

Local, state, and federal fair housing laws cover most types of rental housing. However, there are some limited exemptions. These include, in part:

1. Housing for older persons.

Housing for older persons is only exempt from the age and familial status provisions of fair housing laws. There are only three types of housing that qualify for this exemption. First, some public and subsidized housing may be specifically operated to serve elderly persons. Second, housing developments which are solely occupied by persons 62 and older can be exempt. Third, developments in which 80% of units are occupied by at least one tenant 55 years of age or older can be exempt.

2. Owner-occupied small buildings.

The federal Fair Housing Act exempts owner-occupied buildings of four or fewer units; however, the Wisconsin Open Housing Law does not include this exemption. Therefore, owner-occupied buildings in Wisconsin are subject to all the same requirements as other buildings.

3. Shared living spaces and roommate situations.

Under the Wisconsin Open Housing Law, individuals looking for a roommate or roommates may exercise whatever choices they desire when selecting a person with whom they wish to reside. However, when advertising for a roommate, the only protected class preference that an advertisement may indicate is for a roommate of the same sex.

Other limited exemptions may apply to some types of housing; if you have questions about whether the housing you own or operate qualifies for these exemptions, contact an attorney.



Enforcement of Fair Housing Laws

An individual who believes they have been discriminated against has the right to seek a legal remedy through an administrative (government) agency and/or the courts. Complainants may seek various forms of relief in the enforcement process.

The federal administrative agency that accepts and processes housing discrimination complaints is the U.S. Department of Housing and Urban Development (HUD), sometimes with the involvement of the U.S. Department of Justice. In Wisconsin, a person alleging a violation of the Wisconsin Open Housing Law may file a complaint with the Wisconsin Equal Rights Division, a process that may involve the Wisconsin Department of Justice in some instances. A person has one year from the act of discrimination to file administrative complaints with HUD or the Wisconsin Equal Rights Division.

When complainants prevail in the administrative process, housing providers can be required to provide various types of relief to the complainant, such as monetary damages and attorney fees. In some cases, complainants may have the opportunity to rent the property they were previously denied. The housing provider may also be required to provide affirmative relief.

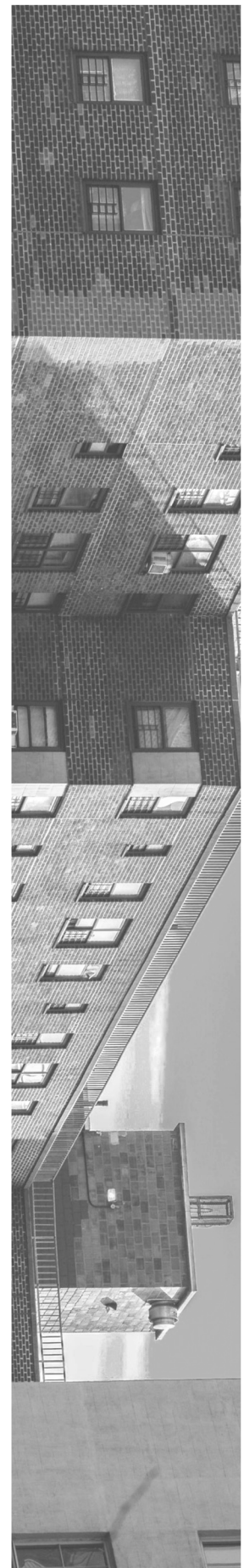


Examples of affirmative relief may include attending fair housing training, using fair housing logos and statements in advertising and on business documents, and affirmatively marketing property to a broad cross-section of the market. The respondent could also be required to pay fines, called civil forfeitures, directly to the government.

People who allege discrimination based on a city or county fair housing ordinance may have the option of filing complaints with city or county administrative enforcement bodies. For example, housing consumers who have experienced a violation of the City of Madison Equal Opportunities Ordinance may file a complaint with the Madison Department of Civil Rights. In the City of Milwaukee, housing consumers may file complaints of discrimination with the Milwaukee Equal Rights Commission. For more information about city and county administrative agencies in Wisconsin, contact the Fair Housing Council, and review any local fair housing ordinances applicable to locations of interest.

In addition to filing complaints with administrative agencies, people who have experienced discrimination may file lawsuits in state or federal court. If someone is alleging a violation of the Wisconsin Open Housing Law, they have up to one year to pursue the complaint in court. Under the federal Fair Housing Act, a lawsuit may be filed up to two years after the alleged act of discrimination. A lawsuit alleging a violation of the Civil Rights Act of 1866 may be filed up to three years after the act of discrimination in some cases.

When complainants prevail in housing discrimination lawsuits, the court may require the housing provider to pay actual and punitive damages to the complainant, including relief for economic harm, lost housing opportunities, and compensation for humiliation and emotional distress. The court may also award the complainant the opportunity to rent the property if it is still available, and may require the housing provider to pay the complainant's attorney fees and costs.



Fair Rental Management in Action

As noted in the Introduction, this Guide is not intended to recommend specific policies or give legal advice, but to provide a potential framework that housing providers may use to develop their own policies and practices for fair housing compliance.

We invite housing providers to consider the following suggestions as they engage in that process.

- **Standardizing rules, policies, and procedures.**

Clarity and consistency are helpful. Many housing providers find it is easier to provide equal housing opportunities by implementing standardized business practices. Consider proactive standardization of policies related to overnight guests, quiet hours, screening criteria, termination of tenancy, due dates for monthly rent, application of late fees, reasonable occupancy standards, use of common areas, responses to requests for reasonable accommodations and modifications, and/or other scenarios where a clear and cohesive approach may be helpful. Defining standardized practices makes it easier to ensure that prospective and current tenants who interact with housing providers and their staff will receive uniform, consistent treatment.

- **Formalizing business practices in writing.**

Writing down standard rules, policies, and procedures can make it easier to share that information with housing consumers and avoid potential misunderstandings. Further, such written documents can be used to train staff and communicate expectations to coworkers and employees who work directly with tenants. When developing written rules, policies, and procedures, it is always advisable to work with an attorney to ensure that all practices comply with all relevant laws.

*Bear in mind, however, that exceptions or changes to rent due dates, late fees, and other rules and practices may be made as a reasonable accommodation for a tenant with a disability.

- **Affirmatively marketing available properties.**

Most housing providers strive to reach the largest number of qualified applicants for their available units that their advertising budget will allow. It may be helpful to evaluate whether current advertising strategy reaches a broad cross-section of the local housing market. Housing providers may contact their local housing authority to learn about opportunities to rent to tenants who use Housing Choice Vouchers and/or partner with local social services agencies that assist housing consumers in finding housing.

- **Receiving fair housing training on a regular basis.**

Fair housing laws, and interpretations of those laws, change over time. Obtaining regular training can help housing providers stay up to date. Furthermore, housing providers should ensure that their employees and agents receive fair housing training - including property owners and managers, maintenance personnel, leasing agents, and administrative staff - as any of these parties may be legally liable for violating fair housing laws. Contact the Fair Housing Council for information about training opportunities.



Additional Resources

For information about fair housing laws and enforcement:

Metropolitan Milwaukee Fair Housing Council
www.fairhousingwisconsin.com

U.S. Department of Housing and Urban Development
www.hud.gov

Wisconsin Equal Rights Division
<https://dwd.wisconsin.gov/er/>

City of Madison Department of Civil Rights
<https://www.cityofmadison.com/civil-rights>

City of Milwaukee Equal Rights Commission
<https://city.milwaukee.gov/ERC>

For information on physical accessibility of housing:

Fair Housing Accessibility FIRST
<https://www.fairhousingfirst.org/>

For information on landlord-tenant laws:

Wisconsin Department of Agriculture, Trade and Consumer Protection
<https://datcp.wi.gov/Pages/Homepage.aspx>

Tenant Resource Center
<https://www.tenantresourcecenter.org/>

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Metropolitan Milwaukee Fair Housing Council
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The purpose of the Metropolitan Milwaukee Fair Housing Council is to promote fair housing throughout the State of Wisconsin by combating illegal housing discrimination and by creating and maintaining racially and economically integrated housing patterns.

In addition to its Milwaukee office, the Metropolitan Milwaukee Fair Housing Council operates two satellite offices, the Fair Housing Center of Greater Madison and the Fair Housing Center of Northeast Wisconsin.

