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**ILLINOIS ASSOCIATION OF CODE ENFORCEMENT  
FAIR HOUSING TRAINING  
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This presentation is intended for informational purposes only and should not be considered as legal advice. If you have questions regarding a specific situation you are dealing with, you should consult a private attorney.

**I. The Right to Fair Housing**

**A. What is Fair Housing?**

1. In general – The Right to Fair Housing is the right for people to choose where to live free from unlawful discrimination.
2. What are the applicable laws?
  - (a) The Fair Housing Act (“FHA”) (42 U.S.C. 3601)
  - (b) Illinois Human Rights Act (“IHRA”) (775 ILCS 5)
  - (c) Local Ordinances
3. Unlawful discrimination is treating someone differently because of a protected trait or characteristic.
4. What areas are protected?
  - (a) Under the FHA: Race; Color; Religion; National Origin; Sex (including sexual harassment); Familial Status; and Disability.

(b) Under the IHRA: All seven of the Federal protected bases identified above; Ancestry; Age (40 and over); Marital Status; Military Status; Unfavorable Discharge from Military Service; Order of Protection Status; and Pregnancy.

(c) Some local ordinances may have additional protections.

5. What activities are covered?

(a) Purchase or rental of property;

(b) Terms, conditions or privileges which go along with the real estate transaction and the furnishing of facilities or services in connection with the real estate transaction (includes harassment and sexual harassment);

(c) Discriminatory statements and advertising;

(d) Steering; Blockbusting; and Restrictive Covenants;

(e) Duty to make reasonable accommodations and modifications for a person with a disability so that they can equally enjoy the property; and

(f) Duty to design and construct new multifamily housing so that it is accessible to persons with disabilities.

6. Who are bound?

(a) Landlords; Sellers; Property Management Companies; Condominium and Homeowners Associations; Real Estate Agents and Brokers;

(b) Mortgage Companies; Banks and Lenders; Property Insurance Companies; and

(c) Municipalities and Public Housing Authorities.

7. Who is exempt?

- (a) The private **sale** of a single family home by the owner, if the owner doesn't own three or more single family homes at the time of the sale, was the last current resident of the home, doesn't use the services of a real estate agent, broker or salesperson, and the home is sold without any discriminatory advertisements or written notices;
- (b) The **rental** of an apartment in a building which contains 4 units or less, if the owner resides in one of the units;
- (c) The rental of a room or rooms in a private home by an owner if he or she, or a member of his or her family, resides within;
- (d) A religious organization from limiting the sale, rental or occupancy of a dwelling to a person of the same religion;
- (e) Restricting the rental of rooms in a housing accommodation to persons of one sex; and
- (f) Housing for older persons from familial status discrimination.

8. How is discrimination proven?

- (a) Direct Evidence;
- (b) Indirect Evidence; and
- (c) Disparate Impact.

**B. Why is Fair Housing Important?**

- 1. A person's home is their castle.
- 2. Where a person lives controls access to public works, health care, public transportation, jobs, public schools and education, and stores and retail establishments.

## **II. Reasonable Accommodations and Modifications**

### **A. Reasonable Accommodation**

1. A housing provider has the duty to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation.
2. The request for a reasonable accommodation must be both necessary and reasonable.
3. A housing provider may not refuse residency or place conditions, such as a fee, upon a person because they requested a reasonable accommodation.
4. Courts have held that the reasonable accommodation provision applies to states and local government, usually in the context of exclusionary zoning or other land-use decisions.

### **B. Reasonable Modifications**

1. A housing provider has the duty to permit a person with a disability to make reasonable modifications to the existing premises.
2. A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford the person full enjoyment of the premises.
3. There must be an identifiable relationship or nexus between the requested modification and the individual's disability.
4. The person requesting the modification is responsible for paying the cost of the modification.
5. As with reasonable accommodations, courts have held that the reasonable modification provisions apply to state and local governments, most often in the context of exclusionary zoning or other land-use decisions.
6. A housing provider may require that the requester obtain any building permits needed to make the modifications, and that the work be performed in a workmanlike manner.

7. A housing provider may not condition approval of the requested modification on the requester obtaining special liability insurance, or require the requester to pay an increased or extra security deposit.

### **C. Problem #1**

1. **Jane Johnson is disabled and uses a wheelchair. She would like to rent an apartment from Joe Landlord. However, there is a step leading into the front door of the vacant unit, which would prevent Ms. Johnson from entering the apartment. Ms. Johnson requests permission from Mr. Landlord to build a ramp leading into the apartment. Mr. Landlord agrees to allow Ms. Johnson to build the ramp, but informs her that she must obtain a building permit from the Village before constructing the ramp. Ms. Johnson goes down to the Village's Building Department and requests a permit to build her ramp. The Village denies her request for a permit, citing that the proposed ramp would cross the 5-foot setback provision in the Village Ordinance by three inches. Ms. Johnson explains to the Village that she needs the ramp because she uses a wheelchair and asks the Village to make an exception to the 5-foot setback provision so that she can build her ramp. The Village refuses to make an exception for her and denies her permit. Because she was unable to obtain a permit, Mr. Landlord denies her request to build the ramp.**
2. **Was there a violation of a fair housing law?**
3. **If so, who violated the law and which law was violated?**

## **III. Design and Construction Requirements**

### **A. Introduction**

1. Newly constructed multifamily dwellings must be designed and constructed with certain features of accessible design so that they are usable for persons with disabilities.
2. The design and construction provisions are not a federal building code. However, state or local governments may adopt building codes which meet the design and construction requirements.

## **B. What properties are covered?**

1. Multifamily dwellings constructed for first occupancy after March 13, 1991, and which contains four units or more:
  - (a) All units if the building has an elevator; or
  - (b) Ground floor units if the building does not have an elevator.
2. Examples include condominiums, cooperatives, apartment buildings, vacation and time share units, assisted living facilities, nursing homes, public housing developments, shelters designed as a residence for homeless persons, dormitories, and extended stay or residential hotels.

## **C. What are the requirements?**

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common use areas.
3. Usable doors.
4. Accessible route into and through the unit.
5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.
6. Reinforcements in bathroom walls to allow later installations of grab bars.
7. Usable kitchens and bathrooms.

## **D. What are the safe harbors?**

1. A safe harbor is an objective and recognized standard, guideline, or code that if followed without deviation, ensures compliance with the design and construction requirements.
2. HUD currently recognizes 10 safe harbors for compliance with the Fair Housing Act.

3. The purpose of recognizing a number of safe harbors for compliance with the design and construction requirements is to provide a range of options that, if followed in their entirety without modification or waiver during design and construction, will result in residential buildings that comply with the design and construction requirements.
4. Fair Housing Act:
  - (a) HUD's March 6, 1991 *Fair Housing Accessibility Guidelines* and the June 28, 1994 *Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines*.
  - (b) *The American National Standard Institute* ("ANSI") A117.1-1986; CABO/ANSI A117.1-1992; ICC/ANSI A117.1-1998; ICC/ANSI A117.1-2003.
  - (c) HUD's *Fair Housing Act Design Manual* published in 1996 and revised in 1998.
  - (d) *Code Requirements for Housing Accessibility 2000* (CRHA), approved and published by the International Code Council (ICC), October 2000;
  - (e) *International Building Code* (IBC) 2000, as amended by the IBC 2001 *Supplement to the International Codes*; *2003 International Building Code*, with one condition. Effective February 28, 2005, HUD determined that IBC 2003 is a safe harbor, conditioned upon the International Code Council publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC; *2006 International Building Code*, published by ICC, January 2006, with the 2007 erratum, and interpreted in accordance with relevant 2006 IBC Commentary.
5. Illinois Human Rights Act:
  - (a) *Standards of the Illinois Accessibility Code* (71 Ill.Admin.Code, Section 400.350).

(b) Compliance with a Local Governmental Law if a unit of local government has incorporated into its law the requirements set forth in the Illinois Human Rights Act for design and construction.

**E. What are the obligations of IDHR and units of local governments to review and approve the design and construction of covered multifamily dwellings to ensure that they meet the design and construction requirements?**

1. The mere fact that a builder followed the local building code does not mean that the builder is safe from liability if the building does not comply with the design and construction requirements.
2. A unit of local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements are met. However, determinations made by a unit of local government are not conclusive in enforcement proceedings if those determinations are not in accord with the terms of the Illinois Human Rights Act.
3. Neither HUD nor the Illinois Department of Human Rights are required to review and approve the plans, designs or construction of all covered multifamily dwellings to determine whether the design and construction of such dwellings are consistent with the design and construction requirements.
4. Neither HUD nor the Illinois Department of Human Rights review local government building codes to determine whether they comply with the design and construction requirements.

**F. Problem #2**

1. **Joe Developer wants to build a three hundred-unit apartment building in the Village of Pleasantville. The proposed apartment building has ten floors with an elevator. The Village has adopted the International Building Code of 2006, with the 2007 erratum as its building code. While Joe Developer believes that its plans comply with the IBC, the plans actually fail to do so. The Village Inspector reviews the plans and mistakenly approves them. Shortly after Joe Developer builds the apartment building, a disabled individual attempts to rent an apartment, but is unable to do so**

**because it is not accessible. The prospective tenant files a complaint alleging that the building does not meet the design and construction requirements. Joe Developer responds to the complaint, claiming that since the Village adopted the IBC and the Village approved the plans, it cannot be liable.**

**2. Does Joe Developer have a valid defense?**

**IV. Occupancy Standards**

**A. Introduction**

1. Occupancy Standards which are overly restrictive may be discriminatory in that they could have a disparate impact on families with children.
2. Reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwellings are permissible.

**B. What is a Reasonable Occupational Standard?**

1. HUD has stated that an occupancy policy of two persons per bedroom, as a general rule, is reasonable under the Fair Housing Act.
2. However, the reasonableness of any occupancy policy is rebuttable, and HUD will not determine compliance based solely on the number of people permitted in each bedroom.
3. In occupancy cases, HUD will consider the following factors in assessing whether an occupancy standard is reasonable:
  - (a) The size of the bedroom and unit;
  - (b) The age of the children;
  - (c) The configuration of the unit;
  - (d) Any other physical limitations of housing;
  - (e) State and local law; and
  - (f) Any other relevant factors.

**C. Problem #3**

- 1. Joe Landlord has a ten-unit apartment building located in the Village of Pleasantville. Mr. Landlord has an occupancy standard which limits the number of residents per bedroom to two. The Village of Pleasantville has an occupancy standard which requires bedrooms to contain at least 75 square feet for the first occupant and 50 square feet for each additional occupant. The Village's standard also does not count babies under the age of two. Mr. Landlord rents a one-bedroom apartment to Jose and Maria Tenant. The bedroom is 180 square feet. Mrs. Tenant becomes pregnant. When Mr. Landlord learns that Mrs. Tenant is pregnant, he informs Mr. and Mrs. Tenant that they will have to move out once the baby is born because his occupancy standard only permits two persons to occupy the apartment. Mr. and Mrs. Tenant explain to Mr. Landlord that the bedroom is big enough to fit a crib. Mr. Landlord informs Mr. and Mrs. Tenant that he cannot let them stay in the apartment because it would violate his occupancy standard.**
- 2. Is Mr. Landlord discriminating against the Tenant's because of their familial status?**

**V. Best Practices**

- A. Enforce your ordinances equally**
- B. Develop and follow your standard procedures**
- C. Document your activities**