

A Nebraska Fair Housing Act Overview: Navigating Issues, Avoiding Problems



Nebraska Equal Opportunity Commission

What is the NEOC?

- o An administrative agency of the State that:
- o Receives, investigates, and renders formal determinations on charges filed
- o Conciliates charges of unlawful discrimination
- o Provides information and assistance in matters of civil rights laws and compliance
- o We have jurisdiction to investigate under the Nebraska state and Federal FHAs “substantially equivalent”

Nebraska Fair Housing Act

Overview



Nebraska Equal Opportunity Commission

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Illegal Discrimination

Treating somebody differently based on their protected class. Usually must involve a harm to be actionable.

Protected Classes under the Fair Housing Act

- Race**
- Color**
- Religion**
- National Origin**
- Familial Status**
- Sex**
- Disability**



Different Treatment

When similarly **situated** individuals
are treated differently

Disparate Impact

When a seemingly neutral

policy or practice

affects a larger share of one group and

cannot be justified as a

business necessity.

Nebraska Fair Housing Act

Time Jurisdiction: 1 year to file from the last date of harm. Agency must attempt to investigate within 100 days of filing.

Covered: Any transactions involving housing sales, rentals, housing loans, housing insurance, or anything else housing related.

Exemptions

1. Religious organization, association, or society or nonprofit institution or organization operated, supervised, or controlled by or in conjunction with same, to give preferences to its own members unless other types of discrimination are part of the restriction
2. Private club may give preference to its members
3. Four or less sleeping rooms in a house where owner occupies (“Mrs. Murphy”)
4. Housing operated for older persons – 55+ / 65+ -
(for family status discrimination only)

What is Prohibited Under Fair Housing Laws?



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It is against the law to:

**Refuse to
sell or rent.**



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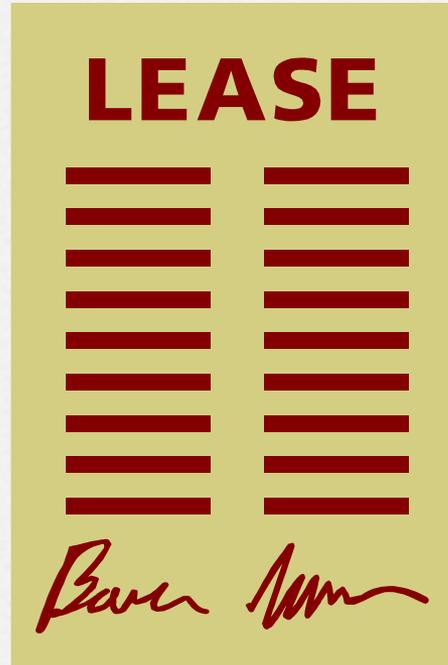


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It is against the law to:

**Refuse to
negotiate or
otherwise fail
to allow
somebody to
proceed in the
application
process.**

It is against the law to:



**Discriminate in the
terms and
conditions of sale or
rental, including the
provision of services**

It is against the law to:

Make, print, or publish
any notice, statement, or
ad with respect to the
sale or rental of a
dwelling that indicates
any preference,
limitation, or
discrimination.

Examples.....

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Examples of Discriminatory Advertisement

Ads that use certain words to limit the type of renter/buyer the person is looking for, such as:

- o Using the words “No Men” or “Christians only” in an ad to rent an apartment
- o Using the words “No immigrants” or “Couples only” in an ad to sell a house

Examples of Discriminatory Advertisement

Ads that would keep dissuade/persuade people or groups of people from renting or buying housing in an area, such as:

- o Using the words “Mostly Asian neighborhood” or “quiet, childless neighborhood” in an ad to sell a home
- o Using the words “nearly all Christian families” to rent a unit in an apartment building

It is against the law to:

**Falsely
representing
availability (or
lack thereof) of a
property for
rental or sale.
(AKA lying.)**

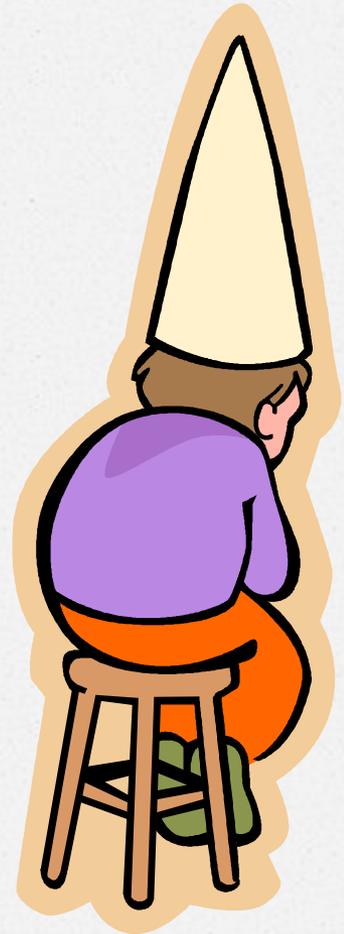




It is against the law to:

**Steering a person
to or from
particular housing.
“This would be a
better fit for your
type.”**

**Punishing/firing
employee or agent
for complying with the
Fair Housing Act**



BLOCKBUSTING

Make any representations regarding the entry or prospective entry into the neighborhood of members of a particular protected class.



It is against the law to:



Fail to provide a reasonable accommodation to, or allow a modification for, a person with a disability who has requested one.

What is a Disability?

Physical or Mental

impairment

which

“substantially limits” (broad coverage)

one or more

major life activities

Major Life Activities include:

- Walking
- Speaking
- Breathing
- Seeing
- Hearing
- Learning
- Performing manual tasks
- Standing
- Thinking
- Caring for oneself
- Working
- Eating
- Sleeping
- Sitting
- Lifting
- Bending
- Reading
- Concentrating
- Communicating

What is a Reasonable Accommodation?



Request for changes in the rules,
policies, practices, or services
necessary to afford a person with
a disability equal opportunity to
use and enjoy a dwelling.

What is Reasonable?

- ▶ Does not pose a *financial hardship (undue burden)
- ▶ Does not create a *safety/health threat to the tenant or other persons
- ▶ Is *not disruptive to the peaceful enjoyment of other tenants
- ▶ Does not pose substantial *physical damage to the property
- ▶ Does not impose a fundamental alteration in the nature of the housing provider's program.

An accommodation request has been made... now what?

- ▶ What can be asked to verify?
 - ▶ You are entitled to info (letter) necessary to evaluate if the accommodation may be necessary because of a disability. So...
 - ▶ 1. Does the person have a disability?
 - ▶ 2. Is the accommodation necessary to alleviate a symptoms of that disability?
- ▶ If either of those is obvious/apparent/known, you cannot ask it (but might be able to ask the other).

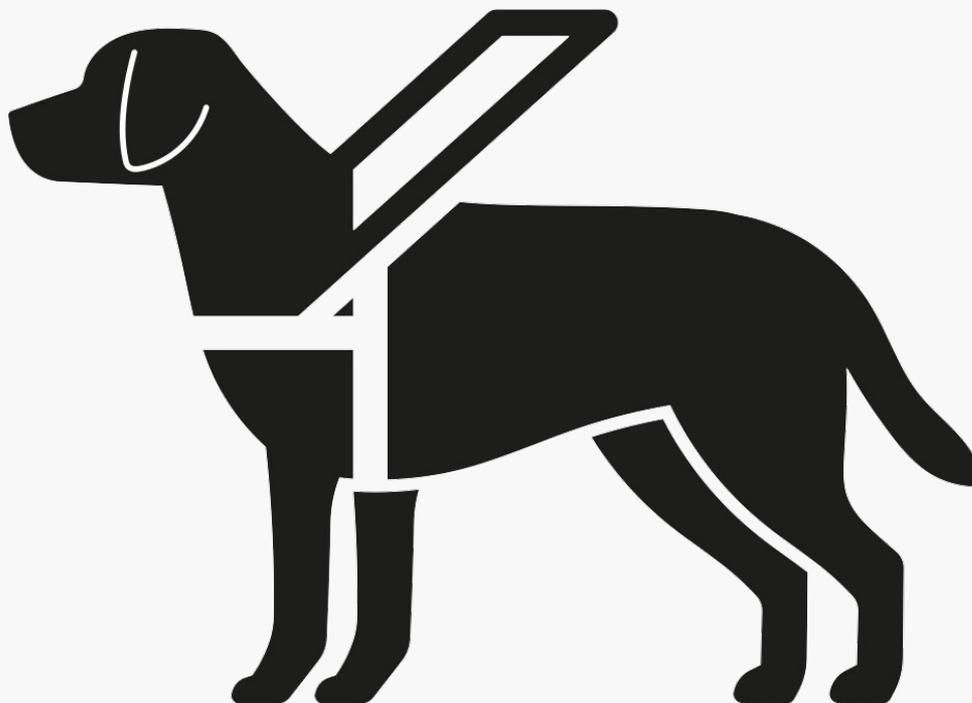
One may not ask the tenant to provide any details regarding the specific details of the disability, or ask for medical records.

Some Suggestions for Accommodations



1. The landlord cannot charge a tenant for additional paperwork associated with making an accommodation
2. If a person needs help in completing application material, it should be provided
3. If a person fails to fill out your paperwork, you cannot deny the accommodation request solely on that factor.

**Service/Companion
Animals and
Reasonable Accommodations**



What is a service animal?

- ▶ Any animal individually trained to perform tasks for the benefit of a person with a disability
- ▶ No national standard regarding the training or performance of a service animal, including guide dogs
- ▶ This is an ADA term. “Service animal” or “service dog” does not appear in the FHA.



What is a companion animal?

- ▶ Also referred to as assistive, emotional support or therapeutic animals
- ▶ Typically for persons with mental or emotional disabilities
- ▶ Assist with depression or anxiety
- ▶ Provide emotional support
- ▶ There is no national standard regarding the training or performance of a companion animal.
- ▶ Companion animals are not included in the ADA, and the words companion animal do not appear in the FHA.



Other important Animal facts

- ▶ Pet deposits should be waived for any service/companion animal. Fees for a disability assistance device or animal are not allowed.
- ▶ Does the tenant have responsibilities? YES
 - ▶ Clean up waste, and any other messes
 - ▶ Keep animal from disrupting peaceful enjoyment of others (within reasonableness)
 - ▶ Responsible for damage to property (\$\$\$)
- ▶ Can be required to keep on a leash/tether in shared spaces UNLESS
 - ▶ The leash/tether interferes with the service animal's work OR
 - ▶ The person's disability prevents use of these devices
- ▶ Service/companion animals are allowed anywhere on the property the tenant can go, unless their presence would harm safe operations

Retaliation is:

Harm against a person who has

participated

in an investigation,

opposed

an illegal practice, or

assisted

somebody else in doing the above.

Examples of Retaliation

1. Evicting or threatening eviction
2. Threat to file a counterclaim in court
3. Withholding security deposit
4. Providing a negative reference
5. Selective strict enforcement of a policy/procedure
6. Sudden change in the way a policy/procedure is enforced (see examples)
7. Harassment/monitoring
8. Issuing 14/30 day notices
9. Entering a unit without 24-hour notice in non-emergency
10. Not providing needed repairs or maintenance (see examples)
11. Intimidating witnesses or spreading rumors
12. Punishing/firing employee who participates

Sudden changes in enforcement, or selective enforcement

- “If you’ve always allowed me to pay rent by the 8th, why are you suddenly saying that is late and I have to pay a late fee?”
- “If you’ve always told me my dog is quiet and his barking doesn’t bother anyone, why are you now telling me my dog is too loud and I have to get rid of her?”
- “Several of my neighbors have had their kids’ friends to the pool and you allow it as long as they behave. Now when my kids took a friend to the pool you said it is against pool rules? Why?”



Failing to provide maintenance or other services

- Respondent: “We felt it best to have no contact with Complainant while his complaint was being investigated, especially since his complaint was about our maintenance workers harassing him, so we put all work orders on hold in his apartment until the situation could be resolved.”



Protection continues after investigation, regardless of outcome...

- A person who filed a complaint continues to be protected after the investigation concludes, even if no discrimination was found.
- **EXAMPLE:** A tenant claims he is being harassed by your maintenance worker. NEOC investigates and finds that there is no evidence to support the tenant's claim at all. You receive a No Reasonable Cause decision on Harassment. After you receive the NRC decision, you send a note to the tenant telling him that because he lied and made a false accusation against your maintenance worker you are terminating his tenancy. The tenant can file a new complaint of discrimination based on Retaliation, and will have a strong case.

Best practices for avoiding the appearance of Retaliation

- Follow your own policies precisely at all times.
- Rules/policies vs Procedures vs Practice. If you're going to have exceptions, consider adding them to your rules.
- Document everything. Notices, complaints (oral or written), tenant interactions, maintenance, police or other reports, maintenance/repair receipts/orders, your own personal notes, calendars, etc. Make sure your employees are documenting the same.
- You certainly may evict or otherwise act according to the lease in case of lease violations. Just make sure your actions are consistent with past actions against Complainant and others!



Questions?
Contact the NEOC:
402-471-2024
And/or contact us to
schedule a
training session!