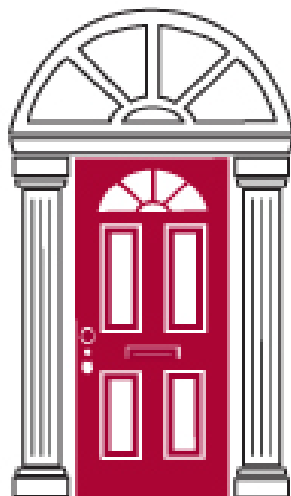


# FAIR HOUSING LAW IN VIRGINIA



**WATERGATE AT LANDMARK**  
*May 12, 2023*



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# Statutory Foundation

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- ✦ Federal Fair Housing Act of 1968 and the Fair Housing Amendments of 1988 (42 U.S.C. Sections 3601 *et seq.* as amended)
- ✦ Virginia Fair Housing Law (Section 36-96.1 *et seq.* of Code of Virginia and 18 VAC 135-50-10 of the Virginia Administrative Code)
- ✦ Local Fair Housing-Related Ordinances



# Federal Fair Housing Act

Federal Fair Housing Act prohibits **housing providers** from discriminating in any aspect of sale or rental of a dwelling unit, or in the provision of services or facilities, on the basis of:

- Race
- Color
- Religion
- National origin
- Sex (**including gender identity and sexual orientation**)
- Familial status (under the age of 18)
- Disability



# Virginia Fair Housing Law

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The provisions of the Virginia Fair Housing Law mirror those of the federal Fair Housing Act, **except** that the Virginia Fair Housing Law has additional “**protected classes**” –

- Elderly (55 or older)
- Military Status (active duty, veteran, spouse)
- Source of Funds



# City of Alexandria Protected Classes

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- Ancestry
- Marital Status
- Sexual Orientation



# Virginia Fair Housing Law Amendments - 2020

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Four new protected classes:

- Sexual Orientation
- Gender Identity
- Status as a Veteran
- Source of Income



# Virginia Fair Housing Law Amendments – 2021

## *Protected Classes*

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Re-defines protected class in Virginia Fair Housing Law related to ***military status***:

- Active military
- Military spouse
- Veterans



# Applicability to Community Associations

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Courts have applied fair housing laws to both homeowners and condominium unit owners associations, determining that each is a **housing provider**.





# Disability



# Disability Defined

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The Fair Housing Act defines a person with a disability as a person:

- ✦ With a **physical or mental impairment** that *substantially limits* one or more **major life activities**;
- ✦ Who is regarded as having such an impairment; and
- ✦ With a record of such an impairment.



# Physical or Mental Impairment Defined

The Joint Statements define the term “physical or mental impairment” to include, but not limited to:

- ✦ Orthopedic, visual, speech and hearing impairments
- ✦ Cerebral Palsy
- ✦ Autism
- ✦ Epilepsy
- ✦ Muscular dystrophy
- ✦ Multiple sclerosis
- ✦ Cancer
- ✦ Heart disease
- ✦ Diabetes
- ✦ HIV
- ✦ Mental retardation
- ✦ Emotional illness
- ✦ Drug addition (other than illegal use of controlled substance)
- ✦ Alcoholism
- ✦ Hoarding



# Housing Provider Response

The fair housing laws *require* housing providers to:

- ✱ Make **reasonable accommodations** in rules, policies, practices, or services **necessary** to afford disabled individuals an equal opportunity to use and enjoy their **dwelling**.
- ✱ Make **reasonable modifications** of existing premises that are occupied by disabled individuals if such modifications are **necessary** to afford disabled individuals with an equal opportunity to use and enjoy the **dwelling**.



# Necessity of Accommodation or Modification

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To determine whether a requested accommodation or modification is necessary, there must be an identifiable relationship, or **nexus**, between the requested accommodation or modification and the individual's disability.



# Who Pays?

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As a general rule, the **association** is responsible for the costs to make **reasonable accommodations** and the **requesting party** is responsible for the costs to make **reasonable modifications**.



# Virginia Fair Housing Law Amendments – 2021 *Accessible Parking*

- Requests for accessible parking to accommodate a disability shall be treated as a request for ***reasonable accommodation***.
- Background
  - *Windsor Plaza* case.
  - HUD Joint Statement.
- Impact: Housing providers responsible for costs – unless an *undue financial burden*.



# What You CAN Ask

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- ✦ If the disability is NOT obvious, the housing provider may ask for information that:
  - is necessary to verify that the person is disabled
  - describes the needed accommodation/modification
  - shows the relationship between the disability and the need for the requested accommodation/modification
- ✦ If the disability IS obvious, but the need for the request is not readily apparent or known, the housing provider may only request information necessary to evaluate the disability-related need for the request.





# What NOT To Ask

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The housing provider may not ask about the nature or severity of an individual's disability.



# Virginia Fair Housing Law Amendments - 2016

Comprehensive amendments to the Virginia Fair Housing Law:

- Defined “***physical and mental impairments***”
- Defined “***assistance animal***”
- Enumerated rights and responsibilities relating to accommodations for assistance animals



# Virginia Fair Housing Law Amendments - 2016

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- Established a specific interactive process for the handling and processing of accommodation requests
- Incorporated guidance contained in Joint Statements



# Virginia Fair Housing Law Amendments - 2016

The amendments also confirmed that:

- Assistance animals can be animals **other than dogs**
- Assistance animals are **not** pets
- Assistance animals do **not** have to be trained or certified
- An individual entitled to an assistant animal may **not** be required to pay a pet fee or additional rent



# HUD Guidance on Assistance Animals

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HUD released a Notice on January 28, 2020 intended to provide detailed guidance to housing providers on:

1. Assessing a person's request to have an animal as a reasonable accommodation under the Fair Housing Act, and
2. Documenting an individual's need for assistance animals in housing.



# Main Takeaways

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Two types of assistance animals:

- Service Animals
- Other animals that do work, perform tasks, provide assistance or provide therapeutic emotional support

***REMEMBER: Assistance animals  
are not pets!!!***



# Main Takeaways

How to consider a person's request, including:

- How to tell if the animal a ***service animal***?
- What information may be requested to show a disability or disability-related need?

***Documentation from the internet  
alone may not be sufficient!***



# Virginia Fair Housing Law Amendments - 2021

- Requests for **accessible parking** to accommodate a disability shall be treated as a request for ***reasonable accommodation***.
- Background
  - *Windsor Plaza* case.
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- Impact: Housing providers responsible for costs – unless an *undue financial burden*.





# **Race, Color, Religion, National Origin, and Sex**



# Race

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It is illegal to deny someone a housing opportunity because that individual is, for instance, Caucasian or African American.



# Color

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It is illegal to deny someone a housing opportunity because that individual is, for instance, a darker complexion.



# Religion

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It is illegal to deny someone a housing opportunity because that individual practices a certain religion, such as Islam or Christianity.



# National Origin

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It is illegal to deny someone a housing opportunity because of an individual's national origin.

Such discrimination can be based either upon the country of an individual's birth or where his or her ancestors originated.



# Sex

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It is illegal to deny someone a housing opportunity based on the gender of that individual.

On February 11, 2021, HUD implemented a policy that discrimination on the basis of gender identity or sexual orientation is discrimination against sex.



# Familial Status



# Familial Status

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- ✦ The Fair Housing Act, with some exceptions, prohibits discrimination in housing against families with children under 18.
- ✦ In addition to prohibiting an outright denial of housing to families with children, the Act also prevents housing providers from imposing special requirements or conditions on residents with custody of children.





# Familial Status (Continued)

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Housing providers may not discriminate against families in which one or more children under 18 live with:

- ✦ A parent;
- ✦ A person who has legal custody of the child or children; or
- ✦ The designee of the parent or legal custodian, with the parent or custodian's written permission.
- ✦ Women who are pregnant; and,
- ✦ Anyone securing legal custody of a child under 18.



# Familial Status Impact on Rule-Making

- ✦ Community associations must be careful to create objective descriptions in rules, policies, and restrictions.
- ✦ For example, the following rules will likely be found to violate fair housing law:
  - Children may not play on the common area;
  - Children under the age of 15 must be accompanied by a person over the age of 18;
  - Children must wear diapers in the pool.



# Harassment



# The HUD Rule

- **HUD:** Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices (*effective October 14, 2016*).
- Formalizes treatment of Fair Housing Act claims raising allegations of **quid pro quo** and **hostile environment** harassment.



# Quid Pro Quo

## “*This for That*”

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### Quid Pro Quo Harassment

- Unwelcome request or demand
- Protected class
- Submission to the demand or request is a condition to:
  - Sale, rental, or availability of housing
  - Terms, conditions, privileges of sale or rental
  - Provision of services or facilities



# Hostile Environment

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## Hostile Environment Harassment

- Unwelcome conduct
- Protected class
- Severe or pervasive enough to interfere with:
  - Sale, rental, or use of a dwelling
  - Terms, conditions, or privileges of sale or rental
  - Provision of services or facilities



# Association Liability

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An association may liable for harassment by a third party if Association:

- Knew or should have known about the harassment
- Had the power to correct it
- Failed to take prompt corrective action



# Association Liability

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“A community association generally has the power to respond to third-party harassment by imposing conditions authorized by the association’s CC&Rs or by other legal authority [...]”

(Office of the Federal Register)





# Fair Housing Dos

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|---|--|
| <ul style="list-style-type: none"><li>• Be prepared.</li></ul>  | <ul style="list-style-type: none"><li>• Get the facts.</li></ul>   |
| <ul style="list-style-type: none"><li>• Remain calm.</li></ul>  | <ul style="list-style-type: none"><li>• Be empathetic – not sympathetic.</li></ul>                                   |
| <ul style="list-style-type: none"><li>• Explain the applicable rule in clear terms.</li></ul>                     | <ul style="list-style-type: none"><li>• Be positive and solution oriented.</li></ul>                                 |
| <ul style="list-style-type: none"><li>• Speak in a slow and polite manner.</li></ul>                              | <ul style="list-style-type: none"><li>• End the conversation if the individual becomes abusive in any way.</li></ul> |
| <ul style="list-style-type: none"><li>• Keep body language neutral.</li></ul>                                     | <ul style="list-style-type: none"><li>• Take control and action when required.</li></ul>                             |
| <ul style="list-style-type: none"><li>• Maintain a comfortable distance between you and the individual.</li></ul> | <ul style="list-style-type: none"><li>• Be firm, but non-confrontational.</li></ul>                                  |
| <ul style="list-style-type: none"><li>• Focus on the behavior; not the person.</li></ul>                          | <ul style="list-style-type: none"><li>• Call for backup – internal or external, if necessary.</li></ul>              |
| <ul style="list-style-type: none"><li>• Listen, observe and document.</li></ul>                                   |  |
| <ul style="list-style-type: none"><li>• Be sensitive to communication barriers.</li></ul>                         |  |

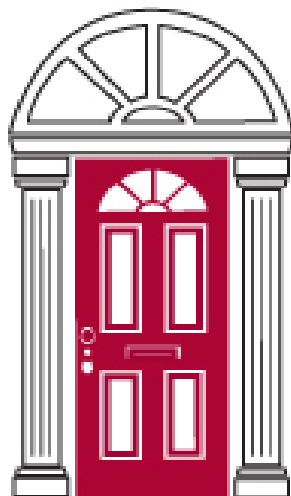


# Fair Housing Don'ts

- Assume the facts.
- Respond aggressively or derogatorily.
- Interrupt.
- Argue or engage.
- Touch or corner the individual.
- Make the situation personal.
- Embarrass the individual.
- Provide the source of the complaint.



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EQUAL HOUSING  
OPPORTUNITY #219866

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