

# FAIR HOUSING

## Below are some of the most commonly asked questions regarding fair housing laws:

### How selective may I be of my tenants?

You may be very selective so long as you use the same set of standards or requirements for all prospective tenants. These standards cannot be based upon race, color, sex, national origin, religion, disability or familial status. South Dakota state law and Sioux Falls city ordinance protect ancestry and creed, as well.

### What should I look for in selecting a tenant?

The most important things for you to determine are whether the tenant will be able to pay the rent in a regular, timely manner; whether the tenant will avoid behaviors that would disturb other tenants; and whether the tenant will maintain the unit in a reasonable condition. These questions can often be answered by references from previous landlords, income verification and/or a credit bureau.

### Does the law limit my advertising?

Yes. Fair housing laws do not allow you to advertise in a way that indicates a preference or limitation based on a protected class. This prohibition against discriminatory advertising applies even to advertising for single-family and owner-occupied housing that is otherwise exempt from the requirements of fair housing laws.

### I want a racially balanced building. May I maintain a quota?

No. Quotas of any kind may be unlawful, because in order to maintain a quota it might be necessary to discriminate against some people protected under fair housing laws.

### I'm afraid that a woman won't be able to complete maintenance or repairs. May I rent to men only?

No. If a woman is an otherwise qualified tenant, you may not refuse to rent to her because of her status as a woman. Both men and women may be capable of maintaining a property, or they may choose to hire someone to do it for them. You can always check references to find out whether a potential tenant properly maintained properties they previously rented, as long as you check for both women and men.

### May I set a dollar amount on the income I require of my tenants?

Yes. You may establish reasonable minimum income criteria necessary for the applicant to afford the unit. This standard must be applied uniformly to all applicants. Keep in mind that the

income need not come only from employment. Some people have sufficient verifiable income from other sources that would enable them to qualify.

### May an owner of an apartment complex refuse to rent any of its apartments to a family solely because the family includes a minor child?

No. Familial status is protected under fair housing laws. Thus, a family with minor children cannot be denied housing solely due to their presence.

### Are there any exceptions to this rule?

Yes. Complexes designed for older persons are allowed to refuse to sell or rent dwellings to families with minor children, but they must meet certain guidelines to do so. Advertising of vacancies require specific language setting minimum age requirements (55 years or 62 years, depending on the designation.)

### Can I make rules which govern the conduct of children?

You have the right to adopt reasonable rules regulating the conduct of all tenants. Rules which address children only may be viewed as unlawful discrimination based on familial status.

### I would like to limit the number of people in my apartments to two adults and two children. Is there a problem with this?

HUD's current, general guideline is two persons per average-sized bedroom. This is not a rule or law and other factors such as the size of the unit and bedrooms, configuration of the unit and physical limitations may also have an impact on what is considered a reasonable occupancy standard. Any occupancy standard must apply to all tenants and cannot be specific to adults and/or children. For instance, one could not limit the number of children in a unit, but can limit the number of individuals in a unit.

### I have always had older persons renting my apartments. Why can't I keep it that way? It would be very upsetting to my current tenants to have children in the building.

You cannot rent just to older persons unless you meet the qualifications for being designated as housing for older persons. You cannot choose particular tenants based on the preferences of your current tenants if those preferences are discriminatory or based on any of the protected class statuses.

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## **I recently painted my apartments. Must I rent to people in wheelchairs who may bump into and mark the walls?**

Yes. You may not deny housing to qualified persons with disabilities. If there is damage that would be considered more than normal wear and tear, you may recover the repair costs through the security deposit as you would with any tenant.

## **A family with several children came to look at one of our apartments. The children were noisy and unruly, yelling and running in the hallways, and the parents made no attempt to control the children's behavior. Do I have to rent to this family?**

Not if you have reason to believe the family would not take care of the property or would not abide by the rules. Checking references may give you some additional information about the past and present behavior of these potential tenants and provide you with documentation for your denial. You may not refuse to rent to a person just because they have children, but you may refuse to rent to a person that you believe will not fulfill tenancy requirements that you apply to all tenants.

## **May I refuse to rent to people whose sexual orientation offends me?**

HUD has taken the position that the prohibition against sex discrimination under the Fair Housing Act includes protection based upon sexual orientation and gender identity as well, and HUD will investigate complaints of violations on this basis. Sexual orientation and gender identity are not explicitly included as protected classes under South Dakota law or Sioux Falls ordinance.

## **My landlord refuses to make necessary repairs. May I stop paying rent to force him to make repairs?**

This is not a fair housing issue, unless the landlord is targeting you in some way because of a protected class status. This is a situation covered by South Dakota Landlord-Tenant Law, which specifies procedures to follow if your landlord has failed to complete repairs necessary to make the premises fit for human habitation.

## **If an applicant or tenant requests an accommodation due to a disability, can a housing provider require documentation that he or she needs the accommodation?**

If the person's disability and/or need for a requested accommodation is not obvious or otherwise known to the housing provider, he or she may ask an applicant or tenant to

provide documentation necessary to evaluate the disability and/or disability-related need for the accommodation. The type of verification needed will depend on the specifics of the situation and may be provided by a doctor or other medical professional, a peer support group, a service agency, or another reliable third party in a position to know about the individual's disability. Generally the applicant or tenant is not required to disclose to the housing provider the specifics of their disability or to give the housing provider a full copy of their medical history, and inquiry beyond what is needed to evaluate the disability and need for accommodation is inappropriate. Fact Sheet #3 addresses how to write a request for a reasonable accommodation or modification.

## **Can a housing provider evict a tenant who has filed a fair housing complaint and is now delinquent on rent?**

Yes. A housing provider may follow previously established policies regarding non-payment of rent so long as the policy is being enforced consistently and in all situations regardless of whether a tenant is involved in a fair housing complaint or not. Housing providers may take appropriate action that would be applied to all tenants. However, it is unlawful to enforce an eviction policy more harshly solely against persons who file fair housing complaints, and this is true even if the discrimination complained of in the underlying complaint is not found to have occurred.

## **The apartments on the upper floors of my building have balconies. I don't think they're safe for children to play. Can I refuse to rent these apartments to families with young children?**

No. It is up to the parents or guardians who will be renting the apartment to decide if it is a suitable place for their family.

## **Do I have to rent to sexual offenders or people with criminal histories?**

Currently, neither South Dakota law nor federal law includes protection from discrimination based upon convictions of sexual offenses or criminal records generally. Accordingly, you are allowed to have and enforce "crime free" policies, as long as you enforce them fairly against all tenants or potential tenants. Consideration should also be given to creating a crime free policy that does not unfairly impact individuals based upon their protected class status, such as unintentionally harming victims of domestic violence, the majority of whom are females.



The mission of Sioux Falls Human Relations is to eliminate unlawful discrimination and harassment, and to promote greater understanding, inclusion, and justice in Sioux Falls.

For more information, please contact: 224 West Ninth Street, Sioux Falls, SD 57104  
605-367-HOME (4663) or 605-367-8745 | [human.relations@siouxfalls.gov](mailto:human.relations@siouxfalls.gov) | [siouxfalls.gov/relations](http://siouxfalls.gov/relations)

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## Fair Housing Best Practices for Housing Providers: Fact Sheet #2

When acts of unlawful housing discrimination are allowed to occur or continue in a community, there are many consequences. Housing discrimination tears at the fabric of a community and encourages an environment where disputes escalate. Acts of housing discrimination that go unchallenged send a message of apathy throughout a community and result in reduced efforts to seek help when it is needed.

Housing discrimination leads to segregated neighborhoods and feeds the stereotypes that form the basis for discrimination. Where discrimination flourishes, so does a lack of respect for cultures. Housing discrimination works to perpetuate other housing problems, such as tight housing markets, substandard housing, and homelessness, as well.

Civil rights and fair housing laws have made housing discrimination unlawful for over 140 years, yet housing discrimination still exists. It is imperative that the community join together so we can be successful in ensuring equal housing opportunity for all.

Any person involved in a housing transaction is responsible for following and upholding the fair housing laws. This includes such people as owners of property, on site managers, rental agents, mortgage lenders, real estate brokers, agents, and appraisers.

In addition, neighbors who harass and providers who do not ensure a safe living environment may also be liable. As a housing provider, establish a program to ensure equal opportunity for all. Some examples of successful fair housing business standards and practices are:

- 1. Policy Statement:** Publish a statement that your organization provides equal opportunity housing and does not discriminate based upon race, color, religion, sex, national origin, familial status, disability, ancestry, or creed as prohibited by fair housing laws.

- 2. Provide an Orientation Packet and Periodic Training on Fair Housing Laws for all employees.** Provide an Orientation Packet and Periodic Training on Fair Housing Laws for all employees. The Sioux Falls Human Relations Office is available to provide fair housing training upon request.

- 3. Establish Employee and Agent Guidelines that include:**

- Providing written copies of policies and procedures to employees.
- Offering examination of individual attitudes.
- Assessing working and current knowledge of fair housing laws.
- Confirming that fair housing violations will lead to sanctions.
- Providing consistent quality of treatment.
- Training staff to know how to respond to any reasonable accommodation or modification requests, whether verbal or written.
- Maintaining a file that documents all fair housing trainings offered and which employees attended.

- 4. Office Resources:**

- Fair housing posters prominently displayed for customers.
- Advertising consistent with fair housing laws – “describe the property, not the people.”
- Displays, pamphlets, and circulars contain fair housing logo.
- Employees certified as having attended a fair housing orientation course.
- Office log for housing issues with date and time of incident, forms for check in and out, maintenance requests, etc.
- List of fair housing resources and references including how to request and respond to reasonable accommodations and modifications.
- Standardized application and interview criteria for applicants.
- Provide all new tenants with instructions to access information on South Dakota’s Landlord & Tenant Law.

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## 5. Fair Housing Practices:

- Report instances of discrimination, or concerns of potential discrimination, to superiors immediately.
- Assess staff knowledge of fair housing periodically.
- If photographs of models are used in advertisements, include models with different visible protected class characteristics to reflect the diversity of the community.
- Be aware of local occupancy codes and ensure that any occupancy policies are not more restrictive than the codes in place.
- Ensure staff is receptive to communications from tenants with disabilities as it relates to their needs for any reasonable accommodation or modification, and that they promptly engage in the interactive process to address such requests.
- All real estate advertisements should include equal housing opportunity logotype, statement or slogan. Keep a record of all advertising, marketing, and outreach activities which includes the date, location, and resource used.
- If you have a multi-family property built for first occupancy as of March 13, 1991, it must be accessible to people with disabilities. Ensure it is, or make any necessary changes to make it accessible if it is not.
- Make sure employees understand the differences between pets and animals needed for those with disabilities.

**6. Emphasize consistency.** Require the same qualifications for all tenants. Housing providers have rights, too, which include the right to require all tenants to meet generally applicable qualifications, pay rent on time, obey rules and policies, and avoid disturbing other residents or abusing the property.

## FAIR HOUSING RESOURCES:

Sioux Falls  
Human Relations:  
[siouxfalls.gov/relations](http://siouxfalls.gov/relations)



South Dakota Division  
of Human Rights:  
[dlr.sd.gov/human\\_rights](http://dlr.sd.gov/human_rights)



U.S. Department  
of Housing & Urban  
Development/  
Fair Housing:  
[hud.gov/fairhousing](http://hud.gov/fairhousing)



U.S. Department of  
Justice/Civil Rights:  
[usdoj.gov/crt](http://usdoj.gov/crt)



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