#### **2018 CMHA U**

Presented by
Housing Opportunities Made Equal of Greater
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#### Fair Housing Overview & Updates for Housing Providers in the Housing Industry

#### H.U.D. Rulings Under FHA

- 2012- Equal Access Rule
- 2013- Assistance Animals & Reasonable Accommodations
- 2016- Affirmatively Furthering Fair Housing
- 2016- Criminal Record Policies
- 2016- Victims of Harassment/Survivors of Domestic Violence

#### 2016 H.U.D Ruling:

ON CRIMINAL RECORD POLICIES

#### What is H.U.D.'s New Ruling on Criminal Record Policies?

- Landlords and home sellers that turn down potential tenants and buyers based upon their criminal records may violate the Fair Housing Act.
- Private landlords who have blanket bans on renting to people with criminal records are in violation of the Fair Housing Act and can be sued and face penalties for discrimination.

#### What is H.U.D.'s New Ruling on Criminal Record Policies?

- This new ruling allows plaintiffs to challenge housing practices that have a discriminatory effect without having to show discriminatory intent.
- People with criminal records are not a protected class under the Fair Housing act, and guidance from H.U.D. says that in some cases, turning down an applicant because of their criminal record can be legally justified.

### What is H.U.D.'s New Ruling on Criminal Record Policies?

- Whether a landlord's policy has a discriminatory impact will need to be determined on a case-by-case basis. Saying "criminals are poor tenants" are not sufficient, HUD says. Barring people based upon arrest alone is no good, because arrests alone aren't proof of guilt.
- HUD warns if landlords do intend to discriminate, and use criminal records as a cover for their actions, they can be found in violation of the Fair Housing Act.
- Arbitrary or overbroad policies as well as any pretexts to conceal discrimination, aren't protected.
- Plaintiffs are allowed to show that a landlord practices have both a disparate impact on racial groups and are not justified. The goal is to make landlords consider, "Is their policy towards criminal records about keeping a community safe?"

## What Landlords Must do Under New Ruling?

- Landlords must take more of an individualized approach to avoid violating the Fair Housing Act. Even those with a partial ban must prove that their policy does not discriminate, by showing that it "accurately distinguishes" between criminal conduct that poses a risk to safety and conduct that is not.
- Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the crime and the length of time since the conviction.
- Landlords should not use a blanket policy and look at the applicant's ability to pay rent and to be a good tenant. They should take a holistic approach and look at the applicant as a whole.

#### 2013 H.U.D Ruling:

ON ASSISTANCE ANIMALS AND REASONABLE ACCOMMODATIONS

## HUD's 2013 Ruling on Assistance Animals

- April 2013, HUD issued a notice to housing providers clarifying their obligation to accommodated people with disabilities who rely on assistance animals under the FHA, Section 504, and the ADA. This ruling applied only to the FHA and Section 504 of the Rehabilitation Act.
- This notice was the result of DOJ's 2010 amendments to the ADA, which limited the definition of the service animal in public and commercial areas. This change created confusion for housing providers as they addressed requests for assistance animals in residential rental properties.

### HUD's 2013 Rule on Assistance Animals

- HUD's notice defines "assistance animal" under fair housing laws and housing providers must consider when evaluating an accommodation request which one applies to their properties and how these laws should be implemented.
- There are several differences in the definition of the assistance animal under the FHA, Section 504 and the ADA.

### HUD's Notable Difference Assistance Animal Terms

 Under the FHA and Section 504, HUD intentionally uses the term "assistance animal" to help distinguish it from the ADA's, "service animal" term.

 The FHA and Section 504 has a much broader definition of the "assistance animal", verses the ADA's restrictive definition.

## What Is An Assistance Animal Under the FHA?

- Assistance animals are not "pets", but rather assistive aids such as wheelchairs, hearing aids, cane or crutches.
- Both federal and state laws require that housing providers make exceptions to their "no pet" policy so that a disabled person with an assistance animal can enjoy the full use of his/her dwelling.

# What Is An Assistance Animal Under the FHA?

- These animals may be certified or uncertified.
   They could be an emotional support animal or any other animal that works, provides assistance, or performs tasks for the benefit of a person with a disability.
- Dogs and other animals may qualify. However there is no limit as to the type of animal that may provide assistance as long as it does not pose a direct threat to health and safety.

### What Is An Assistance Animal Under the FHA?

- Assistance/companion animals may be any size, breed or weight. Some, but not all of these animals, wear special collars and harnesses.
- There is no legal requirement for assistance/ companion animals to be visibly identified or to have documentation. There are many types of these animals with different names, which are not certified and do not have special training.

#### Types of Assistance Animals

- Any animal that is recommended to a disabled person in order to help with his/her disability is considered an assistance animal. These animals are often referred to as service animals, work animals, therapy pets or companion pets. There are two types of categories for these animals:
  - (1) <u>Animals for the physically-impaired:</u> (guide dog, seizure –alert, or balance animals)
  - (2) <u>Animals for the mentally –impaired:</u> (therapy or companion animals)

#### Types of Assistance Animals

- The Fair Housing Act does not specify any particular type of animal in order to qualify as an assistance animal.
- Assistance animals could be dogs, cats, birds, fish, rabbits, etc.
- Assistance animals are exempt from "no pet policies" and pet restrictions.
- A disabled tenant cannot be charged pet rents, deposits or fees for these animals.
- Housing providers must waiver pet weights, sizes, and breeds.

### Assistance Animals Limitations in Rental Properties

- Assistance (service) animals are permitted in all areas of the home, common areas and public accommodations within the housing complex, whether the disabled person is a resident, applicant, or guest.
- Emotional Support/Companion Animals can be restricted to the home and common space areas. A guest of a resident may also be allowed to have an emotional support animal in the home or common areas.