

Fair Housing Overview



How to file a complaint

- Contact MDCR at 800-482-3604
- Detroit Office at 313-456-3700
- File a complaint Online via www.michigan.gov/mdcr
- Virtual Intake: Claims Examiners are available via ZOOM Mondays from 8 am – 12 noon and Wednesdays from 1 pm – 5 pm (excluding state holidays).

MDCR Data

- Formal Complaints Filed by Basis for FY 2021

- 1. Disability 1144 cases
- 2. Race 957 cases
- 3. Retaliation 751 cases
- 4. Sex 573 cases
- 5. Age 351 cases
- 6. National Origin 179 cases
- 7. Religion 90 cases

What is Fair Housing?

- Fair housing is the right to obtain housing of your choice free from discrimination of protected classes under federal, state and local fair housing law.
- Where you live affects how you live including the location of schools, public services, health care, fresh food, etc.



Types of Housing Covered



- Apartment Complexes
- Management Companies
- Condominium Associations
- Cooperatives
- Real Estate Agents
- Lending Institutions
- Individual Landlords
- Subsidized Housing
- Shelters
- Etc.

MDCR is a FHAP

HUD has two federal programs dedicated solely to fair housing.

- ✓ FHIP (Fair Housing Initiatives Program) funds private fair housing organizations to assist people who have been subjected to discriminatory housing practices
- ✓ FHAP (Fair Housing Assistance Program) funds the fair housing enforcement programs of state and local government agencies with substantially equivalent rights and remedies to those provided by the federal Fair Housing Act (FHA).

MDCR is certified by HUD as a FHAP which allows HUD to refer complaints to MDCR for investigation and provide payment for completion of dually filed cases. HUD also provides significant funding to MDCR for training, administrative costs, and other resources.

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

Origins of Fair Housing Law

Civil Rights Act of 1866

- “All persons in the United States have the same rights as White persons”
- Including the right to own property, sue in court, and enjoy the full protection of federal law.

Civil Rights Act of 1870

- “All persons have the full and equal benefit of all laws as enjoyed by White citizens”

Federal Fair Housing Law

Civil Rights Act of 1968 (The Fair Housing Act)

Race

Color

National Origin

Religion

Sex (1974)

Familial Status (1988)

Disability (1988)



Michigan Fair Housing Law

Elliott Larsen Civil Rights Act of 1976

- Race
- Color
- Religion
- National Origin
- Sex
- Marital Status
- Familial Status
- Age

Persons with Disabilities Civil Rights Act of 1976

Similar to ADA protections

Greater responsibility to allow reasonable accommodations/modifications

Exemptions

Owner Occupied Dwellings

MI

Units with living quarters occupied/intended to be by no more than 2 families living independently of each other, if the owner maintains and occupies 1 living quarter.

Rental of a room or rooms in a single-family unit if the lessor or immediate family resides in the dwelling.

FHA

Units with 4 or fewer rental units and the owner lives in 1 of those units.

Exemptions Continued

Single Family Housing

MI

Rental of a unit for not more than 12 months by the owner or lessor if it was occupied by them and maintained as their home for at least 3 months immediately preceding occupancy by the tenant and is maintained as the owner's or lessor's legal residence.

FHA

Homes sold or rented by a private individual owner without a broker or advertising, if the owner does not own more than 3 single-family homes at one time.

Limited Exemptions

Religious organizations and private clubs

May give preference to members but cannot discriminate in membership based on other protected classes.

Housing for seniors

Exempt from familial status and age

- Dwelling is specifically designed for and occupied by elderly persons under federal, state or local government program or
- Occupied solely (100%) by persons 62 and older or
- Houses at least 1 person who is 55 or older in at least 80% of the occupied units and adheres to a policy that demonstrates intent to house persons who are 55 or older.

Advertising



- Regardless of any exemptions, all housing providers are prohibited from advertising in a discriminatory manner under the FHA.
- Advertising under the federal and state law is broad and includes not only promotional materials and newspaper and internet advertisements, but any verbal statements made.

Discriminatory Advertising

- This home would be ideal for an elderly couple
- Great for a single person
- Ideal for college student or single person
- Ideal for two singles or a married couple
- Limited to two children
- No animals, no exceptions!

Use of Human Models



- The use of human models in advertising must be representative and inclusive.
- Include pictures of people from various protected classes.
- Should avoid using pictures with strong racial, religious, or ethnic associations.

Additional Laws

- Section 504 of the 1973 Rehabilitation Act – federal law that protects qualified individuals from disability discrimination by entities that receive financial assistance from any federal department or agency.
- Title VI – prohibits discrimination based on race, color, and national origin in programs and activities receiving federal financial assistance.
- Housing for Older Persons Act - housing must have one person who is 55 years of age or older living in at least 80% of its occupied units or all residents are 62 and older.



HUD's Equal Access Rule

- A determination of eligibility for housing assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made without regard to actual or perceived sexual orientation, gender identity, or marital status.
- Applicable to HUD programs and housing, including HUD-assisted and HUD-insured projects, such as Sec. 8, HCVs, CDBG grants, Public Housing, etc.

Who is Protected?

- An aggrieved person is someone who:
 - claims to have been injured by a discriminatory act, or
 - believes that they will be injured by an act about to occur
- A person includes government entities, corporations, fair housing organizations.
- Immigration status does not affect fair housing rights.
- Only the classes specifically listed in the federal and state fair housing laws have protection.

Protected Classes

Fair Housing Act

Religion

Race

Color

National Origin

Sex

Disability

Familial Status



Michigan Law

Includes all the above plus
age and marital status

Race, Color and National Origin



- Race and Color refer to a person's skin color (light, dark, etc.)
- Ethnological (Asian, African American, etc.) as well as unscientific distinctions (Middle Eastern, etc.)
- National Origin refers to one's country of origin and ethnic heritage.
- The **perception** of someone's race, color and/or national origin is also protected under the law.

Criminal Records

- Criminal history is not a protected class and any complaint must be tied to a covered protected class.
- Disparities in our criminal justice system
 - Black people make up roughly 13% of the total U.S. population but account for roughly 27% of all arrests.
 - In 2019, the incarceration rate of Black males was 5.7 times that of White non-Hispanic males
 - Black females were incarcerated 1.7 times the rate of White non-Hispanic females
 - Hispanic individuals are incarcerated at a rate that is 1.3 times the incarceration rate of White non-Hispanic.
 - Individuals with disabilities are also disproportionately impacted by the criminal justice system.

Implementation of HUD Guidance on Criminal Records

Any policy must:

- Consider the nature, severity and recency of criminal conduct.
- Be justified with reliable evidence showing that it assists in protecting resident safety and/or property.
- Distinguish between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.

[HUD 2016 Criminal Records Guidance](#)

[HUD 2022 HUD Criminal Records Implementation Memo](#)

The housing provider:

- May not implement automatic denials, blanket bans (i.e. “no felonies”) and consideration of arrests.
- Must conduct an individualized assessment of relevant mitigating information including
 - age of the individual at the time of the conduct,
 - evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct,
 - and evidence of rehabilitation efforts.

Sex

Recent Developments

Includes

- Sexual Orientation and Gender Identify
- Protections against Sexual Harassment
- Pregnancy

2015 USSC: Constitutional right to same-sex marriage

2018 MCRC: Interpretative Statement that ELCRA includes SO and GI

2020 USSC: Sex discrimination prohibited by Title VII includes SO or GI.

2021 Biden EO “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation”

2021 HUD issued statement that it will administer/enforce the FHA to prohibit discrimination based on SO and GI.

2022 MI Supreme Court: Prohibition against sex discrimination under ELCRA includes discrimination based on sexual orientation. Adverse actions based on sexual orientation and/or gender identity constitute discrimination because of sex under the ELCRA.

Familial Status

Familial Status refers to having a child under the age of 18 in the household, whether living with a parent, a legal custodian, or their designee.

- Protections include
 - pregnant women
 - people in the process of adopting or securing legal custody
 - foster children.

[Keating Memo](#) advises that a restriction of 2 persons per bedroom is reasonable but rebuttable by assessing factors:

- Size of bedrooms
- Age/sex of children
- Additional living room or den

Examples: Refusal to rent to a family with minor children; charging higher rent/deposit because of children; charging rent per bedroom in a single-family home; restricting children to certain floors or areas.

Marital Status

Marital status is covered under MI law only and protects people from discrimination based upon whether or not they are married.

- Does not protect based on the individual to whom one is married, divorced, etc.
- Protections include single, divorced people and married couples.

Examples:

- Advertising “Married Couples Only”
- Refusing to rent to roommates or single parents



Religion

Discrimination in housing based on religion is prohibited under the FHA and MI law.

- The FHA provides a narrow exemption for religious organizations to limit the sale, rental or occupancy of housing to members of their own religion, as long as the housing is not operated for a commercial purpose.
- Advertising for such housing should include a disclaimer statement, such as “This Home does not discriminate on the basis of race, color, religion, national origin, sex, disability, or familial status.”
- That exemption applies unless the religious organization discriminates in its membership based on race, color, or national origin.
- No one is exempt from the Civil Rights Act of 1866, which prohibits all racial discrimination in the sale or rental of property.

Age

If a person can legally enter into a contract, age cannot be used as a basis for discrimination in housing.

- Over 18 years of age or legally emancipated.
- There is no protection for “Student Status.”
- Housing providers may give preference or impose limits as to students, provided it is applied to all students, not just “traditional student age.”

Examples

Condominium Association limiting buyers or occupants based upon age.

Apartment complex steers certain age groups to specific units or buildings.

Senior Housing

Housing that qualifies as Senior Housing is exempt from familial status and age protection discrimination.

Requirements:

- Dwelling is specifically designed for and occupied by elderly persons under federal, state or local government program
or
- Occupied solely (100%) by persons 62 and older
or
- Houses at least 1 person who is 55 or older in at least 80% of the occupied unit and adheres to a policy that demonstrates intent to house persons who are 55 or older.

[HUD Guidance on HOPA](#)

Retaliation

Both state and federal law prohibit retaliating against any person for engaging in a protected activity under the applicable law.

Protected Activity

- Participation in a Fair Housing Action (filing a complaint, acting as a witness)

AND/OR

- Opposition of a Fair Housing Violation by any Individual or Organization (communicating a belief of discriminatory policy)

After such, the housing provider imposes adverse action against the person who engaged in the protected activity.

Ex: Requesting a disability related accommodation and then being issued a Notice to Quit (Eviction.)

Disability Status



- Disability is a broad term
 - Definition
 - physical or mental impairment that limits a major life activity;
 - record of having such an impairment;
 - being regarded as having such an impairment.
- “Major Life Activity” should be broadly construed
 - Includes Major Bodily Functions
- Sleeping, walking, bathing, eating, breathing, driving, hearing, seeing, etc. (non-exhaustive list)
- Includes associational protections

Prohibited Actions Under Elliott Larsen Civil Rights Act

Article 5 Definitions

Section 501

Real property includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate cooperative or condominium.

Real estate transaction the sale, exchange, rental, or lease of real property, or an interest therein.

Housing accommodation includes improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of 1 or more persons.

Section 502 Prohibited Actions (part 1)

1. It is unlawful for a person engaging in a real estate transaction to take these actions based on protected classes:

- (a) Refuse to engage in a real estate transaction.
- (b) Discriminate in the terms, conditions, privileges, facilities or services in connection with a real estate transaction.
- (c) Refuse to receive or transmit a bona fide offer to engage in a real estate transaction.
- (d) Refuse to negotiate for a real estate transaction.

Section 502 Prohibited Actions (part 2)

1. It is unlawful for a person engaging in a real estate transaction to take these actions based on protected classes:

(e) Represent that real property is not available for inspection, sale, rental, or lease when it is or knowingly fail to bring a property listing to a person's attention or refuse to permit a person to inspect real property, or otherwise make unavailable or deny real property.

(f) Make, print, circulate, post, mail, or cause to be made or published a statement, advertisement, notice, or sign, or use a form of application which indicates an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction.

Section 502 Prohibited Actions (part 3)

1. It is unlawful for a person engaging in a real estate transaction to take these actions based on protected classes:

- (g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.
- (h) Discriminate against a person in the brokering or appraising of real property.

Section 502 Prohibited Actions (part 4)

2. A person shall not deny a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting real property or to discriminate against him or her in the terms or conditions of that access, membership, or participation because of religion, race, color, national origin, age, sex, familial status, or marital status.



Section 504 Prohibited Actions (Financing)

(1) A person to whom application is made for financial assistance/financing in connection with a real estate transaction or to improve real property, shall not:

(a) Discriminate against the applicant because of the religion, race, color, national origin, age, sex, familial status, or marital status of the applicant or a person residing with the applicant.

(b) Use an application for financial assistance/financing or make a record, or keep a record in connection with an application that indicates a preference, limitation, specification, or discrimination as to the religion, race, color, national origin, age, sex, familial status, or marital status of the applicant or a person residing with the applicant.

(2) Business owners engaging in real estate transactions shall not discriminate because of religion, race, color, national origin, age, sex, familial status, or marital status, when purchasing loans for:

acquiring,
constructing, or
improving a dwelling or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate.

Section 506 Prohibited Actions (Blockbusting)

Individuals shall not represent, for the purpose of inducing a real estate transaction for their financial benefit, that:

- a change has occurred or will or may occur because of the religion, race, color, national origin, age, sex, familial status, or marital status of the owners or occupants in the area of the real property's location OR
- this change will or may result in
 - the lowering of property values,
 - an increase in criminal or antisocial behavior, or
 - decline in the quality of schools in the area where real property is located.

Prohibited Actions Under Persons with Disabilities Civil Rights Act

Section 102 Affirmative Duty of Housing Providers

Housing providers must accommodate a person with a disability unless the housing provider demonstrates that doing so would impose an undue hardship.

Undue Hardship= unreasonable financial or administrative cost.

Section 502 Prohibited Actions (part 1)

1. It is unlawful for a person engaging in a real estate transaction to take these actions based on disability status:
 - (a) Refuse to engage in a real estate transaction.
 - (b) Discriminate in the terms, conditions, privileges, facilities or services in connection with a real estate transaction.
 - (c) Refuse to receive or transmit a bona fide offer to engage in a real estate transaction.
 - (d) Refuse to negotiate for a real estate transaction.

Section 502 Prohibited Actions (part 2)

1. It is unlawful for a person engaging in a real estate transaction to take these actions based on disability status:

(e) Represent that real property is not available for inspection, sale, rental, or lease when it is or knowingly fail to bring a property listing to a person's attention or refuse to permit a person to inspect real property, or otherwise make unavailable or deny real property.

(f) Make, print, circulate, post, mail, or cause to be made or published a statement, advertisement, notice, or sign, or use a form of application which indicates an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction.

Section 502 Prohibited Actions (part 3)

1. It is unlawful for a person engaging in a real estate transaction to take these actions based on disability status:

- (g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.
- (h) Discriminate against a person in the brokering or appraising of real property.

Section 502 Prohibited Actions (part 4)

2. A person shall not deny a person access to or membership or participation in a multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting real property, or discriminate against a person in the terms or conditions of that access, membership, or participation.

Section 504 Prohibited Actions

A person shall not discriminate based on disability in making or purchasing loans for acquiring, constructing, improving, repairing, or maintaining real property, or in providing other financial assistance secured by or otherwise related to real property.

Section 506 Prohibited Actions (Blockbusting)

Individuals shall not represent, for the purpose of inducing a real estate transaction for their financial benefit, that:

- a change has occurred or will or may occur because of the religion, race, color, national origin, age, sex, familial status, or marital status of the owners or occupants in the area of the real property's location OR
- this change will or may result in
 - the lowering of property values,
 - an increase in criminal or antisocial behavior, or
 - decline in the quality of schools in the area where real property is located.

Section 506a Prohibited Actions

(1) A person shall not do any of the following in connection with a real estate transaction:

(a) Refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if those modifications may be necessary to afford the person with a disability full enjoyment of the premises. In the case of a rental, the landlord may, if reasonable, make permission for a modification contingent on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(b) Refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person with a disability equal opportunity to use and enjoy residential real property.

Section 506a Prohibited Actions Continued

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, fail to include all of the following features:

- (i) The dwellings have at least 1 building entrance on an accessible route, unless that is impractical because of the terrain or unusual characteristics of the site.
- (ii) The public and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.
- (iii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.
- (iv) All premises within covered multifamily dwellings contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and kitchens and bathrooms designed so that an individual in a wheelchair can maneuver about the space.

Title VIII of the U.S. Fair Housing Act of 1968

Fair Housing Act

- Section 804 contains the prohibited actions similar to Michigan fair housing law.
- Prohibits discrimination in sales, rentals, terms and conditions, steering, financing, redlining, and blockbusting based on race, color, national origin, sex, religion, disability status, and familial status.
- Complaints may be filed with HUD **within 365 days** of the date of the alleged discriminatory act.
- Claimants can go directly to court or the Attorney General may enforce the Act.

Reasonable Accommodations and Modifications

Reasonable Accommodations

- Housing providers sometimes need to make changes to the way things are normally done in order to accommodate a person with a disability.
- Persons with disabilities can request **reasonable accommodations** when necessary to afford them an equal opportunity to use and enjoy a dwelling.
- Reasonable Accommodation is a change in any rule, policy, procedure or service if the changes are needed in order for a person with a disability to have equal access and enjoyment of their housing.
- Little or no cost to the housing provider.
- [HUD DOJ Joint Statement on Reasonable Accommodations](#)

Accessible Parking

Accessible parking spaces must be provided and must:

- Be at least 96 inches wide for cars; 96 inches or 132 for vans
- Have an access aisle at least 60 inches wide
- Have no more than a 1.48 (2.08%) slope in all directions
- Have a surface that is firm, stable, and slip-resistant
- Have a sign with the international symbol of accessibility on it, mounted at least 60 inches above the ground (measured to the bottom of the sign)

Accessible parking spaces must have access aisles which provide a designated area for people who use wheelchairs or other mobility devices to get in and out of their car or van. **Access aisles must be:**

- Marked (to discourage drivers from parking in them)
- The same length as the space
- Level with the parking space

Assistance Animals

Assistance animals are NOT pets and therefore should not be subjected to pet policies, fees or deposits. They perform many disability-related functions including guiding individuals who are blind/low vision, alerting individuals who are deaf or hard of hearing to sounds, pulling a wheelchair, retrieving medication or other items, alerting persons to impending seizures, **or providing emotional support to persons with disabilities.**

There are two types of assistance animals:

- (1) service animals (limited to work or task trained dogs or miniature horses), and
- (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (HUD calls them “support animals.”)

Support animals do not need to be trained, certified or licensed by any entity or program but they must be kept under control at all times.

Emotional Support Animals

There has been a vast increase in the amount of people requesting reasonable accommodations to a no-pet policy in order to maintain a support animal in their rental unit. We most frequently see complaints involving animals commonly referred to as an “Emotional Support Animal.”

- ESAs provide emotional support to mitigate their owner’s disability.
- Can potentially be any type of animal and is not limited to dogs and miniature horses.
- There are no disability-related task training or registration requirements for ESAs.
- Their presence alone or general interaction provides emotional support or therapeutic benefits.
- ESAs are only covered under the PWDCRA and the FHA. They are not permitted to enter places of public accommodation.
- The ESA can accompany the resident in the dwelling unit and all common use areas of the property.

Supporting Documentation for Assistance Animals

- If the animal prescribed is not a common domestic animal that is traditionally kept in the home, additional information on the patient's need for that particular animal may be required.
- A housing provider may request reliable documentation when the disability-related need for an accommodation is not obvious or otherwise known.
- HUD advises that documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal.
- Reasonably supporting information: information from a licensed health care professional – *e.g.*, physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse – general to the condition but specific as to the individual with a disability and the assistance or therapeutic emotional support provided by the animal.
 - A relationship or connection between the disability and the need for the assistance animal must be provided. This is particularly the case where the disability is non-observable, and/or the animal provides therapeutic emotional support.

HUD Guidance on Assistance Animals

HUD issued guidance in 2020 on Assistance Animals. The guidance includes two sections:

- “Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act” which contained a set of best practices for complying with the FHA when assessing a person with a disability’s accommodation requests involving animals in housing.
- “Guidance on Documenting an Individual’s Need for Assistance Animals in Housing” which conveys information that an individual seeking a reasonable accommodation for an assistance animal may need to provide to a housing provider about his or her disability-related need for the requested accommodation, including supporting information from a health care professional.

[HUD 2020 Guidance on Assistance Animals](#)

[HUD fact sheet on Assistance Animals](#)

Reasonable Modifications

- Reasonable modification is a structural or other physical change to the unit or housing structure to provide a person with a disability physical access.
- Persons with disabilities can request **reasonable modifications** when necessary to afford them an equal opportunity to use and enjoy a dwelling.
- Must be allowed, for the most part, at the expense of the resident.
- Federal funding at a property increases the obligation to allow such requests and may trigger obligations for the housing provider to cover the costs.
- [HUD DOJ Joint Statement on Reasonable Modifications](#)

Accommodations and Modifications

- Can be requested any time.
- Residents with non-visible disabilities may be asked to provide documentation on why the accommodation is needed.
- Can request more than one accommodation/modification.
- Reasonableness is not defined under law and must be determined on a case-by-case basis.
- Refer to Joint Statements/FHEO memos.

Statute of Limitations

- FEDERAL LAW
 - -HUD: 1 year
 - -Court: 2 years
- STATE LAW
 - -MDCR: 180 days
 - -Court: 3 years



Questions?

MDCR and HUD CONTACT INFORMATION

- Toll Free Number: 800-482-3604
- Detroit Office: 313-456-3700
- Website: www.michigan.gov/mdcr
- U.S. Department of Housing and Urban Development (HUD):
www.hud.gov