# KNOW YOUR RESPONSIBILITIES

*as a*

# Landlord or Property Manager in Pennsylvania

HOUSING EQUALITY CENTER of Pennsylvania

*Fair Housing…* ***It's Your Responsibility!***

The Housing Equality Center of Pennsylvania is a nonprofit organization dedicated to advancing fair and equal access to housing opportunities for all Pennsylvanians. We provide education on fair housing rights to consumers and organizations serving members of the protected classes and offer training and technical assistance to private and nonprofit housing providers and local governments. The Housing Equality Center provides fair housing counseling and testing investigation services for victims of housing discrimination in the City of Philadelphia and in Bucks, Chester, Delaware, Lehigh, Montgomery, and Northampton Counties in Pennsylvania.

If you have found this manual helpful and would like to support efforts to assist residents of Pennsylvania regarding their fair housing rights, please consider making a contribution to the Housing Equality Center by visiting equalhousing.org and clicking on **Donate Now.**

HOUSING EQUALITY CENTER of Pennsylvania

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equalhousing.org

**This manual is not intended as a substitute for proper legal advice.**
The Housing Equality Center cannot be held responsible for errors, omissions, or changes to the law.

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# INTRODUCTION


It is our hope that this manual will help to guide you through a successful experience as a landlord by providing general information and self-help resources regarding state and federal fair housing laws and Pennsylvania Landlord Tenant Law as it pertains to the rental of private residential property.

This manual covers two bodies of rules regarding residential rental transactions in Pennsylvania. The Pennsylvania Human Relations Act (Act of 1955, P.L. 744, No. 222, as amended June 25, 1997 by Act 34 OF 1997, 43 P.S. §§ 951-963) and the federal Fair Housing Amendments Act, 42 U.S.C. 3601 et seq. protect consumers from being discriminated against, or treated in an unfair or prejudicial way, due to their membership in a category that is protected under these laws. Some municipalities in Pennsylvania adopt their own ordinances which add additional protections beyond those provided by state and federal law. Landlords need to be aware of these ordinances in the areas in which they have rental properties. The second is the Pennsylvania Landlord and Tenant Act of 1951, 68 P.S. § 250.101 et seq. Pennsylvania Landlord Tenant Law protects both tenants and landlords by establishing basic rules and requirements for the rental of residential property.

Subsidized housing, rooming houses, mobile homes, and commercial property may have additional laws and requirements and are not discussed within the scope of this manual.

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# FAIR HOUSING

## What is Fair Housing?

Fair housing is the right of individuals and families to access the housing of their choice without being subjected to forms of discrimination prohibited by law. As a landlord, you need to be aware of local, state, and federal laws prohibiting housing discrimination. This chapter will cover fair housing laws and how they apply to you as a housing provider.

## Fair Housing Violations Can Be Expensive

As a housing provider, one of the most potentially expensive mistakes you can make is to violate fair housing laws. Consequences for violations or perceived violations of the Fair Housing Act can include having an administrative complaint filed against you with the U.S. Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO) or the Pennsylvania Human Relations Commission (PHRC). A state or federal lawsuit may also be filed against you by a consumer who believes you have discriminated against them.

Victims of housing discrimination can win economic, non-economic, and punitive damages. Victims can be awarded out-of-pocket costs incurred while obtaining alternative housing and any additional costs associated with that housing. Non-economic damages for humiliation, mental anguish, or other psychological injuries may also be recovered.

Housing discrimination cases can also result in the prevailing plaintiff winning attorney's fees. Even if you prevail in defending yourself in a fair housing discrimination case, it may cost you time and money and can hurt your professional reputation. You can protect yourself by adopting tenant screening policies and property management practices that do not discriminate or otherwise violate fair housing laws.

In addition, housing providers who violate fair housing laws can be subjected to civil penalties, government monitoring, injunctions, and loss of tax credits. Federal civil penalties that apply to violations of the Fair Housing Act can reach $21,663 for a first violation, $54,157 for a second violation within the preceding five years and $108,315 for violating the Act two or more times in the previous seven years. These sobering potential penalties emphasize the importance of understanding your responsibilities and liabilities as a housing provider.

## What Happens When a Discrimination Complaint is Filed Against You?

Housing discrimination complaints filed against you can be in the form of any of the following:

- A federal lawsuit, which can be filed up to two years from the date of the incident
- An administrative complaint filed with the U.S. Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO), which can be filed with FHEO within one year from the incident
- An administrative complaint filed with the Pennsylvania Human Relations Commission (PHRC), which can be filed with PHRC within 180 days from the incident
- A lawsuit in state court, which can also be filed up to two years from the date of the incident
- An administrative complaint filed with a local municipal human relations commission (statutes of limitations may vary and will be found in your local anti-discrimination ordinance)
- Systemic violations which affect large numbers of consumers may be investigated and adjudicated by the U.S. Department of Justice or the Pennsylvania Office of the Attorney General

If someone files a discrimination complaint against you, you will receive a letter from the administrative agency which received the complaint. You will be given a copy of the complaint with the allegations and will be given an opportunity to respond to the allegations in writing.

If you have a complaint filed against you, you will want to seek proper legal advice from an attorney. Be careful how you respond to a tenant who has filed a complaint against you. It is illegal to retaliate against someone for filing a complaint. It is illegal to threaten, coerce, intimidate, or interfere with someone exercising their fair housing rights or filing a complaint with an administrative enforcement agency. It is also illegal to threaten, coerce, intimidate or interfere with witnesses. Retaliation against a complainant will compound your legal liability.

It is important to maintain complete and accurate records and documentation with names, dates, and details regarding the allegations to help prove your case. It is easy to forget important details, so as soon as you can, write a narrative and timeline of the events which led up to the discrimination complaint being filed. You will want to collect the contact information for any witnesses.

The party filing the complaint with PHRC or FHEO is called the complainant and the party being accused of discrimination is called the respondent. If the complaint has been filed with PHRC or FHEO, then the agency will investigate the allegations and will also provide an opportunity for both parties to conciliate (or settle) the complaint. A conciliation is a compromise of sorts to end the administrative complaint process. A conciliation agreement will typically be made public. If the two parties cannot agree to a conciliation, then the investigating agency will issue a finding. If a finding of "no probable cause" for discrimination is made, then the administrative complaint process ends with no finding of discrimination. A complainant can still choose to pursue a lawsuit in either state or federal court as long as it is within the statute of limitations. If a conciliation agreement was signed, then the complainant will not be able to file a lawsuit in state or federal court.

If a finding of "probable cause" of discrimination has been made, then the investigating agency will issue a charge of discrimination against the respondent. After a finding has been issued, there will be a hearing and the case will be heard in front of an administrative law judge.

If the judge rules against you, you may find yourself responsible for any of the following:

- Actual damages
- Compensatory damages
- Damages for humiliation or emotional distress
- Punitive damages
- Victim's attorney's fees
- Federal civil penalties—$21,663 for the first violation, $54,157 for the second violation within five years of the first violation, and $108,315 for a third violation within seven years (24 CFR §180.671) (2021)

Even if you win the case and a "no probable cause" finding is made or a lawsuit ends in your favor, you will have incurred attorney's fees, lost time, and possibly experienced much frustration.

## What Can I Do to Protect Myself From Housing Discrimination Complaints?

It is extremely important that you understand local, state, and federal fair housing laws. Being a landlord is difficult enough without adding on the aggravation, time and considerable expense to defend yourself against a discrimination complaint. Make it a priority to:

- Read this manual to give you a comprehensive overview of Pennsylvania state and federal fair housing law.
- Check with your local municipality to see if there is an anti-discrimination ordinance in effect in the areas where you own or manage rental properties.
- Make sure that any employees or representatives that work for you are properly trained and know how to handle situations which could potentially lead to fair housing complaints against you. Under the Fair Housing Act, you can be held responsible for the actions of third parties who are acting on your behalf. *For more information see boxed text on third party liability on page 21.*
- Understand how your insurance policy is written and what it covers. Find out if your insurance policy covers your attorney's fees. Will it cover any judgment against you? You will want to know if your insurance policy covers any employees who have been accused of discrimination. Find out if you insurance policy covers complaints filed with administrative agencies such as PHRC or FHEO.
- Be aware that the tenant screening process is the area where landlords are most vulnerable to be accused of unlawful discrimination. Many housing discrimination complaints are filed due to discriminatory behavior or actions that occur during the application or tenant screening process.
- Adopt and apply uniform, consistent, nondiscriminatory evaluation criteria to evaluate a tenant's credit worthiness, criminal history, and rental history.
- Treat tenants fairly and equally without regard to race, color, national origin, religion, sex, familial status, disability, LGBTQ+ status, age (over 40), or whether they are a user, handler, or trainer of assistance animals for persons with disabilities.
- Make reasonable accommodations for people with disabilities.
- Allow individuals with disabilities to make reasonable modifications to their rental units.
- Be flexible with various types of lawful, verifiable income, including but not limited to Housing Choice Vouchers, Social Security Income, Social Security Disability Income, alimony, and child support.
- Become familiar with your local fair housing group and reach out to them for technical assistance when you are unsure of how to handle a particular situation with potential fair housing implications. Fair housing groups exist to help those who feel they have been victims of housing discrimination and also to assist landlords with technical questions.
- Avoid common property management mistakes by following the requirements of applicable laws. Communicate in a clear, calm, factual manner with tenants and applicants. Properly document conversations, agreements, breaches of the lease and damages. Consult with an attorney when necessary.
- Many housing discrimination complaints and lawsuits can be avoided by employing good conflict resolution strategies and positive management approaches. Seek to understand before being understood. Cultivate trust with your tenants. Avoid using threats. Focus on the interests of both parties and don't argue just to "win." Stay objective. Be creative and work toward alternative solutions or compromises that benefit both parties when necessary.

# FAIR HOUSING LAWS

As a housing provider, you need to be familiar with federal, state, and local anti-discrimination laws.

## Federal Fair Housing Law

Title VIII of the Civil Rights Act of 1968, as amended, is known as the **Fair Housing Act.** The Fair Housing Act is the federal law that makes it illegal to discriminate in any housing-related transaction based on seven protected classes.

- **Race**
- **Color**
- **National Origin**
- **Religion**
- **Sex** (Sex includes sexual orientation and gender identity.)
- **Disability**
- **Familial Status** (Familial status includes the presence of minor children in a household, pregnant women, or anyone in the process of securing legal custody of a child. For exemptions to the familial status provision of the Fair Housing Act, see Housing For Older Persons on page 18.)

## State Fair Housing Law

**The Pennsylvania Human Relations Act** is the state law protecting consumers against housing discrimination and adds two additional protected classes: **Age (over 40) and users, handlers, or trainers of assistance animals for persons with disabilities.**

## Local Fair Housing Laws

Municipalities across Pennsylvania have adopted local ordinances, which add additional protections that are not included under federal or state laws. At the time of printing, at least 50 municipalities and almost all of the major cities in Pennsylvania have adopted anti-discrimination ordinances which add additional protected classes. Some common additional protected classes include marital status, source of income, and military or veteran status. Check with your local government for more information specific to the municipalities in which you have rental properties.

## Prohibited Conduct

Fair housing laws make it illegal to discriminate against anyone because they are a member of a protected class. Prohibited conduct can include any of the following:

- Refusing to rent or sell housing because someone is a member of a protected class
- Refusing to negotiate for the sale or rental of housing because someone is a member of a protected class
- Making housing unavailable or denying that housing is available because someone is a member of a protected class
- Setting different terms, conditions, or privileges for the sale or rental of housing, a mortgage loan, homeowner's or renter's insurance, or any other housing transaction. This includes applying tenant screening criteria unequally to members of protected classes, requiring higher security deposits from members of protected classes, or terminating a lease because a tenant is a member of a protected class or associates with a member of a protected class.
- Advertising in a discriminatory way including stating a limitation, preference, or bias for or against any protected class
- Threatening or intimidating anyone exercising a fair housing right or assisting anyone else in exercising their fair housing rights

## Types of Housing Covered by the Fair Housing Act

The Fair Housing Act and the Pennsylvania Human Relations Act cover all types of housing, including, but not limited to:

- **Apartments**
- **Mobile Home Parks**
- **Condominiums**
- **Single Family Homes**
- **Public Housing**
- **Nursing Homes**
- **Dormitories**
- **Group Homes for People with Disabilities**

# EXEMPTIONS TO THE FAIR HOUSING ACT

The following types of housing do not have to comply with some portions of the Fair Housing Act:

- The federal Fair Housing Act exempts buildings with four or fewer units where the owner lives in one of the units and the owner does not use the services of a real estate professional. This is commonly referred to as the "Mrs. Murphy's exemption." This exemption does not exist under the Pennsylvania Human Relations Act. The Pennsylvania Human Relations Act exempts **only** buildings with two units where the owner lives in one of the units.
- In Pennsylvania, if you own the property, the property is your primary residence, and there are only two units in the building, you may choose who you want to live in the other unit, even if such choice would show a preference or limitation based on a protected class. You still must be careful, however, that you do not make discriminatory statements or advertise in a discriminatory manner as these types of speech are not protected by the First Amendment and do violate the Fair Housing Act. In addition, the Civil Rights Act of 1866 prohibits all discrimination in the sale or rental of property based on race or color, therefore the Mrs. Murphy's exemption may not be used to discriminate based on race or color.
- The federal Fair Housing Act exempts single-family housing sold or rented without the use of a broker, when the private individual owner does not own more than three such single-family homes at one time. The Pennsylvania Human Relations Act does **not** contain this exemption so sellers in Pennsylvania may not discriminate in for-sale-by-owner transactions.
- Housing operated by religious organizations and private clubs may limit occupancy to members as long as they do not discriminate in their membership.
- Housing for Older Persons that meet certain requirements under the Housing for Older Persons Act (HOPA) may refuse to rent to families with children **if:**
  - The HUD Secretary has determined that the housing is specifically designed for and occupied by elderly persons under a Federal, State, or local government program;
  - The housing is occupied **solely** by persons who are 62 or older; **or**
  - At least 80 percent of the occupied units have at least one resident who is 55 or older **and** the housing adheres to a policy that demonstrates an intent to house persons who are 55 or older.

  As a landlord, you cannot arbitrarily decide that you want to rent only to people 55 and up. Properties must meet all the requirements of the Housing for Older Persons Act in order to avoid liability for discriminating against families with children. *For more information, see Housing for Older Persons on page 18.*

**REMEMBER:** There is **never** an exemption for discriminatory statements or discriminatory advertising. There are no exemptions to the advertising provision of the Fair Housing Act which stipulates that you cannot make, print, or publish a discriminatory statement.

**REMEMBER:** The **Civil Rights Act of 1866** prohibits all discrimination in the sale or rental of property based on race or color. This law contains no exemptions so even properties exempt under federal or state law are still prohibited from discriminating based on race or color.

# ADVERTISING

Per Section 804 (c) of the Fair Housing Act, it is illegal to make, print, or publish any notice or statement with respect to the sale or rental of a dwelling that includes a preference or limitation based on a protected class. Avoid posting discriminatory statements on social media or in any type of advertising. Posting discriminatory statements will be very difficult to defend in court or during an administrative complaint investigation process.

You want to make sure that nothing in your ad can be interpreted as discriminatory. Your ads should stick to the number of bedrooms and bathrooms, square footage, rental price, location, lease terms and amenities and special features of the property. A good rule of thumb is to describe the unit itself and not the desired qualities of potential occupants.

The following are examples of illegal advertising:

- "No kids"
- "Perfect for single or couple"
- "Christian home"
- "Apartment not suitable for handicapped person"
- "Italian neighborhood"
- "Mature adults preferred"
- "Prefer single female"
- "Not suitable for families with kids due to the stairs"
- "Great for retired couple or young professional"

Describe the rental unit in an accurate manner. Advertise only rental units that are truly available. Quote the correct rental rate in your ad. Any discrepancies between what is stated in an ad and what is verbally conveyed to a prospective tenant could be construed as unlawful discrimination. Make sure to mention any legal rules or regulations, like "no smoking", in your ad. If you are going to do a credit check and/or a background check, you may mention this in the ad.

# FAMILIAL STATUS



Familial status is a protected class under the Fair Housing Act. It is illegal to discriminate against individuals and families who have minor children in their household, pregnant women, or anyone securing legal custody of a child under the age of 18. Examples of illegal discrimination against families with children include:

- "No children" policies
- Refusing families due to the ages of their children (for example, not allowing children under the age of 7)
- Segregating housing so that children are only allowed on certain floors or in certain buildings
- Stating that parents and children or boys and girls cannot share a bedroom—these types of decisions are the parents' choice to make
- Evicting or not renewing the lease of a family or individual because of pregnancy or a child joining the family by birth, adoption, or legal custody

## Safety Rules for Children in the Use of Housing Facilities

Although the Fair Housing Act does not prohibit a housing professional from creating rules that ensure the health and safety of all residents, it does prohibit rules and regulations that apply only to children when it comes to the use of housing facilities. Even though you may have a concern about the health and safety of children and/or increased liability if children are left unsupervised, it is important that all safety rules comply with the Fair Housing Act.

Housing professionals should be aware that any rule that restricts families with children from living on upper floors of a multi-story building or restricts families with children from living in certain sections of a building or complex are considered discriminatory. In addition, the following are some examples of regulations dealing with children's use of housing facilities that may be considered overly restrictive:

- Restricting all children under the age of 18 access to housing facilities
- Requiring only children to take a swim test as a condition for access to a community swimming pool when adults are not subject to the same terms and conditions
- Restricting children from riding bikes on the walkways outside an apartment complex when adults are not subject to the same rule
- Restricting children from playing outside in courtyards or other grounds of an apartment building or complex or imposing unreasonable fees upon tenants with children in order to discourage such activities when adults are not subject to the same restrictions or fees

## Adult Supervision

In order to protect the health and safety of children, housing professionals may create rules that make it mandatory for children to have adult supervision when using certain housing facilities, such as a pool, fitness center, sauna, hot tub or laundry room. While it is reasonable to ask that children of certain ages be supervised for safety reasons, it may be unreasonable to make a rule that all children under 18 must be supervised by an adult to use certain housing facilities. For example, it is reasonable to ask that children under 5 years of age be supervised by an adult in a pool area. However, it may be unreasonable and discriminatory to impose a rule that mandates children 17 years old or younger be supervised by an adult, as the supervision may not be necessary.

## Tips for Creating Non-Discriminatory Safety Rules for All Residents

It is illegal to deny a family with children housing-related amenities or services because of safety concerns. While safety rules and regulations may be established to protect children, they may be considered discriminatory when children are singled out and restricted from using and enjoying certain housing facilities that are enjoyed by adults. When creating safety standards, make sure they are directed towards residents of all ages, not just children. When adult supervision is required to ensure the health and safety of children in a pool area, fitness center, hot tub, laundry room, etc., make sure the regulation is age-appropriate and/or developmentally appropriate. All rules should be applied to everyone, whether adult or child, and enforced on an equal opportunity basis.

## Occupancy Policies

Overly restrictive occupancy policies and per capita charges for each additional occupant may violate the Fair Housing Act. You will want to be very careful in establishing occupancy policies for your rental units. Each rental unit will need to be considered individually, taking into consideration its layout, square footage, and code requirements such as existing means of egress (required exits for living and sleeping areas).

It is important that you read and understand your local municipality's occupancy regulations. Most municipalities follow the International Property Maintenance Code (IPMC[1]). Section 404.4.1 of the 2021 IPMC establishes that every bedroom must contain at least 70 square feet of floor area and every bedroom occupied by more than one person must contain at least 50 square feet for each occupant.

Following the guidelines of the 2021 IPMC a "2 person per bedroom" limitation may or may not be reasonable depending on the size of the bedroom. Remember that overly restrictive occupancy limits can be challenged as having a disparate impact on families with children and may result in a legal challenge. When establishing your occupancy limits, you will want to take careful consideration of your local municipality's occupancy codes and the 2021 IPMC. Limiting your occupancy beyond that which is required by law may prove to be expensive in the long run. Consult with your local fair housing agency if you have any questions or would like assistance in developing a fair housing compliant occupancy policy.

Per capita charges may not be arbitrary and must be based on actual increased costs that are directly related to additional occupants. For example, if you as the property owner pay the water bill, it may be reasonable to apply an additional small charge for additional occupants if you can document the actual increase in water usage and associated cost that you incur due to each additional occupant. Any per capita fees that cannot be justified by specific costs incurred by the housing provider may be considered different terms and conditions with a discriminatory effect on families with children. You may want to consider imposing equal rent increases for all tenants to cover these types of costs rather than risk an accusation of familial status discrimination.

[1]At time of publication, the 2021 International Property Maintenance Code is the latest edition of the IPMC. This can be accessed online at https://codes.iccsafe.org/content/IPMC2021P1

# Q&A Familial Status



**My rental property has very steep steps and the door opens onto a busy parking lot with many commercial trucks. I do not feel it would be safe to have small children living in this unit. Am I allowed to restrict the unit to only older children and adults?**

No. It is a violation of the Fair Housing Act to restrict housing based on a protected class. Familial status is a protected class. It is up to the parents to determine if a property is suitable and safe for their children. If the property has hazardous conditions, it should not be rented out to anyone. Make sure your property is up to code to minimize liability for injury on your property. You should also have liability insurance or homeowners insurance to protect yourself against claims.

**My property has lead-based paint. I do not want children to be exposed to the lead. Can I reject families with children based on the presence of lead-based paint?**

While you may have good intentions, you cannot discriminate against families with children, even if there is lead-based paint on your rental property. You do have a legal obligation to disclose the presence of lead-based paint on your property to any tenants.

*See Lead-Based Paint on page 60.*

**Can I set basic rules for safety without being accused of discriminating against families with children?**

Yes. Make sure all community and safety rules are applicable to all residents and are not directed at only children. For example, if you do not want residents riding bicycles on the sidewalk make a rule that says “no bicycle riding on the sidewalk at any time” rather than stating “children may not ride bicycles on the sidewalk.”

**I have elderly neighbors who do not want to be disturbed by children. What can I do to protect their rights?**

Establish a non-discriminatory noise policy which is enforced equally. It is not only families with children who generate noise. Televisions with the volume turned up too loud, loud music, or barking dogs can also be disruptive to neighbors. Establishing a non-discriminatory noise policy that applies to all residents protects your tenants who want to enjoy their rental unit without excessive noise. A non-discriminatory policy also protects you from being accused of discrimination if it becomes necessary to evict tenants for excessive noise violations.

**Are babies considered occupants? Can I refuse to rent to a pregnant woman if the new baby will cause the apartment to be over-occupied?**

Infants are generally not considered additional occupants (even though they do seem to take up a lot of space!). It is unlawful to refuse to rent to a woman because she is pregnant. It is unlawful to refuse to rent to anyone because they will be adopting or securing legal custody of a child. There is no set rule on what age a baby or young child is to be considered an occupant. While this makes it difficult for you as the landlord to determine proper occupancy, you want to avoid discrimination based on familial status. Refusing to rent or forcing tenants to move into a larger bedroom apartment due to a new baby can result in a housing discrimination complaint. Consult your local fair housing group for individualized guidance on this issue.

# HOUSING FOR OLDER PERSONS



The federal Fair Housing Act protects people from discrimination in housing based on race, color, national origin, religion, sex, familial status, and disability. Generally, the Fair Housing Act applies to all types of housing, with a few exemptions. One of the exemptions is for qualified senior housing, exempted by the Housing for Older Persons Act (HOPA).

"Housing for older persons" is exempt from the Fair Housing Act's prohibition of discrimination against families with children in two categories:

- 100% of the occupants must be 62 years of age or older; or
- 80% of the occupied units must contain at least one resident who is 55 or older.

HOPA also requires that a facility or community seeking to claim the 55 and older exemption meet two additional conditions. The housing must be intended and operated for persons 55 years of age or older and the housing facility or community must publish and adhere to policies and procedures that demonstrate its intent to qualify for the exemption.

HOPA requires that a housing facility or community seeking the 55 and older exemption comply with HUD regulations on verification of occupancy. This should be performed through reliable survey, affidavit, or other documentation which confirms that the 80% threshold is being met. Copies of the information gathered in support of the occupancy verification may be kept in a separate file with limited access, for the sole purpose of complying with HOPA, and should be reviewed and updated every 2 years.

HOPA permits two ways a community can legally establish "housing for older persons" and qualify for the exemption to the Fair Housing Act. First, a community can convert to "housing for older persons" if 80 percent of its occupied units become occupied by at least one person 55 years of age or older. However, this must occur organically and the housing community **may not** obtain the 80 percent threshold by discriminating against families with children. Additionally, the facility or community cannot publish such policies or procedures in advance of meeting the 80 percent threshold as such policies and procedures would have a chilling impact upon potential applicants or current occupants who are families with children. Secondly, a housing provider may construct a new housing community or facility and meet the requirements set forth in HOPA.

The HOPA regulations state that simply advertising that this is an "adult community" is not sufficient to meet the standard of "publishing and adhering to policies and procedures that demonstrate an intent to qualify" as senior housing. Clear policies and procedures must be published and adhered to. When advertising, the guidelines state that the best practice is to refer to such housing as "Senior Housing" or "A 55 and older community" or "age-restricted housing" and discourages the use of the term "adult housing" or similar language.

While the use of the term "adult housing" or similar phrases, standing alone, do not destroy the intent requirement of HOPA, the regulations state that they send a clear message which is inconsistent with the intent to be housing for older persons. If a community or facility has clearly shown its intent in other ways, and meets the 80% requirement, then the intent requirement has been met even if the phrase "adult" or similar terminology is occasionally used. However, a community that describes itself as "adult," leaves itself vulnerable to complaints about its eligibility for the exemption, which could result in an investigation or litigation to determine whether the community in fact qualifies for the exemption.

ⓘ For more information, visit Questions and Answers Concerning the Final Rule Implementing the Housing for Older Persons Act of 1995 at www.equalhousing.org/wp-content/uploads/2014/09/1995-Housing-for-Older-Persons-FAQ.pdf

# VICTIMS OF DOMESTIC VIOLENCE

It is illegal to discriminate against someone due to a history of experiencing domestic violence. Refusing to rent to someone because they have been a victim of domestic violence or stalking violates the Fair Housing Act.

A zero tolerance policy for crime that is applied to victims of domestic violence violates the Fair Housing Act. As a landlord, you can establish a zero tolerance policy for crime committed on the property and you can evict tenants who commit crimes on your property. However, you cannot apply this policy to the victims of domestic violence.

## Q&A Victims of Domestic Violence Eviction

**One of your tenants is a victim of domestic violence and calls the police when her abuser shows up at her apartment in violation of a protection from abuse order. Can I evict the tenant for police activity?**

No. It would violate the Fair Housing Act for you to evict the tenant who is the victim. Even if you have a zero tolerance policy against crime, you cannot apply this policy to the victim of a crime. Even in cases where the abuse takes place on your property, you may not evict a tenant because they have been a victim of domestic violence. You do, of course, have every right to call the police immediately if violence is occurring on your property. You also are permitted to evict a perpetrator of domestic violence if you have verifiable information that the resident is engaging in violent behavior.

ⓘ *Please note that landlords who accept Housing Choice Vouchers, must comply with the requirements of the Violence Against Women Act (VAWA). For more information, refer to Enforcement of Local Nuisance and Crime-Free Ordinances Against Victims of Domestic Violence and Other Crime Victims at www.equalhousing.org/wp-content/uploads/2016/12/Local-Nuisance-Ordinances-and-the-Fair-Housing-Act.pdf*

## Resources

Violence Against Women Act Resources:
ⓘ www.hud.gov/program_offices/housing/mfh/violence_against_women_act

### National Domestic Violence Hotline

For more information, visit www.thehotline.org

- 1-800-799-7233 (SAFE)
- 1-800-787-3224 (TTY)
- Text “START” to 88788

### Pennsylvania Coalition Against Domestic Violence

Among the services provided to domestic violence victims are: crisis intervention; counseling; accompaniment to police, medical, and court facilities; and temporary emergency shelter for victims and their dependent children. Prevention and educational programs are provided to lessen the risk of domestic violence in the community at large. For more information, visit www.pcadv.org

- 1-800-932-4632

# HARASSMENT

Sexual harassment and harassment based on any of the other state and federally protected classes is illegal under state and federal fair housing laws. Every year many housing discrimination complaints and lawsuits are filed against landlords, agents, property managers, and maintenance workers alleging persistent, pervasive sexual harassment or "quid pro quo" harassment, where the perpetrator demands sex in exchange for rent or repairs. Landlords and other housing providers are responsible for preventing harassment and taking steps to stop harassment if it occurs. Be sure that you have a harassment policy for any employees or property managers and make sure your employees are aware of the consequences of committing harassment. As a landlord, you can also be held liable for the actions of third parties, such as other tenants, if it can be shown that you knew or should have known of the harassing behavior and did not take any action to correct it when you had the ability to do so.

The courts and Department of Housing and Urban Development have long considered harassment based on race, color, national origin, religion, sex, familial status, and disability to be prohibited under the Fair Housing Act. Until 2016, however, standards for assessing harassment claims had not been formalized in regulation. To remedy this lack of clarity, in September 2016 HUD's Office of Fair Housing and Equal Opportunity published a final rule entitled *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act.*

This rule formalized the standards for evaluating claims of hostile environment and quid pro quo harassment in the fair housing context. The rule also provided definitions for "quid pro quo" (this for that) harassment and "hostile environment" harassment, offered examples of such harassment, and clarified housing providers' liability for harassment or discrimination by agents and third parties.

By establishing consistent standards for evaluating claims of quid pro quo and hostile environment harassment, the rule provides clarification and guidance to providers of housing and housing-related services seeking to ensure that their properties and businesses are free of unlawful harassment.

ⓘ For more information, refer to Quid Pro Quo and Hostile Environment Harassment and Liability under the Fair Housing Act at www.equalhousing.org/wp-content/uploads/2016/12/Harassment-and-Liability-under-the-Fair-Housing-Act.pdf

The Fair Housing Act covers two types of harassment: *quid pro quo and hostile environment.*

**Quid pro quo** (meaning something for something) involves subjecting a person to an unwelcome request or demand and making submission to the request or demand a condition related to the person's housing, such as, "Go out with me and I'll reduce your rent" or "Go out with me and I'll fix your roof" constitute unlawful sexual harassment under the Fair Housing Act. Just one incident of quid pro quo harassment can constitute sexual harassment. It is illegal for a housing provider to demand sexual favors in exchange for housing, rent reduction, or for making repairs. An unwelcome request or demand may constitute quid pro quo harassment even if the individual acquiesces to the request or demand.

**Hostile Environment Harassment** involves subjecting a person to unwelcome conduct that is sufficiently severe or pervasive such that it interferes with or deprives the person of the right to use and enjoy the housing. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the housing-related services transaction. Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists.

It is unlawful for a housing provider to create or allow a hostile environment. Unwelcome offensive or sexual conduct, remarks of a sexual nature, or unwelcome touching by a landlord or a landlord's

employee, constitute a hostile environment and are unlawful. Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists.

Similarly, a single incident of harassment because of race, color, national origin, religion, sex, familial status, LGBTQ+ status, and age (over 40), or disability may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a *hostile environment* or evidences a *quid pro quo.* Harassment can be written, verbal, or other types of conduct, and it does not require physical contact. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the housing-related services transaction. Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists.

Not only does a landlord or other covered entity have liability for its own conduct, you may also be held liable for:

- Failing to take prompt action to correct and end discriminatory housing practice by its employee or agent, where the housing provider knew or should have known of the discriminatory conduct;
- Vicarious liability for a discriminatory housing practice by its agent or employee, *regardless of whether or not* the housing provider knew or should have known of the discriminatory housing practice; and
- Failing to take prompt action to correct and end a discriminatory housing practice by a third party, where the housing provider knew or should have known of the conduct and had the power to correct it.

If you employ property managers or others such as maintenance personnel, you need to make sure you have done your absolute best to shield yourself from liability should your employee purposefully or inadvertently engage in discriminatory behavior. You need solid anti-discrimination policies and training on fair housing for all employees or agents to make sure they fully understand and abide by all fair housing laws. Hiring an independent management company might reduce your liability in that many independent management companies are responsible for their employee's actions.

You could be held legally liable for the actions of your property manager or employee who refuses to rent to a qualified tenant due to a discriminatory reason, sexually harasses a tenant, or provides differential treatment to a tenant due to a discriminatory reason. Due to the liability posed to you, be mindful in hiring and make sure that your employees and contractors are well versed in fair housing law. Check to see if your insurance policy covers illegal act(s) by third parties acting on your behalf. Listen to your tenants and take their complaints about management seriously.

## Avoiding Harassment Claims

- Adopt a non-discrimination and sexual harassment policy for all employees, agents, and tenants.
- Ensure that any employees, agents, and tenants are familiar with the non-discrimination and sexual harassment policy and understand the consequences for violating the policy.
- Take all allegations seriously and take actions to stop harassment from occurring.
- Do not retaliate against anyone who reports harassment or makes a complaint of harassment.
- Do not allow racial slurs, jokes, or comments.
- Do not allow the use of threatening words or images to engage in ethnic intimidation.
- Do not permit comments about people with disabilities.

*See also Problems Between Tenants: Harassment and the Fair Housing Act on page 64.*

# AGE DISCRIMINATION

In Pennsylvania, age (over 40) is a protected class under the Pennsylvania Human Relations Act. Discriminating against individuals over the age of 40 in housing can result in a complaint being filed against you with the Pennsylvania Human Relations Commission or in state court. Remember, it is also illegal to discriminate against families with children under the age of 18 unless, the property is designated specifically for individuals age 55 and up under the Housing for Older Person Act (HOPA). So where does that leave individuals who are between the ages of 19–39? The short answer is there is no legal prohibition against discrimination towards individuals in that age group based solely on their age. If they are members of another protected class (race, national origin, religion, disability, etc.) and are discriminated against because of one of these factors then they would be protected from discrimination.

Landlords can fall into legal pitfalls in relation to age discrimination in Pennsylvania by discriminating against individuals who are over the age of 40. Refusing to rent to someone over the age of 40 (just as with any other protected class) must be based on reliable, objective, verifiable evidence or a failure to qualify because of income, credit, criminal records or other objective nondiscriminatory tenant screening criteria.

Examples of age (over 40) discrimination:

- Showing a preference to younger tenants over equally qualified older tenants because you want to have a “young vibe” at your properties
- Refusing to rent to elderly individuals because of assumptions about fall risk or other safety concerns
- Refusing to rent to older individuals because you feel that their current income will not be sustained if they retire from employment

Remember that elderly tenants may have age-related disabilities which may qualify them for reasonable accommodations such as reminders that rent is due, providing a lease and/or any written communication in large print, allowing payments by check rather than through an online portal, or allowing reasonable modifications to make the unit accessible.

# SOURCE OF INCOME



Source of income is currently not a state or federally protected class. There are several municipalities in Pennsylvania that have added source of income as a protected class in their local jurisdictions. If source of income is not a locally protected class in your borough, township, or city, then landlords in Pennsylvania can choose whether or not they wish to participate in government subsidized programs such as the Housing Choice Voucher Program. However, there are many good reasons why it is beneficial for a landlord to participate in a subsidized housing program.

*See Section 8 Housing Choice Vouchers and Other Subsidized Rental Programs on page 55.*

Whether or not source of income is protected in your jurisdiction, all housing providers have a responsibility to ensure that their policies and practices do not have a discriminatory effect on members of protected classes. Not every tenant or prospective tenant will receive income from employment. Other sources of income can include child support, alimony, Social Security Income (SSI), Social Security Disability Income (SSDI), veteran's benefits, and retirement pensions. When a housing provider has a policy of requiring paystubs or employment verification and a prospective tenant is not employed but receives disability-related income, the housing provider must accept the disability-related income as verifiable income.

Housing providers need to be mindful that certain types of income are correlated with membership in a protected class and refusing to consider these sources of income could have a discriminatory effect. For example, a policy of not accepting child support as income could have a discriminatory effect based on familial status. Pensions and retirement income need to be included so as not to have a policy which would have a discriminatory effect on individuals over the age of 40.

# LGBTQ+ DISCRIMINATION

Both the Pennsylvania Human Relations Commission and the U.S. Department of Housing and Urban Development have stated that they will accept formal complaints of discrimination based on sexual orientation and gender identity under the broad category of "sex" as a protected class. This means that if a case is otherwise meritorious and jurisdictional, a complaint can be filed against you at the state or federal level for discriminating against individuals based on LGBTQ+ status. Treating someone in a discriminatory manner because they do not comply with your idea of what constitutes typical gender conformity would constitute unlawful discrimination under both state and federal law.

At the time of printing this manual, more than 50 municipalities, including almost all of the major cities in Pennsylvania, have passed ordinances prohibiting discrimination based on sexual orientation, gender expression, and/or gender identity. Check with your local government for more information.

In addition, the National Association of Realtors® Code of Ethics prohibits Realtors® from discriminating based on sexual orientation. HUD's Equal Access Rule prohibits HUD funded housing programs from discriminating based on sexual orientation, gender identity, or marital status.

If you accept Housing Choice Vouchers, you must comply with HUD's Equal Access Rule and may not discriminate against an applicant or a resident because of their actual or perceived sexual orientation, gender identity, or marital status.

ⓘ For more information, refer to the HUD Memo on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation at www.equalhousing.org/wp-content/uploads/2021/02/HUD_Memo_EO13988-Gender-Identity-and-Sexual-Orientation.pdf

LGBTQ+ means Lesbian, Gay, Bisexual, Transgender and Queer or Questioning.

# DISCRIMINATION BASED ON RELIGION

As with any other state or federally protected class, it is illegal to show a bias, preference or limitation based on religion. A common fair housing pitfall can occur with newsletters and other written communication concerning religious holidays. It is better to use “Holiday Party” rather than “Christmas Party” or “Hanukkah Party” so that no one perceives that they are being excluded based on their religious beliefs. Rules regarding the placement of holiday decorations or religious symbols should apply to all religions. Do not discuss religion with tenants or inquire about or make comments about religious beliefs.

# NATIONAL ORIGIN, IMMIGRATION STATUS, AND LIMITED ENGLISH PROFICIENCY



Every person in the United States is protected by the Fair Housing Act. A person's immigration status does not affect his or her fair housing rights. It is illegal to discriminate against someone because of their own or ancestral place of origin or because of their cultural or ethnic background or language. It is illegal to discriminate against someone who appears to be of a certain ethnic background, even if they are not. Different terms and conditions, such as requiring a higher security deposit or a cosigner for someone who is not a citizen, are illegal as is intimidation or interference with a person's fair housing rights, including threats to report an individual to U.S. Immigration and Customs Enforcement if they make a complaint of housing discrimination.

A common misconception is that it is unlawful to rent housing to an undocumented immigrant. This is not true. Local ordinances which prohibit or restrict renting to undocumented immigrants violate the Fair Housing Act.

Landlords are allowed to request identity documentation and conduct inquiries to determine whether a potential renter meets the criteria for rental, as long as the same process is applied to **all** potential renters. Singling out individuals to provide information regarding their immigration status because of their national origin is unlawful discrimination. For example, asking only Mexican immigrants for proof of immigration status and not asking the same documentation of other applicants is a violation the Fair Housing Act.

Requiring that all applicants have a social security number disproportionately excludes prospective tenants based on national origin. While landlords are permitted to request social security numbers in order to do credit and background checks, landlords must also accept an Individual Taxpayer Number (ITN) or other alternative verification method in lieu of a social security number. Conditional residents and Nonimmigrants (persons residing in the U.S. on a temporary basis) may have ITN numbers rather than social security numbers.

Additionally, it is illegal to discriminate against someone because they have limited proficiency in English. Statements such as "all tenants must speak English" or treating tenants differently because their English is not proficient violates the law. Programs that receive federal funds have an additional responsibility to provide interpreters and translators for individuals who are not proficient in English.

It is unlawful to advertise a preference, bias, or limitation based on national origin. For example, advertising a rental unit only in Chinese or Russian implies that you prefer to rent to individuals who speak these languages or originate from these countries and is a violation of fair housing laws.

ⓘ For more information, refer to Fair Housing Act Protections for Persons with Limited English Proficiency at www.equalhousing.org/wp-content/uploads/2016/12/Fair-Housing-Act-Protections-for-Persons-with-Limited-English-Proficiency.pdf

# DISABILITY AND THE FAIR HOUSING ACT

As a housing provider, understanding the rights of individuals with disabilities is key to avoiding the most common types of housing discrimination complaints. Although housing discrimination against people with disabilities was outlawed by an amendment to the Fair Housing Act in 1988, over half of all incidents of housing discrimination nationwide occur on the basis of disability. Housing discrimination against people with disabilities often takes the form of housing providers refusing to permit reasonable accommodations or reasonable modifications that allow individuals with disabilities an equal opportunity to use and enjoy their dwelling.

Individuals with disabilities are entitled to certain additional protections under the Fair Housing Act. These protections include:

- A right to reasonable accommodations and reasonable modifications, when necessary, to provide equal opportunity to use and enjoy a dwelling
- Housing providers are not permitted to inquire into the nature or extent of a person's disability
- Design and construction requirements, which provide a basic level of accessibility in certain types of new multifamily construction

## Definition of a Disability

A disability is defined by the Fair Housing Act as a **"physical or mental impairment that substantially limits one or more of a person's major life activities."** Major life activities can include caring for one's self, walking, seeing, hearing, speaking, breathing, learning, and working.

The definition of disability under the Fair Housing Act also includes people who have a **history of an impairment** and people who are **perceived as having an impairment** (even if they are not actually disabled).

Disabilities may include physical, mental, or emotional illnesses, difficulties associated with aging, HIV/AIDS, alcoholism, or drug addiction. While addiction is a protected disability under the Fair Housing Act, individuals who are currently using illegal drugs are not protected.

The law also protects people who are associated with someone who has a disability.

# REASONABLE ACCOMMODATIONS AND MODIFICATIONS FOR PEOPLE WITH DISABILITIES



## Reasonable Accommodations

A **reasonable accommodation** is a change in rules, policies, practices, or services that enables a person with a disability an equal opportunity to use and enjoy a dwelling. A person with a disability must notify the housing provider if they need a reasonable accommodation and the housing provider must grant the request if it is reasonable. There must be a connection between the disability and the need for the accommodation.

Examples of reasonable accommodations include:

- Assigning a person with a disability a reserved parking spot near their unit even though tenant parking is generally on a first come, first served basis
- Allowing a person with a disability to keep an assistance animal despite a “no pets” policy
- Allowing a disabled tenant who receives disability checks on the 5th of every month to pay rent after the 1st of the month without a late fee
- Allowing an assistance animal with no fees
- Providing a lease application in large print
- Permitting a live-in personal care attendant
- Allowing a transfer to a first floor or a more accessible unit

## What If the Reasonable Accommodation Has a Cost Associated With It?

Changes to rules, policies, procedures or practices usually do not cost anything. If there is a cost associated with the reasonable accommodation, then the cost is borne by the landlord. It is one of the costs of doing business as a housing provider.

## Reasonable Modifications

A **reasonable modification** is a change in the physical structure of a dwelling that enables a person with a disability an equal opportunity to use and enjoy that dwelling. In many cases, individualized modifications to a dwelling enable a person with a disability to live in a space that they would otherwise be physically unable to live in. This includes the interior and exterior of a building or a unit, including public and common-use areas.

Examples of reasonable modifications include:

- Allowing a tenant who uses a wheelchair to install a ramp at the entrance of the dwelling
- Allowing a tenant to install grab bars in the bathroom or at the entrance to the unit
- Allowing a tenant to install visual or tactile smoke alarms or doorbells
- Allowing a tenant to remove below-counter cabinets to allow for wheelchair access
- Allowing a tenant to install a fence or awning
- Allowing a tenant to replace door handles with levers
- Allowing a tenant to replace faucet knobs with levers
- Allowing a tenant to widen doorways in a unit

## Who Pays for Reasonable Modifications?

The cost of purchasing and installing reasonable modifications is the responsibility of the tenant. Private landlords who accept housing vouchers are also **not** responsible to pay for reasonable modifications.

Federally funded housing projects (such as a Public Housing Authority) may be required to pay for reasonable modifications requested by a disabled tenant. Additional requirements for federally funded housing are not covered in this manual.

## What Rights Do Landlords Have Regarding Modifications Made to Their Property?

Housing providers can require that the work necessary to make an accessibility modification be done in a workmanlike manner using a certified contractor and that all necessary building permits are obtained. They cannot require that certain contractors be used.

A housing provider can require that the tenant restore any interior modifications to their original condition upon moving out of the unit only if the modification will interfere with the next tenant's use and enjoyment of the premises. For example, if a tenant has built a ramp to the laundry room in a multi-unit apartment complex, the ramp does not need to be removed because it is located in a common use area and may be beneficial to future tenants. However, if cabinets in a tenant's kitchen are moved lower to provide more accessibility to a wheelchair user, the landlord may want the cabinets returned to their original height if the landlord believes it will interfere with the next tenant's use and enjoyment of the premises. For exterior modifications, restoration or structural changes are generally not required. If the modification is in a common use area and could benefit future tenants, the housing provider cannot require that the tenant restore the dwelling to its original condition upon moving out of the unit.

A Homeowners or Condo Association (HOA or COA) may **never** require restoration and reversal of a reasonable modification. In addition, HOAs and COAs are not permitted to require a certain type of construction, certain colors, or even a certain type of a plan for modification.

If restorations to the dwelling will be necessary after a tenant moves out, a housing provider may request payment by the tenant into an interest-bearing escrow account. Such payments may be made over a reasonable period during the tenancy and the amount must be reasonable and cannot exceed the cost of the restorations. The interest from the account accrues to the benefit of the tenant. If a tenant is going to make extensive modifications to a rental unit, the tenant may ask for a longer lease term so that they do not risk their lease not being renewed after making a considerable investment. Tenants who are willing to go to the expense of making modifications to a property are very likely going to be long term, stable tenants.

Modified units that are accessible are extremely marketable. Roll in showers, wheelchair ramps, chair lifts, cabinet modifications and so forth are expensive. There is a strong market for wheelchair accessible housing. As a landlord, if you own a property that has accessibility modifications, you can contact local disability rights groups to let them know of the availability of an accessible apartment and, most likely, they will have a list of prospective tenants who are looking for accessible housing.

## How Should a Resident or Prospective Resident Request A Reasonable Accommodation or Modification?

A person with a disability must notify the housing provider if they need a reasonable accommodation or reasonable modification. A request can also be made by someone on behalf of a person with a disability. A landlord is not expected to predict or anticipate an individual's needs. It is not the responsibility of a housing provider to offer or suggest an accommodation or modification to a resident or prospective resident, even if they are aware of the disability or disability-related need.

As a landlord, you must consider all reasonable accommodation and modification requests even if they are not made in writing. Although it is recommended that requests for reasonable accommodations or modifications be made in writing in order to provide documentation, the Fair Housing Act requires that all requests, whether made verbally or in writing, be given proper consideration.

Keep in mind that many people requesting a reasonable accommodation or modification may not use the term "reasonable accommodation" in their request. It is your responsibility to be able to "read between the lines" to identify that a tenant is asking for a change in rules, policies, practices, or services due to a disability.

Be sure that you respond promptly to all requests for reasonable accommodations or modifications. Courts have treated any delay in responding to these requests as a denial of the request. A delay in responding could mean liability for you.

A reasonable accommodation or modification request can be made at any time. There must be a connection between the disability and the need for the accommodation or modification. A tenant can ask for a reasonable accommodation when applying for housing, when moving in or moving out, while living in the unit, or even during an eviction hearing at the Magisterial District Court.

## When Must a Housing Provider Grant a Reasonable Accommodation or Modification Request?

A housing provider must grant a request for a reasonable accommodation or reasonable modification when:

- the person making the request fits the definition of a person with a disability,
- the person needs what they are requesting because of their disability, and
- the request is "reasonable".

A housing provider may not stall or delay in responding to a request for reasonable accommodation or reasonable modification.

## What is Reasonable?

A request for an accommodation or modification is considered reasonable when that request:

- Does not cause an undue financial and administrative burden to the housing provider
- Does not cause a basic change in the nature of the housing program available
- Will not cause harm or damage to others
- Is technologically possible

**Example 1:** If a person becomes disabled and can no longer access their 3rd floor apartment in a non-elevator building, it would be unreasonable (and possibly architecturally impossible) to request the landlord allow the tenant to build an elevator. A more reasonable request would be to request a transfer to a first floor apartment. If that is not possible, the tenant can negotiate with the landlord for an early release from the lease.

**Example 2:** It would be unreasonable for a person with a disability to ask that their landlord assist them with their meals, unless the housing provider was already in the business of providing meal support (such as in an assisted living facility).

If the accommodation or modification proposed by a tenant is unreasonable, the housing provider must engage in an interactive dialogue to determine if there is another solution that will meet the tenant's needs. It is best to document this interactive dialogue to show that you have engaged in a good faith effort to accommodate a person's disability-related need.

## Can Housing Providers Require Specific Forms for Reasonable Accommodation and Modification Requests?

Housing providers sometimes create standardized forms for requesting reasonable accommodation and modifications, however, they cannot require that a tenant use a certain form to request a reasonable accommodation or modification. Housing providers cannot require that requests be made in a specific manner or at a specific time. Housing providers must consider each request even if the person making the request did not use your preferred form or procedure for making the request. Take care that any reasonable accommodation or modification request form that you use does not contain invasive or burdensome questions.

A standardized form for making a reasonable accommodation or modification request can be useful to have. It demonstrates that you understand your responsibility to seriously consider reasonable accommodation and modification requests. A form also allows you to inform the tenant of the Pennsylvania Assistance and Service Animal Integrity Act, including the consequences for unlawfully representing that an animal is a service or an assistance animal in housing *(see Assistance Animals on page 37).* A form also allows you to request targeted and necessary information, such as, whether the person has a disability as defined by the Fair Housing Act and specifics about the accommodation or modification that is being requested. Remember that you cannot ask about the nature or severity of a person's disability. Reasonable accommodation request letters often go beyond what is required and disclose a person's diagnosis. This is information to which you are not entitled and it is better if you are not aware of the specific diagnosis in order to protect yourself legally.

While there are benefits to offering a standardized form, as stated above, you cannot require that this form is used and must accept any form of a reasonable accommodation or modification request whether it be handwritten, via email or text, or verbally requested.

ⓘ For more information, refer to Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations Under the Fair Housing Act at www.equalhousing.org/wp-content/uploads/2014/09/2004-Reasonable-Accommodations-FAQ.pdf

ⓘ For more information, refer to Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Modifications Under the Fair Housing Act at www.equalhousing.org/wp-content/uploads/2014/09/2008-Reasonable-Modifications-FAQ.pdf

# SAMPLE
# Reasonable Accommodation or Modification Request Form

**Please note that a letter or verbal request for a reasonable accommodation or modification is also acceptable. This form is provided as a courtesy.**

Date _____

Name _____

Address _____

Phone _____ Email _____

Landlord's Name _____

Landlord's Address _____

Landlord Phone _____ Landlord Email _____

- ❑ _____ is a person with a disability as defined by the Fair Housing Act. A disability is defined by the Fair Housing Amendments Act (42 USC § 3602 h) as a physical or mental impairment which substantially limits one or more major life activities.
- ❑ I am requesting a reasonable accommodation (a change in a rule, policy, practice, or procedure) under the federal Fair Housing Act. I am requesting the following: _____
  _____
- ❑ I am requesting to make a reasonable modification (physical change) to my rental unit. The physical change I am requesting is _____.
  I understand that I am responsible for the cost of providing and installing this modification. I understand that it must be installed in a professional manner. I understand that I am responsible for obtaining all necessary building permits as required. I understand that I am responsible for the upkeep and maintenance of this physical modification. I understand that I may be required to restore the unit to its original condition when I move out. I understand that I may be required to put money in an escrow account to ensure that funds are available for removing the physical modification and restoring the apartment to its original condition when I move out. I understand that if I am making a modification to a common area where others may use and enjoy the modification that I cannot be required to pay for the removal and reversal of the modification when I move out.
- ❑ I verify that this reasonable accommodation or modification is necessary in order for me to be able to have full use and enjoyment of the rental unit.
- ❑ I understand that each request will be considered on a case by case basis.
- ❑ I understand that my landlord is not required to grant a reasonable accommodation or modification request if it is an unreasonable request or poses an undue administrative and financial burden, causes harm or danger to others, or is technologically impossible.
- ❑ I understand that I may be required to provide proof that I have a disability as defined by the Fair Housing Act and/or disability-related need if my disability and/or disability-related need are not obvious. I will provide this proof if requested, in the form of a letter from a medical professional who is qualified to diagnose or treat my disability and who can attest personally to my disability and/or disability-related need.

Signature _____ Date _____

# VERIFYING DISABILITY AND NEED

## When Can I Ask for Verification of a Disability and Need For a Reasonable Accommodation or Modification?

If the disability is obvious and need for the reasonable accommodation or modification is also obvious, the housing provider cannot ask for additional documentation (for example, a person with a visual impairment who uses a guide dog).

If the disability is obvious, but the need for the reasonable accommodation or modification is not clear, the housing provider is only allowed to request information to evaluate the disability-related need (for example, a person with a visual impairment who has an emotional support cat).

If both the disability and the need are not clear, the housing provider may request documentation that a tenant has a disability and has a disability-related need for the reasonable accommodation or modification (for example, a person with a mental health diagnosis or post-traumatic stress disorder who has an emotional support animal).

A housing provider **may not** ask:

- Questions about the nature or severity of a disability
- If a person is able to live independently
- Questions that would require a person to waive their rights to confidentiality regarding their medical condition or history
- To see medical records

## Verifications

If a person's disability is not obvious or the need for the reasonable accommodation or modification is not clear, a housing provider may request verification from a medical professional (physician, mental or behavioral health professional, etc.). The medical professional does not need to be a physician but does need to be qualified to assess the disability and familiar with the person requesting the accommodation or modification.

A verification letter should be written by a qualified medical professional who is familiar with a person's disability, or who is qualified to diagnosis or treat the person's disability. A medical professional can include (but is not limited to) a doctor, nurse, psychiatrist, psychologist, behavioral therapist, optometrist, physician's assistant, or nurse practitioner. The letter should be written on professional letterhead and should:

- Verify that the individual has a disability as defined by the Fair Housing Act. The actual diagnosis or the severity of the disability does not need to be disclosed.
- Demonstrate a relationship between the person's disability and the need for the requested accommodation or modification (show how granting the request is necessary in order for the resident to be able to use and enjoy the premises on an equal basis).

Other forms of disability verification can include proof of Social Security Disability Income (SSDI), Medicare of Supplemental Security Income (SSI) for a person under the age of 65, veterans disability benefits, or services and benefits from a local, state, or federal agency. Housing vouchers or housing assistance received due to disability are also forms of disability verification.

*See "Can Housing Providers Require Specific Forms for Reasonable Accommodation and Modification Requests? on page 31 for more information.*

# SAMPLE
# Medical Verification Form

**Please note that a letter on professional letterhead from a medical professional is also acceptable. This form is provided as a courtesy.**

Date _____

Name _____

Title _____

Address _____

Phone _____ Email _____

- ❑ I certify that _____ has been under my care or has been a client of mine since _____
- ❑ I verify that I have personally provided professional care or treatment to the above named individual.
- ❑ I certify that I am familiar with the above named individual's medical history and disability-related functional limitations.
- ❑ I certify that I am qualified to diagnose or treat this type of disability and that I can attest personally to the diagnosis of this disability and/or disability-related needs.
- ❑ I certify that the above named individual is a person with a disability as defined by the Fair Housing Act. A disability is defined by the Fair Housing Amendments Act (42 USC § 3602 h) as a physical or mental impairment which substantially limits one of more major life activities.
- ❑ I understand that the above named individual is requesting a reasonable accommodation (a change in a rule, policy, practice, or procedure) under the federal Fair Housing Act. They are requesting the following: _____
- ❑ I understand that the above named individual is requesting to make a reasonable modification (physical change) to their rental unit. The physical change that they are requesting is: _____ _____
- ❑ I verify that this reasonable accommodation or modification is necessary in order for the above named individual to be able to have full use and enjoyment of the rental unit.
- ❑ I verify that this reasonable accommodation or modification is necessary for my patient or client for the following reasons: (choose one or more of the following)

  ___ Alleviate disability-related symptoms

  ___ Allow for continued health and stability

  ___ Improve physical, emotional, or psychological function

  ___ Provide mobility support

  ___ Provide essential services

  ___ Enable my patient/client to live more independently

  ___ Other _____

- ❑ I attest that I am available to answer questions you may have concerning this verification and my patient/client's reasonable accommodation or modification request.

Signature _____ Date _____

Licensing or Professional Credentials _____

## What if You Believe a Request is Unreasonable?

Each reasonable accommodation or modification request is very individual and each request must be determined on a case by case basis. **If the accommodation or modification proposed by a tenant is unreasonable, the housing provider must engage in an interactive dialogue with the tenant to determine if there is another solution or alternative accommodation that will meet the tenant's needs.**

A reasonable alternative accommodation may require negotiation between the tenant and the housing provider. If the alternative accommodation will effectively meet the disability-related needs, is reasonable, and does not pose an undue financial and administrative burden on the housing provider, the accommodation must be granted. The process of negotiating a reasonable accommodation or modification should be documented by both the tenant and the housing provider to protect their own interests should a dispute arise.

A housing provider may not stall or delay in responding to a request for reasonable accommodation or modification. Court cases have established that a delay in the approval process can be considered a denial of an accommodation or modification.

## Reasonable Accommodation/Modification Request Evaluation "DANCE"

When evaluating a reasonable accommodation or modification request, the housing provider should assess the following to help determine the reasonableness of the request.

**D**isability: Does the tenant have a disability as defined by fair housing laws?

**A**ccommodation: Is the tenant requesting a change in the landlord's rules or practices?

**N**ecessary: Is the accommodation or modification necessary for full use and enjoyment?

**C**ost: Does the accommodation or modification impose an undue financial or administrative cost on the landlord?

**E**ffect: Would the accommodation or modification effect a fundamental change in the landlord's business?

If the answer to the first three questions is **yes** and the answer to the last two questions is **no,** then the housing provider should grant the request.

## Can a Housing Provider Charge Extra Fees and Deposits or Require Conditions?

Housing providers cannot place financial conditions upon the granting of an accommodation or modification or require some action or condition before granting a reasonable accommodation request. For example, a housing provider cannot require a resident with a disability to purchase insurance to protect the landlord should someone be injured by a wheelchair ramp. Housing providers are not permitted to charge fees for reasonable accommodations and must forego collecting pet deposits or pet fees for assistance animals.

Reasonable modifications are generally done at the tenant's expense. The housing provider may require that a plan or sketch be provided, that the work will be performed in a professional manner, and that necessary building permits be obtained. A housing provider may not require a certain type of construction, a certain color, a certain contractor, or even a certain type of plan for a modification. If a housing provider would like a more expensive modification to meet any aesthetic concerns, the design

must still meet the tenant's needs and the housing provider should pay for the additional costs. If the resident installing the modification is going to be the only one using it, then that resident is obligated to provide the upkeep of the modification. If the modification is in common use areas, then the housing provider is obligated to provide upkeep, including insurance, for the modification.

## Competing Disability Needs

Sometimes a reasonable accommodation request from a person with a disability can potentially have an impact on other tenants with disabilities. For example, a request for an assistance animal may negatively affect another tenant with a severe allergy to animals. In these cases, the housing provider must weigh the needs of both tenants with disabilities and try to come up with a mutually agreeable solution. It is important in this situation for the landlord to apply the same process for engagement in an interactive negotiation and require appropriate verifications from both tenants. While this can be an extremely frustrating situation for a landlord, it is important to take the steps necessary to ensure the rights of all tenants to protect yourself from liability. Sometimes there is no easy answer or solution when there are competing disability-related needs, and as a housing provider, you may offer an alternative accommodation such as offering to release a tenant from a lease early without penalty. Tread carefully in these situations and reach out to your local fair housing group or attorney for guidance.

## Reserved Parking Spaces

A reserved parking space is a common reasonable accommodation request. Do not make the mistake of denying this request because handicapped parking spaces already exist. ADA requirements concerning the number of handicapped parking spaces required at a property have no bearing on a reasonable accommodation request for a reserved parking space. While you may think you have provided the appropriate number of handicapped parking spaces for your property, there is often a demand for these spaces and visitors may park in them. Additionally, a tenant may require a reserved parking space on level ground or closest to their rental unit due to a mobility impairment or other medical condition. Courts have required housing providers to provide assigned parking spaces as reasonable accommodations even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking.

While the actual granting of a reserved parking space is a reasonable accommodation, there may be some extra costs associated with it. Courts have placed the responsibility for providing the parking space on the housing provider, even if it results in some cost to the provider. Painting lines, creating signage, redistributing spaces, and creating curb cuts are examples of some costs that must be borne by the housing provider in order to grant the reasonable accommodation.

Even though the housing provider may be faced with costs in granting this request, it is unlawful to require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

# ASSISTANCE ANIMALS



Many people with disabilities require the use of assistance animals in their daily lives. Assistance animals for people with disabilities are not considered pets under the Fair Housing Act, as assistance animals have a specific role to assist a person with a disability in a way that is related to the disability itself.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability—including providing support for mental or emotional disabilities. Emotional support animals alleviate one of more identified symptoms or effects of a person's disability. A housing provider may not deny occupancy or evict a person with a disability because they require an assistance animal. Pet fees and/or pet deposits must be waived for assistance animals.

While it is permitted to restrict pets from rental properties or condominiums, it is unlawful to deny a person with a disability the right to possess an assistance animal, as long as the animal's function has a direct connection to the person's disability. Under the Fair Housing Act an assistance animal is not required to have formal training or certification, and a housing provider is not allowed to require proof that the animal has been certified, trained, or licensed as a service animal. Policies limiting the size, weight, or type of pets allowed do not apply to assistance animals and assistance animals can be any type of therapeutically necessary animal. Guide dogs, seizure alert dogs, and post-traumatic stress disorder assistance dogs are commonly recognized, however, many types of animals provide emotional support for individuals with mental and emotional health disorders.

A person with a disability can request a reasonable accommodation to a "no pets" policy. Additionally, pet fees and/or pet security deposits must be waived for assistance animals.

A landlord, property manager, condominium board or any other housing provider may request additional information or documentation to verify the need for an assistance animal if the requester has a disability that is not obvious or the disability-related need for the animal is not apparent.

A landlord, real estate agent, property manager, condominium board, or any other housing provider **cannot:**

- Deny a person with a disability the right to have an assistance animal when requested as a reasonable accommodation
- Deny occupancy or evict a person with a disability because he/she requests an assistance animal
- Charge extra fees (such as extra security deposit or monthly pet rent) for an assistance animal
- Stall or delay response to a request for an assistance animal
- Require mandatory training or certification for an assistance animal
- Inquire about the nature or severity of a person's disability

People who own assistance animals must assume all responsibility for the animal including making sure it is up to date on vaccinations, cleaning up after the animal, and making sure it does not disturb neighbors with excessive noise. Owners of assistance animals are exempt from pet fees and pet deposits, but they must pay for any damages that the animal might cause. If an assistance animal is dangerous or disruptive to other residents, the housing provider can require its removal or evict the tenant.

ⓘ For more information, refer to HUD Guidance on Assessing a Person's Request to Have an Animal as a Reasonable Accommodation at www.equalhousing.org/wp-content/uploads/2020/01/HUDAsstAnimalNC1-28-2020.pdf

**Note:** The Fair Housing Act requirements concerning assistance animals differ from the standards required under the Americans with Disabilities Act (ADA) which covers public accommodations. The ADA has very strict and specific governing standards regarding service animals in places of public accommodation like restaurants, stores, and post offices. The Fair Housing Act applies to dwellings and has a broader definition of assistance animal. Under the Fair Housing Act, it does not matter whether an animal is a service animal, a therapy animal, or an emotional support animal. The animal does not need to be trained to perform a specific service. The important factor is that the assistance animal serves a disability-related need and allows a person with a disability equal opportunity to use and enjoy a dwelling.

## Insurance Policy Restrictions on Dog Breeds and Animal Types

An accommodation is unreasonable if it imposes an undue financial and administrative burden on a housing provider. If a housing provider's insurance policy would terminate, substantially increase in cost, or the policy terms would be adversely affected because of the presence of a certain breed of dog or a certain type of animal, this could pose an undue financial and administrative burden on the housing provider. However, the burden is on the housing provider to show that comparable insurance without the breed restriction is unavailable. If an insurance provider has a policy of refusing to insure any housing that has animals without an exception for assistance animals, that insurance provider may be held liable for discriminating against individuals with disabilities.

## Online Emotional Support Animal Registration

There are a large number of online services that claim to certify a pet as an emotional support animal for a fee. No official certification or registration for emotional support animals or assistance animals currently exists. When making a reasonable accommodation request for an emotional support animal or any other type of assistance animal, all verifications provided to housing providers should come from a medical or other professional who is familiar with the patient or client making the request, their disability, and the disability-related need for the animal.

## Liability Protection for Landlords: The Pennsylvania Assistance and Service Animal Integrity Act

A number of states, including Pennsylvania, have passed laws which criminalize falsely representing a pet as an assistance animal.

The Assistance and Service Animal Integrity Act is a law that was enacted in Pennsylvania in 2018 and protects landlords or associations from being held liable for injuries caused by a person's assistance animal or service animal which the landlord has permitted on the property as a reasonable accommodation. This law provides immunity to the landlord in the event that any assistance or service animal on the landlord's property causes injury or property damage.

The Assistance and Service Animal Integrity Act also makes it a third degree misdemeanor to misrepresent an animal as an assistance or service animal, to intentionally create a document misrepresenting an animal as an assistance animal or service animal in housing, to provide a document to another falsely stating that an animal is an assistance animal or service animal for use in housing, or to fit an animal that is not an assistance animal or service animal with a harness, collar, vest, or sign that indicates the animal is an assistance animal for use in housing. A person who violates the Assistance and Service Animal Integrity Act can be charged with a summary offense and fined up to $1,000.

# SAMPLE
# Request for Assistance Animal Form

**Please note that a letter or verbal request for a reasonable accommodation is also acceptable. This form is provided as a courtesy.**

Date _____

Name _____

Title _____

Address _____

Phone _____ Email _____

Landlord's Name _____

Landlord's Address _____

Landlord's Phone _____ Landlord's Email _____

- ❑ _____ is a person with a disability as defined by the Fair Housing Act. A disability is defined by the Fair Housing Amendments Act (42 USC § 3602 h) as a physical or mental impairment which substantially limits one or more major life activities.
- ❑ I am requesting permission to have an assistance animal under the federal Fair Housing Act.
  - ___ The animal I am requesting is a dog named _____
  - ___ The animal I am requesting is a cat named _____
  - ___ I am requesting another kind of animal _____
- ❑ I verify that this assistance animal is necessary in order for me to be able to have full use and enjoyment of the rental unit.
- ❑ I verify that this animal provides a disability-related service. This service is _____
- ❑ I understand that each request will be considered on a case by case basis.
- ❑ I understand that my landlord is not required to grant a reasonable accommodation request for an assistance animal if it is an unreasonable request or poses an undue administrative or financial burden, causes harm or danger to others, or is technologically impossible.
- ❑ I understand that I may be required to provide proof of my disability and/or disability-related need if my disability and/or disability-related need are not obvious. I will provide this proof if requested, in the form of a letter from a medical professional who is qualified to diagnose or treat my disability and who can attest personally to my disability and/or disability-related need.
- ❑ I understand that I am required to provide proof of proper licensing for dogs in Pennsylvania.
- ❑ I understand that the animal must be under my control at all times.
- ❑ I understand that the animal must be leashed when outside of the rental unit.
- ❑ I understand that I am responsible for caring for and cleaning up after the animal both inside and outside my rental unit.
- ❑ I understand that if my animal causes noise disturbances to others, that this request may no longer be reasonable.

- ❑ I understand that if I do not provide proper care or clean up after my animal both inside and outside of my rental unit, that this request may no longer be reasonable.
- ❑ I understand that The Assistance and Service Animal Integrity Act makes it a third degree misdemeanor to knowingly misrepresent an animal as an assistance or service animal, to intentionally create a document misrepresenting an animal as an assistance animal or service animal in housing, to provide a document to another falsely stating that an animal is an assistance animal or service animal for use in housing, or to fit an animal that is not an assistance animal or service animal with a harness, collar, vest, or sign that indicates the animal is an assistance animal for use in housing. A person who violates the Assistance and Service Animal Integrity Act can be charged with a summary offense and fined up to $1,000.

Signature _____ Date _____

**PLEASE NOTE:** Assistance animals under Fair Housing Amendments Act (FHAA) do not need to be trained to perform services or do work for a person with a disability. Assistance animals under the FHAA must serve a disability-related need. This includes providing therapy or emotional support. There is no existing registry or certification for Assistance Animals under the FHAA.

The Assistance and Service Animal Integrity Act makes it a third degree misdemeanor to knowingly misrepresent an animal as an assistance or service animal, to intentionally create a document misrepresenting an animal as an assistance animal or service animal in housing, to provide a document to another falsely stating that an animal is an assistance animal or service animal for use in housing, or to fit an animal that is not an assistance animal or service animal with a harness, collar, vest, or sign that indicates the animal is an assistance animal for use in housing. A person who violates the Assistance and Service Animal Integrity Act can be charged with a summary offense and fined up to $1,000.

# SAMPLE
# Medical Verification for Assistance Animal Form

**Please note that a letter on professional letterhead from a medical professional is also acceptable. This form is provided as a courtesy.**

Date _____

Name _____

Title _____

Address _____

Phone _____ Email _____

- ❑ I certify that _____ has been under my care or has been a client of mine since _____
- ❑ I verify that I have personally provided professional care or treatment to the above named individual.
- ❑ I certify that I am familiar with the above named individual's medical history and disability-related functional limitations.
- ❑ I certify that I am qualified to diagnose or treat this type of disability and that I can attest personally to the diagnosis of this disability and/or disability-related needs.
- ❑ I certify that the above named individual is a person with a disability as defined by the Fair Housing Act. A disability is defined by the Fair Housing Amendments Act (42 USC § 3602 h) as a physical or mental impairment which substantially limits one of more major life activities.
- ❑ I understand that the above named individual is requesting a reasonable accommodation (a change in a rule, policy, practice, or procedure) under the federal Fair Housing Act. They are requesting to be allowed to have an assistance animal in their home as follows: _____

  _____
- ❑ I verify that this reasonable accommodation is necessary in order for the above named individual to be able to have full use and enjoyment of the rental unit.
- ❑ I verify that this reasonable accommodation is necessary for my patient or client for the following reasons (choose one or more of the following)

  ___ Alleviate disability-related symptoms

  ___ Allow for continued health and stability

  ___ Improve physical, emotional, or psychological function

  ___ Provide mobility support

  ___ Provide essential services

  ___ Enable my patient/client to live more independently

  ___ Other _____
- ❑ I attest that I am available to answer questions you may have concerning this verification and my patient/client's reasonable accommodation request.

Signature _____ Date _____

Licensing or Professional Credentials _____

# ACCESSIBILITY AND NEW CONSTRUCTION



The Fair Housing Act's new construction accessibility requirements apply to "covered multifamily dwellings" designed and constructed "for first occupancy" after March 13, 1991. This includes housing that is for rent or for sale and applies whether the housing is privately or publicly funded.

The following multifamily dwellings must comply:

- All buildings containing four or more dwelling units if the buildings have one or more elevators; and
- All ground floor units in buildings containing four or more units, without an elevator.

The requirements apply to all buildings containing four or more single-story units. Condominiums and apartment buildings are covered by the design and construction requirements, as well as, timeshares, dormitories, transitional housing, student housing, assisted living housing, homeless shelters that are used as a residence, etc. To comply, seven basic design and construction requirements must be met:

**Requirement 1:** All covered multifamily dwellings must have at least one accessible building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site.

**Requirement 2:** Covered housing must have accessible and usable public and common-use areas. They include, for example, building-wide fire alarms, parking lots, storage areas, indoor and outdoor recreational areas, lobbies, mailrooms and mailboxes, and laundry areas.

**Requirement 3:** All doors that allow passage into and within all premises must be wide enough to allow passage by people using wheelchairs.

**Requirement 4:** There must be an accessible route into and through each covered unit.

**Requirement 5:** Light switches, electrical outlets, thermostats and other environmental controls must be in accessible locations.

**Requirement 6:** Reinforcements in bathroom walls must be installed, so that grab bars can be added when needed. The law does not require installation of grab bars in bathrooms.

**Requirement 7:** Kitchens and bathrooms must be usable—that is, designed and constructed so an individual in a wheelchair can maneuver in the space provided.

The Fair Housing Act should not be confused with the Americans with Disabilities Act (ADA). The ADA covers public accommodations, while the Fair Housing Act covers housing. Many builders and developers believe that if they are ADA compliant then they have fulfilled their legal responsibilities. This is not necessarily true. Generally, the ADA does not apply to residential units. However, there may be ADA requirements for the accessibility of common use areas in residential developments if the facilities are open to persons other than owners, residents, and their guests (e.g.—sales/rental office, pool, clubhouse and reception room). When determining what laws apply to a building, community or complex, it is important to remember that many codes, federal, state, and local, may apply to your project.

ⓘ Fair Housing Accessibility FIRST is an initiative sponsored by HUD to promote compliance with the Fair Housing Act design and construction requirements. The initiative offers a toll-free information line and website with technical guidance and training for communities and developers. For more information, contact: (888) 341-7781 or www.fairhousingfirst.org

# BEST PRACTICES TO AVOID COMMON AND COSTLY VIOLATIONS OF THE FAIR HOUSING ACT RELATED TO DISABILITY

## Prospective Tenants

- Do not tell a prospective tenant, agent, or third party that you don't want someone with a disability living on the property.
- Do not lie or allow an agent to indicate that an apartment is not available to a prospective tenant with a disability when one or more units are in fact available.
- Do not ask if prospective residents are capable of "independent living."
- Do not ask if a prospective tenant has a disability, takes medication, has ever been hospitalized, or has ever been in a drug or alcohol rehabilitation program.
- Do not discriminate against prospective tenants based on how they sound over the phone.

## Lease Terms and Property Rules

- You cannot charge a higher security deposit because a tenant uses a wheelchair or a scooter or has an assistance animal.
- Do not require people with mobility impairments to live on ground floor units.
- Do not ban people with disabilities from common use areas including pools and fitness facilities.

## Property Management

- Respond equally to all maintenance requests for people with disabilities as you do for tenants who do not have disabilities.
- Do not attempt to evict a tenant because they request a reasonable accommodation or modification.
- Do not attempt to evict a tenant because they file a fair housing complaint.
- Allow tenants with post-traumatic stress disorder or other mental or emotional health disabilities to have an emotional support animal even when you have a "no pets" policy.

## Reasonable Accommodations and Modifications

- Allow tenants to make reasonable modifications to the rental unit or common areas which will enable them equal opportunity to use and enjoy a dwelling.
- Grant reasonable accommodations, as necessary, to allow a tenant with a disability equal opportunity to use and enjoy a dwelling.
- Respond to reasonable accommodation and modification requests in a timely manner.
- Do not charge a pet fee or extra security deposit for an assistance animal.
- Do not ask to see a resident's medical records or speak to their doctor for more details about their condition.
- Accept written or verbal accommodation or modification requests even if you have a preferred form or procedure.
- Do not be rigid or overly burdensome with rules, policies, and procedures.
- Engage in an interactive process.
- Provide fair housing training to all employees who interact with tenants and prospective tenants.
- Do not charge a transfer fee or early lease termination fee when a resident needs to transfer to a more accessible unit or community due to a disability-related need.
- Do not place conditions on an accommodation by requiring some action before it is granted.
- Do not require medical documentation or completion of a particular form before considering an accommodation when the disability or the need for the accommodation is obvious.
- Do not ask about the nature or severity of a requestor's disability.
- Do not require an annual reapplication or recertification of a reasonable accommodation request.

## Harassment and Privacy Violations

- Avoid making any comments which could be seen as threatening or intimidating to a person with a disability.
- Do not make any comments about a person's disability.
- Respond quickly to reports of other tenants harassing someone because of their disability.
- Do not disclose a tenant's disability to other residents.

# BEFORE LISTING A PROPERTY FOR RENT



Renting out a property comes with responsibility. In addition to local, state, and federal fair housing laws, there are also the Pennsylvania Landlord Tenant Law, zoning ordinances, building and property maintenance codes, and rental licensing requirements, all of which must be adhered to. You should understand and address all of these requirements before you begin screening potential tenants. Here is a brief overview of some important things you need to take care of before you rent out a property.

## Zoning

Depending on where your property is located, there may be local zoning restrictions on rental properties. Some zoning ordinances set maximum limits for the number of rental units that can exist in a building or the size of each unit. You have to make sure that your property complies with all local zoning requirements.

## Rental Licensing

Rental licensing is controlled by local municipalities in Pennsylvania. Before a property can be lawfully occupied, it must be properly licensed by the local municipality. Failing to obtain a proper rental license can lead to monetary penalties and a summary offense under local ordinances. Part of the rental licensing process is to obtain a rental inspection from the local building or code enforcement department. They will check to make sure that your property is up to code and complies with important safety requirements.

## Code Enforcement

ⓘ Most municipalities in Pennsylvania use the International Property Maintenance Code (IPMC). You can access the 2021 IPMC online at: https://codes.iccsafe.org/content/IPMC2021P1

The IPMC establishes important property maintenance regulations that will ultimately protect you as the landlord, as well as your tenants. Proper code enforcement can identify and prevent high liability issues such as the lack of working smoke detectors or a lack of means of egress (exit) in a sleeping area. Renting out an unsafe property can have tragic consequences and can lead to lawsuits and even criminal charges being filed against you. Theoretically, complying with the IPMC protects you from renting out an unsafe property. If the rental inspection shows code violations that need to be remedied, you will be given a written list of repairs that need to be made before you can rent out the property.

At a bare minimum, you will need to ensure that the rental property does not have any structural, fire, or electrical hazards that could be a threat to life or safety. You will also have to show that the property is fitted with properly working smoke detectors, carbon monoxide detectors, and fire extinguishers. The properties' mechanical, electrical, HVAC, plumbing, sewer, chimney, and ventilation systems will be required to be in operable and habitable conditions and will need to be maintained in a operable and habitable condition in compliance with all state and municipal regulations and standards.

You may also be required to submit to the local municipality the names of all occupants of your rental units and to provide updates when occupancy changes. If you sell the property or change property managers or emergency contacts, you will need to notify the code enforcement department of such change.

If your property is found to have a code violation, you will be ordered to correct the issue within a certain time frame or be issued a citation. The borough, township, or city issuing the citation can take you to court if you fail to bring the property up to code. Failing to bring a property up to code can result in significant fines and even a misdemeanor charge.

## Document the Condition of the Rental Unit

It is advisable that you create a comprehensive checklist for the property. List walls, ceilings, floors, light fixtures, windows and screens, cabinets, locks, smoke detectors, mirrors, fans, and closets for every room in the dwelling. Make sure to include all kitchen appliances, plumbing fixtures and the heating and air conditioning system. Go through the checklist with your tenants when they move in, noting the condition of each item on the checklist. You will want to take photos of the condition of the dwelling before the tenant moves in as well. When the tenant moves out, this checklist can be used to go over the condition of the property with the tenant and help determine if there are any damages.

## Make Repairs Before Moving in New Tenants

The best way to avoid disputes with tenants over repairs is to make the repairs before any tenant moves into the rental unit.

## Have a Well Written Lease

Many legal disputes arise because of a failure to get an agreement in writing. Every detail of the lease agreement, no matter how small, is worth putting in writing. *See The Lease on page 57.*

## Consider Joining a Landlord Group or Association

There are landlord groups and associations that provide regular educational meetings for landlords and property investors. They will often invite outside experts to come in to provide their members with useful information and strategies for running a successful property management business. You can get a lot of good information from these industry groups on tenant screening, investment opportunities, and understanding landlord tenant laws and regulations.

## Display Fair Housing Posters

Federal regulations require HUD approved fair housing posters to be displayed wherever you conduct housing-related business. Posters should be displayed prominently. You can obtain these posters for free by contacting the Housing Equality Center of Pennsylvania at info@equalhousing.org.

# SCREENING TENANTS

You are probably familiar with the adage "an ounce of prevention is worth a pound of cure." This adage can be applied to tenant screening. Every landlord wants to find tenants who will pay rent on time and maintain the property in a clean and sanitary condition. In addition, property owners want tenants who will inform them promptly of any issues with property maintenance (leaking roof, mold, etc.) so that any necessary repairs can be addressed before they become more costly. Landlords want tenants who do not cause disturbances and who get along with neighbors. Finding these tenants is the goal of every landlord. Paying critical attention at the tenant screening process can save you from a lot of aggravation later on.

There are a lot of decisions to be made before you advertise the property and begin screening tenants.

- How much will you charge for rent and security deposit?
- What is the occupancy limit on the property?
- Will you be offering this rental on a yearly basis only?
- Are you willing to consider a month to month rental for someone who does not want to commit to a year lease or a longer lease for a person who needs to make disability-related modifications?
- Who will be responsible for each utility?
- What is the minimum credit score you want to see for an applicant?
- Based on the monthly rental amount, what is the minimum monthly income your prospective tenants need to earn to qualify to rent your property?
- Are you going to use a tenant screening service?
- Will you collect an application fee?

The tenant screening process is where landlords are most vulnerable to be accused of unlawful discrimination. Many housing discrimination complaints are filed due to discriminatory behavior or actions that occur during the application or tenant screening process. Being a landlord is difficult enough without adding on the aggravation, time, and considerable expense of defending yourself against a discrimination complaint. How does a landlord tip toe through this potential minefield? It all comes down to proper planning and consistency. This chapter will cover some of the most common pitfalls and challenges for landlords. Here's how to avoid some of the most common discrimination complaints which are filed against landlords.

You have to carefully evaluate the rental market as well as your needs and make smart decisions. Once you establish the parameters of your rental contract, you will need to ensure that you:

- Present the same parameters and pricing to every single applicant that you have for each rental unit.
- Adopt and apply uniform, objective, and nondiscriminatory criteria designed to evaluate a prospective tenant's credit worthiness, such as requiring credit or criminal background checks.
- Establish policies that ensure adherence to local, state, and federal fair housing laws.

One of the most important things that you can do to screen tenants effectively, fairly and without unlawfully discriminating, is to first find out if a prospective tenant has sufficient verifiable income to be able to pay the rent. This should include verifiable third party payments such as child support, alimony, SSDI, or rental assistance. Other permissible inquires may include whether the prospective tenant is willing to comply with the property's rules, requesting references from previous landlords, and other questions related directly to tenancy.

Accept all applications and show the property to everyone who requests to see the property. Refusing to engage with a prospective tenant without a lawful reason for doing so can result in the perception of discrimination and the prospective tenant filing a complaint. Do not profile callers due to the sound of their voice over the phone. Do return calls in the order in which they were received.

Any questions that you ask of those inquiring about your rental property, you must ask of all applicants on an equal opportunity basis, without regard to race, color, national origin, religion, sex, familial status, disability, LGBTQ+ status, or age (over 40).

If you are going to reject an applicant, you will want to show that they did not qualify based on objective qualification criteria. Choosing the most qualified applicant based on income, credit, and references is a best practice. If you have to make a decision among equally qualified applicants, be objective in making the final decision. Choose the one who applied first or look at some other objective and nondiscriminatory factor based on income, credit, or references. You will want to show that applicants were not rejected because of their race, color, national origin, religion, sex, familial status, disability, LGBTQ+ status, or because they are over the age of 40.

The Fair Credit Reporting Act mandates that if you take an adverse action (such as denying a rental applicant) based on information found in an applicant's credit report, you must give the applicant an "adverse action notice." You must provide the name and address of the credit reporting agency that provided the credit report. *See Fair Credit Reporting Act on page 53.*

Maintain records of all inquiries and applicants. Keep these records for at least two years. These records can be invaluable to defend yourself against an unfounded claim of discrimination. *See What Happens When a Discrimination Complaint is Filed Against You on page 8.*

Be certain that your vacancy listings and advertisements are accurate and up to date. You do not want to advertise that a unit is vacant only to tell a prospective tenant that the unit is no longer available. Likewise, do not lie about an apartment being rented when it is still available.

## Best Practices to Avoid Discrimination in Tenant Screening

- Be aware that we can be influenced by subtle unconscious biases which affect our perceptions and the decisions that we make. These biases can lead to what constitutes unlawful housing discrimination.
- When screening tenants, be careful that you are not eliminating prospective tenants based on their accent or an unfamiliar or difficult to pronounce name. Do not make comments about how difficult a person's name is to pronounce or spell.
- Do not engage in voice profiling, or discrimination based on your perception of a person's race or ethnicity based on how they sound over the phone.
- Do not print or publish any potentially discriminatory advertising or statements. *See Advertising on page 14.*
- Treat all applicants the same. Ask the same questions of all applicants.
- Do not ask if a prospective tenant is pregnant or if they have children. It is permissible to ask how many people will occupy the unit.
- Do not ask a prospective tenant about their race, ethnicity, or national origin.
- Do not ask a prospective tenant about their religion.
- Do not ask a prospective tenant about the nature or severity of their disability.

- Do not make comments about a person's disability or offer a reasonable accommodation or modification if one has not been requested.
- Do not ask prospective tenants if they are capable of "independent living."
- Do not ask if a prospective tenant has a disability, takes medication, has been hospitalized, or has been in a drug or alcohol rehabilitation program.
- Make sure all employees understand and abide by anti-discrimination laws. You are legally liable for the actions of any managers, agents or employees working on your behalf.

## The Rental Application

You want to ask prospective renters to fill out a rental application. This application may request:

- Credit references and other credit background information
- A list of past landlords including telephone numbers and addresses
- An employment history including salary information
- An application fee that may be non-refundable
- The first month's rent
- A security deposit

Make sure that prospective tenants are aware of possible consequences, such as the loss of a non-refundable fee, if they decide not to take the rental unit.

If you require a deposit at the time of application, make sure it is clear if the deposit is non-refundable. Be sure to keep records and give receipts for all monies paid.

Offer the tenant an opportunity to read the proposed lease before signing the rental application to make sure that they are willing to comply with the terms of the lease.

## Legitimate Nondiscriminatory Reasons to Reject Applicants

- Lack of sufficient income
- Poor credit record
- Reliable information that the person has a recent history of violent, disruptive, or destructive behavior
- Negative landlord references
- A record of late rental payments
- Inability to come up with the full security deposit
- Applicant is a current user and dealer of illegal drugs

Remember that **consistency** will be the key to both avoiding and defending yourself against fair housing discrimination complaints.

## What Questions May I Ask a Prospective Tenant With Disabilities?

You are permitted to inquire into an applicant's ability to meet tenancy requirements. This means that you may ask whether a prospective tenant has sufficient income to be able to pay the rent, whether they are willing to comply with the building's rules, and other questions relating directly to tenancy. You may also adopt and apply uniform, objective and nondiscriminatory criteria designed to evaluate a prospective tenant's credit worthiness, such as requiring credit or criminal background checks. You are permitted to ask if a person has been convicted of the distribution or manufacture of a controlled substance and whether a person is a current user of illegal controlled drugs. Any questions asked by a housing provider must be asked to all applicants on an equal opportunity basis, without regard to race, color, national origin, religion, sex, familial status, disability, LGBTQ+ status, or age (over 40).

## Determining if a Tenant Would Pose a Direct Threat

The Fair Housing Act does not require that housing be made available to a person who would constitute a direct threat to the health or safety of others or who would constitute a risk of substantial physical damage to the property of others. The determination that a person would pose a direct threat to others or to property must be based on objective evidence. A recent history of violent, disruptive, or destructive behavior qualifies as objective evidence.

If the tenant or prospective applicant refuses or is unable to comply with the tenancy rules that apply to all tenants, or if the tenancy would pose a direct physical threat to the health or safety of others, then the housing provider can reject that applicant or evict that tenant.

It is important to understand that the Fair Housing Act does not allow housing providers to deny housing opportunities to people with disabilities based on fear, speculation, or stereotypes about a particular disability or disabilities in general. To show that a tenancy would pose a direct threat, the housing provider must do an individualized assessment to determine if reliable objective evidence exists that shows there is current or recent history of disruptive and/or destructive behavior. The direct threat assessment must take into account the nature and severity of the risk of injury as well as the probability that an injury will occur and whether there are any reasonable accommodations that would eliminate the direct threat.

Case law addresses that even in cases of tenants who do in fact present a "direct threat" due to their disabilities, these tenants are entitled to a determination of whether any reasonable accommodation would mitigate any risk posed by their disability-related behaviors prior to eviction. If an individual has received treatment or medication that has eliminated the direct threat, that should be taken into account and the housing provider can request that the individual document how circumstances have changed or how the individual no longer poses a direct threat. Denying an individual housing because of a direct threat must be based on reliable and objective evidence.

**Example:** A housing provider may not deny housing to a prospective tenant just because they know that individual has recently been in drug rehab. Rejecting someone based solely on a belief that people who have a history of addiction are dangerous and may damage property will violate the Fair Housing Act. However, if the housing provider finds out through landlord references that the individual has perpetrated property damage repeatedly in the recent past and there is no evidence to show that this threat has been mitigated in any way, then the housing provider can reject this applicant based on direct threat.

**Example:** A housing provider may not deny housing to a prospective tenant because they know that individual has a psychiatric diagnosis. If a tenant with a psychiatric disability stops taking their medication and threatens another resident and if the management has a policy of evicting residents who engage in violent or disruptive behavior, then the tenant can request a reasonable accommodation to this policy if they are able to show that treatment and medication monitoring will eliminate the direct threat. If the tenant is not willing to undergo medication monitoring and treatment or continues to pose a direct threat to the health and safety of other residents, then management can proceed with an eviction.

**Example:** A tenant threatens another tenant with a baseball bat. Because of this unacceptable behavior, the landlord issues a Notice to Quit to terminate the lease. Soon after, the landlord is contacted by a case worker for the tenant who explains that the tenant had stopped taking their medication and has agreed to resume the medication along with increased counseling and case management. While the term "reasonable accommodation" is not actually used in the request, this is, in fact, a reasonable accommodation request to retract the eviction notice due to a disability-related need. Remember, a third party can request a reasonable accommodation on behalf of a person with a disability. If the medication and counseling do not work or the tenant does not cooperate and reengages in threatening behavior, the landlord can resume terminating their lease.

## Criminal Backgrounds

The U.S. Department of Housing and Urban Development (HUD) issued guidance in 2016 stating that because of the racial disparities in the criminal justice system, blanket bans (or refusing to rent to anyone with any type of criminal history, regardless of circumstances) would most likely have a greater impact on Black or Hispanic applicants, and as such, could violate the Fair Housing Act. This guidance applies to private providers of rental housing, as well as to public and subsidized housing programs.

HUD's guidance states that housing providers need to consider the nature and severity of a crime and the amount of time that has passed to determine if the person would pose a direct threat to the health and safety of other residents. The guidance issued by HUD states that a mere arrest does not indicate guilt and a person should not be denied housing based on an arrest without a conviction. Furthermore, housing providers must apply criteria equally to all applicants and tenants, regardless of protected class. Using criminal background as a pretext for discrimination based on a protected class is illegal. For example, a landlord should not make an exception to their policy of rejecting applicants with drug convictions only in cases where the applicant is a woman.

The U.S. Department of Justice reports that approximately 100 million U.S. adults have some type of criminal record. These individuals, making up approximately one-third of the population of the U.S., face significant barriers to securing housing. Whether they are formerly incarcerated individuals, convicted but not incarcerated, or arrested but not convicted, having a criminal record is a frequent reason for rejection of an application for rental housing. Furthermore, because of racial and ethnic disparities in the criminal justice system, the arrest, conviction, and incarceration rates of African American and Hispanic men in particular are disproportionate to their share of the general population. Therefore policies and practices that create barriers for individuals with criminal records have a disproportionate effect on minority home seekers.

According to HUD's guidance, "While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another." In addition, "While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification."

HUD has provided guidelines for determining if a policy or practice of denying housing to an individual based on past criminal history has a discriminatory effect on racial and ethnic minorities. An understanding of these guidelines is a critical risk management strategy for real estate professionals.

There are a few key concepts that landlords and real estate professionals should understand:

- Unintentional discrimination may occur due to a facially neutral criminal records policy, even when such a policy is applied equally to all applicants. According to 2015 case law, "A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate."
- If a policy or practice has a discriminatory effect on members of the protected classes and if it does not serve a "substantial, legitimate, nondiscriminatory business interest of the housing provider" then the policy violates the Fair Housing Act. Furthermore, if the business interest could be served by another practice that has a less discriminatory effect, then the less discriminatory policy must be implemented to avoid a fair housing violation.
- As with any other qualification standard, if applied in a discriminatory manner, a criminal record policy or practice is a clear Fair Housing violation. Example: Allowing white applicants with criminal records to rent a home but disqualifying African-American or Hispanic applicants with similar records.
- Criminal history-based restrictions to housing violate the Fair Housing Act if a housing provider has a blanket policy of excluding individuals with prior arrests (without conviction). This policy would not meet the burden of demonstrating that it is necessary to achieve a "substantial, legitimate, nondiscriminatory interest."
- The nature and severity of criminal conduct, as well as the amount of time that has transpired since the conduct, need to be taken into consideration. Policies or practices that fail to take into consideration these factors are likely to violate the Fair Housing Act.
- Housing providers should be able to show that a policy distinguishes accurately between past criminal conduct which signifies a demonstrable risk to resident safety and/or property and that which that does not suggest a demonstrable risk.

There is an exception to the HUD guidance on criminal backgrounds. If a person possesses a **conviction** for the manufacture and/or distribution of illegal controlled substances, they can legally be denied housing and the landlord will not be in violation of the Fair Housing Act for this denial. **Note:** this exception does not include either arrests for drug charges that do not lead to conviction or convictions for possession only.

A well drafted lease should clearly state that tenants must abide by all local, state, and federal laws, regulations and ordinances. If a tenant engages in illegal activity on the leased premises, the landlord can take action to evict the tenant based on breach of lease.

## Can a landlord refuse to rent to someone with a criminal background?

Yes—but it depends on the circumstance and overly broad criminal history blanket bans (ex. refusing to rent to anyone with a criminal record no matter how long ago the conviction occurred) can violate the Fair Housing Act.

ⓘ For more information, refer to HUD Guidance on Use of Criminal Records by Providers of Housing and Real Estate Related Transactions at www.equalhousing.org/wp-content/uploads/2016/08/HUD-Guidance-on-the-Use-of-Criminal-Records-by-Providers-of-Housing-and-Real-Estate-Related-Transactions.pdf

## Financial Qualification Standards

Each landlord is permitted to have his or her own financial qualification standards. As a landlord, you need to establish your financial qualification criteria and apply it equally to all prospective tenants regardless of race, color, national origin, religion, sex, familial status, disability, LGBTQ+ status, or age (over 40). Be sure to include verifiable third party income such as SSDI or child support.

## Credit Reports

A landlord is not required to obtain written approval from a tenant in order to conduct a credit check. However, it is advisable to obtain prior written approval from applicants before checking their credit reports. Landlords are required to disclose to the tenant any efforts to conduct an "investigative consumer report." Investigative consumer reports can entail interviewing friends, neighbors, past landlords or personal references. Questions about a prospective tenant's reputation, character, personal characteristics, or manner of living are typical parts of an investigative consumer report.

## Fair Credit Reporting Act

If a landlord uses a credit reporting agency (such as TransUnion, Equifax, or Experian) to pull a credit report on an applicant and takes an adverse action as a result of information disclosed by the credit report, the landlord is obligated under the Fair Credit Reporting Act to furnish an "adverse action report" to the tenant. An adverse action means any action taken that is contrary or unfavorable to the tenant's interests, including a rejection of an application, requiring a co-signor on the lease, charging a higher rent, and/or requiring a larger deposit.

If a landlord takes an adverse action that is based, in whole or in part, on any information contained in a consumer credit report, the landlord must provide oral, written, or electronic notice of the adverse action to the consumer. The landlord must also provide to the consumer orally, in writing, or electronically, the name, address, and toll free telephone number of the consumer reporting agency that furnished the report. The landlord must state in this notice that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer with specific reasons why the adverse action was taken. The landlord must also advise the consumer in this notice that they have the right to obtain a free copy of their credit report from the referenced consumer reporting agency within 60 days and to dispute the accuracy or completeness of any information in the consumer report furnished by the agency.

The Fair Credit Reporting Act (FCRA) contains penalties for noncompliance by landlords including civil penalties for both willful and negligent violations. A landlord who knowingly violates the FCRA can be ordered to pay the consumer not less than $100 but no more than $1,000 in addition to punitive damages, along with court costs and attorney's fees. A landlord who negligently fails to comply with FCRA requirements is liable to the consumer for actual damages along with court costs and attorney's fees.

ⓘ You can find more information about the Fair Credit Reporting Act as it applies to landlords at www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-landlords-need-know

# BEFORE TENANTS MOVE IN

## Record the Physical Condition of the Unit Before Tenants Move In

It is wise to take notes (with the tenant present) of the unit's condition **before** the tenant moves in. It is the tenant's right to have the condition of the dwelling in writing. It protects both the landlord and the tenant to take photos to document the pre-leased condition of the apartment. Both written notes and photographs are very helpful so that there is no dispute regarding the condition of the unit later on. Make sure your photos and notes are dated.

If the rental unit is in need of repairs, these repairs should be completed before the tenant moves in. Both unreasonable delays in repairs and unrealistic expectations by tenants can cause conflict and it is best if everyone has a written plan for what repairs, improvements, or changes will be made and when. It is in your best interest to have the unit in move-in condition when the tenant moves in. Make sure you have documented the condition of the unit with photos and a walk through with the tenant.

When it is time for the tenant to move out, any originally noted defects should not be charged against the security deposit since they were present before the tenant moved in. You will want to be able to show proof of the condition of the apartment should you need to withhold the security deposit after the tenant moves out or to assess additional damages.

## Make Sure Critical Information is Shared and Understood

Before the tenant moves in, set up a day to meet and go over the lease agreement and house rules. Provide the new tenants with a move in letter which highlights your phone number and emergency contact information, how and when to report maintenance problems, and trash disposal and pickup information. Make sure that you show the tenant the location of water shut off valves, fuse boxes, and smoke detectors.

## Establish Tenant Files for Basic Recordkeeping

You will want to establish a file for each tenant that includes the following:

- Tenant's complete contact information including email, cell phone number, work number, and emergency contacts
- The make, model, color, year, and license plate number of tenant's vehicle(s)
- Copy of the tenant's rental application, credit report and references
- Signed copy of the lease agreement
- Financial ledger for rental payments and security deposits (including the bank account information where the security deposit is held and the interest rate)
- Complete inventory of the rental unit and photos showing the condition of the unit before the tenant moved in

In time, you may add additional important records to this file including maintenance requests, requests for reasonable accommodations or modifications, copies of all correspondence with the tenant, copies of your requests to enter the premises for inspection or maintenance, rent increase notices, lease renewals, late fees, late rental notices, and records of any lease violations that might occur. Accurate record keeping is time well spent.

## Section 8 Housing Choice Vouchers and Other Subsidized Rental Programs

The Housing Choice Voucher Program (also known as a Section 8) is a rental subsidy program that provides steady rental payment assistance for low income individuals and families in the private rental market. Those who qualify for the program pay a monthly adjusted amount for their rent and the balance is paid directly to the landlord by the local housing authority.

In Pennsylvania, source of income is not a protected class, meaning that a landlord can refuse to rent to individuals who hold a Housing Choice Voucher from the Housing Authority. Various localities within Pennsylvania have added source of income as a protected class. Contact your local government or municipality to find out if source of income is a protected class in your area. If source of income is a protected class in your area, you will be required to accept Housing Choice Vouchers.

## Benefits to Participating in a Housing Choice Voucher Program or other Subsidized Rental Program

### Reliable Rental Payments

Many property owners appreciate that housing vouchers and subsidies guarantee a consistent rental income at market rate. Landlords whose rents are paid by housing vouchers and/or subsidies do not have the same risk associated with depending on a tenant's ability to maintain steady income in order to pay rent. Job loss or other crises that tenants may experience can greatly impact their ability to pay rent on time every month. Accepting housing vouchers and/or subsidies can provide a level of financial stability to landlords that they would not otherwise have.

### Financial Incentives

Other rental subsidy programs offer financial incentives to new landlords. Signing bonuses, rent guarantees, and offers to cover damages which may exceed the security deposit are often available to landlords who participate in these programs. Some programs offer one month rent payments to hold an apartment or payment of legal fees and court costs if lease violations occur and lead to eviction.

### Increased Occupancy Rates and Marketing Benefits

Landlords who participate in rental subsidy programs have a steady stream of prospective tenants who will be referred directly from the rental assistance program. Turnaround between tenants can happen rapidly without having to spend time advertising and marketing vacancies.

### Low Turnover

Housing Choice Voucher holders have low turnover rates. The average renter using a Housing Choice Voucher stays in a rental unit for 6.6 years. If a Housing Choice Voucher holder loses their job or experiences a health or other crisis, the housing authority will increase their rental subsidy to help them navigate the financial crisis without losing their housing. Landlords can avoid having to evict tenants for nonpayment of rent.

## Support

Landlords who participate in rental subsidy programs are generally offered a level of support by the participating agency. Mediation services are sometimes available. Case management is provided to reduce minor tenant concerns and property maintenance issues. Landlords who participate in rental subsidy programs are a valuable asset to agencies assisting individuals with permanent supportive housing. These programs will work to ensure that you are satisfied with the arrangement and continue your participation in the program.

Participating in the Housing Choice Voucher program will require adherence to some additional regulations that should not be burdensome if you are already following good rental practices and properly maintaining your property. Your rental unit will be required to pass an additional inspection to ensure that it is habitable. You are also required to comply with HUD's Equal Access Rule. This means you cannot deny housing based on an applicant's or resident's actual or perceived sexual orientation, gender identity, or marital status.

ⓘ For more information, refer to the HUD Memo on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation at www.equalhousing.org/wp-content/uploads/2021/02/HUD_Memo_EO13988-Gender-Identity-and-Sexual-Orientation.pdf

## Resources

- To find out more about HUD's Housing Choice Voucher Program, including how to participate, visit www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord
- To find out more about HUD's Fair Market Rental rates, visit HUD Fair Market Rents www.huduser.gov/portal/datasets/fmr.html
- To find out more about participating in Bucks County programs, visit www.bchg.org/the-housing-link.html
- To find out more about participating in Chester County programs, visit www.haccnet.org/landlords.php
- To find out more about participating in Delaware County programs, visit www.dcha1.org/landlords
- To find out more about participating in Lehigh County programs, visit www.lehighcountyha.org/housingvoucher.html
- To find out more about participating in Your Way Home Montgomery County's rental subsidy program, visit www.yourwayhome.org/landlord-information
- To find out more about participating in Northampton County programs, visit www.northamptoncountyha.org/housing-voucher.html
- To find out more about participating in Philadelphia County programs, visit www.pha.phila.gov/housing/housing-choice-voucher/landlord-information/how-to-become-an-hcv-landlord.aspx

# THE LEASE

A lease, either written or oral, is a legal contract which transfers possession and use of a rental property to a tenant for a specified time period. The lease should define the respective rights and obligations of the landlord and the tenant. While a verbal agreement is legally enforceable if it can be proven, it is highly recommended to have a written lease. Many legal disputes arise because of a failure to get an agreement in writing. Every detail of the lease agreement, no matter how small, is worth putting in writing.

The Plain Language Consumer Contract Act 73 P.S. § 2201 et seq, requires that all written residential leases be organized and designed to be easy to read and understand. If a lease contains fine print or "legalese", then it can be found to violate the Pennsylvania Plain Language Consumer Contract Act. A landlord can be held liable for damages for violating this Act.

The Pennsylvania Unfair Trade Practices Act and Consumer Protection Law prohibits landlords from engaging in deceptive or fraudulent practices. This includes misrepresenting the condition of a rental unit and lying about damages in order to fraudulently retain the security deposit.

It is critically important as a landlord, that you have a well written lease which complies with Pennsylvania Landlord Tenant Law and also addresses additional issues such as smoking, guests, animals, subletting, etc.

Read the lease **with** your tenants. Do not expect them to read it on their own. Have them initial each page as you review it to verify that they understand it.

- Remember, a lease is a **legally binding contract.** You are legally responsible for all the provisions in a lease.
- Make sure the tenant understands the terms of the lease **before** signing it. By signing it, both parties agree to its terms and conditions for the duration of the lease agreement.
- Make sure that all blanks are crossed out or filled in before the lease is signed.
- Anything that is crossed out should be initialed by the landlord and the tenant.
- Make sure to give the tenant a copy of the **entire** lease and to keep your copy in a safe place. It is a good idea to scan and keep a digital copy of the lease so that it is always available when needed.

You will want to make sure the following are included in your lease:

- ❑ Landlord's name, street address, email, and telephone number for emergencies
- ❑ Tenant's name and the name of others who are permitted to occupy the unit
- ❑ Address of the rental property
- ❑ Amount of monthly rent—make sure tenants understand how, where, when, and to whom the rent is to be paid
- ❑ Rent due date
- ❑ Late fees and penalties for lease violations
- ❑ Start and end date of the lease—is it a one year lease or a month to month lease?
- ❑ Requirements for notices to renew or terminate leases—how much notice do you have to give a tenant to move out and how much notice does the tenant have to give the landlord when they want to move out? (Note that in Pennsylvania, leases can waive or shorten the statutory notice period required before filing an eviction.)
- ❑ Does the lease renew on a yearly basis or does it revert to a month-to-month lease after the first year?
- ❑ Security deposit—make sure the tenants understand what is required of them when they move out of the rental unit in order for their security deposit to be returned.
- ❑ Utilities—clearly outline who is responsible for paying each utility.
- ❑ Maintenance—what are the tenant's responsibilities for maintenance and who should they contact when repairs are needed?
- ❑ What appliances are included in the lease?
- ❑ Pet agreement and any pet security deposit. (Remember, security deposits and pet fees may not be charged for assistance animals.)

## Changes to the Lease

Any changes to the lease should typically be made at the beginning of a new rental period when the lease is renewed, unless both parties agree to a proposed change before the end of the lease term. Unless the lease specifies how changes are to be made, landlords are required to give one full rental period before any change takes place. However, if a tenant has requested a reasonable accommodation which changes the terms of the lease, the lease should be amended in writing to reflect this change and to document the agreement of both parties.

## Common Lease Provisions

- Tenants must keep the dwelling clean.
- Tenants may be prohibited from subletting the dwelling without the landlord's consent.
- Tenants may be prohibited from moving or breaking the lease without giving proper notice.
- Landlords are permitted to enter the property at reasonable times for inspection, repair, or to show it to potential tenants, provided the current tenants are given prior notice.
- Name of person to contact and how to reach that individual for maintenance and repairs.
- A list of regulations the tenant is expected to follow may be included in the lease.

## Unenforceable Lease Provisions

Tenants are usually bound by the terms and conditions of the lease they sign, however, some terms and conditions are legally unenforceable in court.

Examples of unenforceable lease terms and conditions include:

- ✘ While tenants can be held liable for **damages** to an apartment, they cannot be made responsible for all normal maintenance and repairs, or all repairs under a certain dollar amount.
- ✘ The landlord is not permitted to ban the tenants from having guests to the leased premised.
- ✘ A lease provision that requires payment of more than two months' rent for security deposit during the first year of leasing and more than one month's rent during subsequent years of leasing is unenforceable.
- ✘ The tenant cannot be made to accept the house or apartment "as is." Under the Implied Warranty of Habitability, the facilities and services provided at the leased premises must allow the unit to be occupied for its reasonably intended purpose as a dwelling unit. *Please refer to the section on Repairs and the Implied Warranty of Habitability on page 66.*
- ✘ The tenant cannot waive the right to represent himself/herself in a court of law.
- ✘ The tenant cannot be made to agree that if he/she breaks any promise in the lease, the landlord has the right to break into the apartment, change the locks, and seize the tenant's possessions.
- ✘ The landlord cannot make the tenant agree to waive his or her rights to a hearing or confession of judgment.
- ✘ Any lease provision that contains a discriminatory element or results in a discriminatory effect on members of protected classes.

**Remember:** Go over the lease with tenant before they sign it! **Put everything in writing!**

## Rent Due Date

Most leases state that rent is due on the first of the month. Tenants have an obligation to make sure that the rent is paid by the due date specified in the lease. Even if you allow tenants to pay their rent late, they are still bound by the terms of the lease regarding late fees and other penalties. Be clear and upfront about your expectations. Make sure the rent amount and due date as well as late fees are included in the written lease.

## Late Rental Payments Without a Fee as a Reasonable Accommodation

Rent is typically due on the 1st day of the month. Some leases allow a grace period wherein rent can be paid without a late fee (such as within the first 5 days of the month). Late fees can be assessed when the rent is paid after the due date or the grace period, whatever is determined by the lease agreement. A tenant who has a disability and receives Social Security Disability Income (SSDI) may request a reasonable accommodation to be exempt from the late fee when the date they receive their SSDI payments make paying rent on time difficult or impossible. Courts have determined that this is a reasonable request. Receiving SSDI should be sufficient proof that a person has a disability. If they can show that they do not receive their payments until after the due date or grace period, then that is sufficient proof that there is a disability-related need for the accommodation.

## Lead-Based Paint

Homes built before 1978 may have lead-based paint and homes built before 1950 are more likely to have it. The only way to know for sure if there is lead-based paint is to have a certified inspector test for the presence of lead. When lead-based paint cracks and peels it can become lead dust. Children can get lead poisoning from swallowing flakes of paint or paint dust on their hands and toys. Children can also breathe in lead dust. Even small amounts of lead can cause very serious harm to the brain and other parts of the nervous system. Lead in a child's body can cause delayed growth and development, damage hearing and speech, and cause learning disabilities. There can be other sources of lead in older homes such as in the pipes or in the soil surrounding the house.

Due to the myriad of health problems caused by lead poisoning, the Residential Lead-Based Paint Hazard Reduction Act was enacted in 1992. This law is commonly known as Title X (Ten). Environmental Protection Agency (EPA) regulations implementing Title X apply to rental properties built before 1978. Be sure to contact your municipality to see if your area has specific requirements regarding lead paint disclosure and remediation.

Title X regulations mandate that before signing or renewing a lease or rental agreement, landlords must disclose any known lead-based paint or hazards on the property. An EPA approved disclosure form must be signed by both the landlord and tenant. This disclosure form proves that the landlord told the tenants about any known lead on the premises. This disclosure form must be kept as part of the property owner's records for three years from the date that the tenancy began.

An owner or landlord who fails to give proper information and is found liable for damages can be sued for triple the amount of damages that the tenant suffered. The owner may also be subject to criminal penalties and civil penalties of up to $16,000 for each violation.

Landlords must give prospective tenants of buildings built before 1978:

ⓘ An EPA-approved information pamphlet on identifying and controlling lead-based paint hazards, Protect Your Family From Lead In Your Home can be found at www.epa.gov/lead/protect-your-family-lead-your-home-english. This pamphlet is available in English, Spanish, Arabic, French, Chinese, Korean, Polish, Tagalog, Russian, Somali and Vietnamese.

- Any known information or reports about lead-based paint or lead-based paint hazards concerning the building.
  - For multi-unit buildings this requirement includes records and reports concerning common areas and other units when such information was obtained as a result of a building-wide evaluation.
- A lead disclosure attachment to the lease, or language inserted in the lease, that includes a "Lead Warning Statement" and confirms that you have complied with all notification requirements. The disclosure form must be kept for up to three years once the tenant signs a lease agreement with the specific rental property

  ⓘ Sample Lessor's Disclosure of Information in English at www.epa.gov/lead/lessors-disclosure-information-lead-based-paint-andor-lead-based-paint-hazards and in Spanish at www.epa.gov/lead/declaracion-de-informacion-sobre-pintura-base-de-plomo-yo-peligros-de-la-pintura-base-de-plomo

ⓘ For more information, visit: www.epa.gov/lead/real-estate-disclosures-about-potential-lead-hazards#propertyml

## Rental Payment Reminders

If a tenant has a cognitive disability or impaired memory, then they can submit a reasonable accommodation request that the housing provider set up recurring reminders in the form of notes, phone calls, emails, or text messages to remind them to make their rental payment before the due date.

## Smoke Alarms

Pennsylvania law requires that the landlord provide working smoke alarms in each unit. The tenant cannot waive this requirement or disconnect the smoke detectors. The lease should state whether the landlord or the tenant is required to check the smoke alarms and change the batteries. Be sure to check with your local code enforcement department to see if your municipality has any additional specific requirements regarding smoke alarms.

## Carbon Monoxide Detectors

The Carbon Monoxide Alarm Standards Act (CMASA) requires that property owners install carbon monoxide detectors in all multi-family rental units that have fossil fuel burning heaters, appliances, fireplaces and/or attached garages. The property owner must provide and install an operational, centrally located and approved carbon monoxide alarm in the vicinity of the bedrooms and/or any fossil fuel-burning heater or fireplace. The CMASA states that the property owner is responsible for replacing any approved carbon monoxide alarm that has been stolen, removed, found missing or rendered inoperable during a prior occupancy of the rental property before the commencement of a new occupancy of the rental property. The property owner must ensure that the batteries in each approved carbon monoxide alarm are in operating condition at the time the new occupant takes residence in the rental property.

Tenants are required to replace batteries as needed and replace any device that is stolen, removed, missing or rendered inoperable during occupancy and to also notify the rental property owner or agent in writing of any deficiencies pertaining to the carbon monoxide detectors. Your municipality may have additional requirements regarding carbon monoxide detectors.

## Medical Marijuana

While Pennsylvania allows medical marijuana to be used, it is still illegal to cultivate, possess or use marijuana under federal law. Since marijuana use is a violation of federal law, landlords are permitted to prohibit marijuana use on their properties even if the tenant possesses a valid medical marijuana card. Tenants with disabilities cannot expect landlords to waive “no marijuana” polices as reasonable accommodations.

## Smoking

Landlords have the right to establish no smoking policies in their rental properties. You may choose to ban smoking altogether or you may prohibit smoking only in common areas. Tenants who have disabilities that make exposure to secondhand smoke dangerous can request reasonable accommodations. These accommodations may include installation of air filters and prohibition of smoking in common areas. Some tenants may wish to be released from their leases if secondhand smoke becomes problematic.

## Illegal Drug Use

A well written lease will state that tenants are required to comply with all applicable federal, state, and local laws, regulations, and ordinances. With this clause, tenants who use illegal drugs or who manufacture or sell illegal drugs on the leased premises have breached the lease and the landlord can proceed with an eviction. If the lease states that tenants are required to comply with all federal laws, the seizure of illegal drugs by law enforcement agencies can give the landlord the right to evict. The landlord is not required to prove that the tenant engaged in illegal drug activity beyond a reasonable doubt as would be required in a criminal court case. The landlord's standard of proof would be a "preponderance of evidence" showing that is a more likely than not that illegal activity occurred on the leased premises. Besides the protections provided in the lease agreement, the Pennsylvania Landlord Tenant Act provides a remedy if tenants violate the Controlled Substances Drug, Device and Cosmetic Act. The Model Expedited Eviction of Drug Traffickers Act provides for the swift eviction of tenants who engage in or permit others to engage in illegal drug activity on leased premises.

## Renters Insurance

Most landlords carry property insurance which covers property damage but not the tenant's possessions. You can require that tenants carry renters insurance which covers the tenant's furniture and other personal possessions. Renters insurance can generally be obtained from any insurance company that sells homeowners insurance and is very reasonable in cost.

## Responsibilities of Tenants

To help create a successful tenancy, make sure your tenants understand these basic responsibilities:

- Pay rent when due, not the day after or 5 days after. Tenants are legally responsible to pay the full amount of rent on time in accordance with the lease agreement. If they do not pay their rent on time, the landlord can file an eviction action. If a tenant tells you that they are unable to pay the full amount of rent on time, consider entering into a written payment agreement with them to pay the rent in smaller installments or over a longer period of time. If you agree to a payment plan on back due rent and the tenant does not adhere to the agreement, you can still file an eviction action.
- Whether you accept personal checks, cash, or money orders, keep detailed records of all payments. Give the tenant receipts for all payments. Detailed record keeping will work in your favor if there is a dispute in the future regarding whether rent has been paid.
- Make it clear to tenants that if they are responsible for any utilities, they must be paid on time. If not, this could result in an eviction.
- Both landlords and tenants must comply with all terms and conditions of the lease and with any rules and regulations included in the lease or separately signed addendum(s).
- Both landlords and tenants must comply with the requirements of Pennsylvania law, local ordinances, and housing codes.
- Tenants should not disturb the peace of other tenants and neighbors.
- Tenants are responsible for damages to the premises caused by their negligence (other than normal wear and tear) or by intentional destruction. Tenants are financially responsible for any damages caused by their guests or visitors.
- Tenants should notify the landlord of any serious defects (or needed repairs) in the dwelling that may cause the building to deteriorate. Make sure these notice provisions are outlined in your lease.
- Tenants should keep the premises clean and orderly.
- Tenants must allow the landlord, landlord's representatives, or local government inspector reasonable access for inspection and repairs. The landlord should give prior notice before entering the unit unless there is an emergency (smoke alarm going off, broken water pipes, etc.).
- Tenants should not allow persons who are not on the lease to live in the rental unit.
- Tenants should not engage or allow anyone to engage in criminal activity, including illegal drugs or allowing underage drinking on the premises. Any of these activities could result in eviction.
- If a tenant wishes to change the locks, then they should get permission from the landlord first and give the landlord copies of the keys. The landlord is legally allowed to have a full set of keys for any locks on their property.

## Problems Between Tenants: Harassment and the Fair Housing Act

First, is it a case of personal conflict or is the harassment based on race, color, national origin, religion, sex, familial status, disability, LGBTQ+ status, or age (over 40)? If one of your tenants has reported that they are being subjected to harassment by another one of your tenants due to being a member of any of the state or federally protected classes, you have an obligation to act swiftly. Under the Fair Housing Act, if a tenant harasses another tenant based on their race, national origin, disability, sex, or other protected class, a landlord is required by law to address the issue and prevent the harassment from continuing.

Failing to stop or prevent a tenant from harassing another tenant because they are a member of a protected class, when you knew or should have known the harassment was occurring and had the power to stop it, can leave you legally liable. Address the problem in writing to all parties. A warning should be issued to the tenant who is perpetrating the harassment to immediately cease and desist. Follow up if the problem persists. Keep copies of all correspondence. A well written lease will have a clause that states that tenant harassment is a breach of the lease which can result in eviction. If your lease specifically states that harassing behavior will not be tolerated, then a tenant who is harassing another tenant may be violating the lease and be subject to eviction. Document any and all steps you are taking to address the harassment. Call the police if the situation warrants and get a copy of the police report. Documentation of your actions is critically important in case a fair housing complaint is filed against you for failing to stop harassment behavior or if an eviction is challenged.

A tenant who is being harassed by another tenant may decide to break the lease and move out. If the landlord files in court for unpaid rent, the tenant will need to demonstrate that the landlord was violating the terms of the lease by failing to enforce the right to quiet enjoyment of the property or neglecting to prevent discriminatory harassment. You will want to be able to present evidence that you did everything you could to address the problem of protected class based harassment between the tenants.

*See Harassment on page 20.*

## Guests

Under Pennsylvania Landlord Tenant Law, tenants have the right to invite social guests for reasonable periods of time and to have business visitors in the rental unit without the interference of the landlord. Guests must comply with all rules regarding common areas that apply to tenants. Landlords do not have the right to prevent tenants from inviting guests to the leased premises and any provision in the lease which attempts to waive this right is unenforceable. Landlords are prohibited from charging fees or additional rent for tenant's guests and they are not permitted to penalize a tenant for having guests.

## Unauthorized Occupants

The lease should specify who is allowed to occupy the rental property. A landlord can prohibit tenants from having someone move in with them or stay for an extended period of time without the landlord's permission. Make sure that the lease agreements clearly states who is permitted to occupy the property. If you permit changes to the original agreement allowing additional occupants, make sure it is in writing. You may want to perform background or credit checks on the new occupant and require that they be added to the lease.

If a tenant has moved someone else into the property without permission, you will need to take action to protect your rights. You can issue notice to the tenant that the new occupant must move out immediately or go through the formal application process and screening to be added to the lease. If a tenant has allowed an unauthorized occupant to move into the leased premises, the tenant can be evicted for breaching the lease agreement's occupancy terms.

If the "subtenant" is unacceptable to you for nondiscriminatory reasons and does not move out, you will have to begin legal proceedings to have them removed. You may need to consult an attorney for advice.

A common reasonable accommodation request is for a tenant who requires a live-in aide for disability-related assistance to be permitted to have the aide live in the unit without being added to the lease as an additional occupant. In this case, subjecting a live-in aide to the usual tenant screening procedures would be inappropriate.

## Covenant of Quiet Enjoyment

Pennsylvania Law states that in every lease (whether written or verbal), there is a promise that the landlord will not unreasonably interfere with a tenant's right to possess the leased premises. This Covenant of Quiet Enjoyment includes the right to privacy and ensures the tenant's right to enjoy the premises without unreasonable and excessive intrusions by the landlord.

You should ensure that your lease states that the landlord has the right to enter the rental premises for inspection, repair, or general maintenance. If you have reserved the right to enter the leased premises, the tenant cannot object and claim that the Covenant of Quiet Enjoyment is breached.

Even when the lease reserves the right for the landlord to enter the leased premises for repair, maintenance and inspection, landlords only have the right to **reasonable** access to the leased premises. If a landlord enters a rental unit for no reason or disturbs tenants at night, he or she may be breaching the lease. The landlord does have the right to enter rental premises occasionally for reasonable purpose including inspection and maintenance, repairs, or to show the property to potential buyers or renters. Reasonable also means that the landlord should come at a reasonable time, give the tenant advance notice, and should knock first—unless there is an emergency. If there is an emergency such as broken water pipes or smoke detectors activated, then the landlord has the right to enter immediately without prior notice. When the landlord does not adhere to the general standards as outlined above and repeatedly enters the rental unit without prior notice, the landlord may be cited for trespassing.

A tenant may have a disability such as post-traumatic stress disorder which causes extreme anxiety when a landlord or management enters the apartment for service calls or regular maintenance and inspections. A common reasonable accommodation request is a tenant asking for 24-hour advance notice in a non-emergency situation and for the landlord to provide the tenant with a window of time to expect the visit. The tenant can also request that the landlord or maintenance personnel knock and wait several minutes for the tenant to open the door.

*See Disability and the Fair Housing Act on page 27.*

*See Reasonable Accommodations and Modifications for People with Disabilities on page 28.*

## Tenant Noise Violations

Complaints about noisy neighbors is often one of the most common complaints heard by landlords. Your lease should describe consequences for noise violations. Eviction may be a penalty for repeated noise violations. There may also be a local noise ordinance which prohibits excessive noise or noise after certain hours. Make sure that you communicate with your tenants about any local noise ordinances which may exist. You can require tenants to put rugs on top of hard floors to cut down on noise. Keep records of all complaints about noise—date, time, location of the noise etc. You will want to have documentation of noise violations in the event you need to evict a tenant. Proper documentation of lease violations will also provide proof that you are treating tenants equally and consistently.

## Repairs and the Implied Warranty of Habitability

The Pennsylvania Supreme Court in Pugh v. Holmes, 405 A.2d 897 (Pa. 1979), established that a landlord will provide facilities and services vital to the life, health, and safety of the tenant and use of the premises for residential purposes. This guarantee to decent rental housing is called the **Implied Warranty of Habitability.**

The Warranty means that in every residential lease in Pennsylvania (whether oral or written) there is a promise (the Warranty) that a landlord will provide a home that is safe, sanitary, and healthful. A rental property must be habitable to live in and the landlord must keep it that way throughout the rental period by making necessary repairs. Even if the renter signs a lease to take the dwelling "as is", the Warranty protects the individual. **The right to a habitable home cannot be waived in the lease.** Remember, the Warranty is in the lease, whether or not the lease says so. Any lease clause attempting to waive this Warranty is unenforceable.

The Warranty does not require the landlord to make cosmetic repairs. The landlord is not required to make cosmetic upgrades or improvements. However, the landlord **must** remedy serious conditions affecting the safety or the ability to live in the rental unit.

The following are examples of defects covered by the Implied Warranty of Habitability:

- Lack of hot and/or cold running water
- Defunct sewage system
- No ability to secure the leased premises with locks (on doors and windows)
- Lack of adequate heat in winter
- Insect or rodent infestation
- Lack of weather/water proofing
- No fire warning device
- Unsafe floors, stairs, porches, and handrails
- Inadequate electrical wiring (fire hazard) or lack of electricity
- Inability to store food safely because of broken refrigeration unit (when the landlord is responsible for maintenance and repair of refrigerator)
- Unsafe structural components that make it dangerous to occupy the property

## What Is Adequate Heat?

"Adequate heat" depends on your local property maintenance codes. You will need to check with your local municipality to see what the requirements are for adequate heat in a rental unit in your community. Many municipalities have adopted the International Property Maintenance Code as a standard for property maintenance. This code generally requires landlords to provide a heating system that is able to maintain a minimum temperature of 68°F (20°C) during the winter months. In Philadelphia, landlords are required to maintain a system to provide heat at 68°F minimum from October through April. If the tenant has control of their own heat via a thermostat, the landlord is not

required to keep the heat at 68°F minimum—that is left to the tenant's discretion. Check with your local code enforcement department for the minimum heating requirements in your area.

## What Remedies Can a Tenant Take if a Rental Unit Does Not Comply With the Implied Warranty of Habitability?

If the problem is serious enough to constitute a breach of the **Implied Warranty of Habitability,** a tenant may be entitled to seek one or more remedies.

- First, the tenant will need to show that the defect interferes with the habitability of the rental unit (or that their ability to live in the dwelling is seriously impaired).
- **The tenant must notify the landlord of the problem. If there are provisions in the lease describing how to notify the landlord about defects, the tenant should be sure to follow those notice procedures when feasible.**
- The tenant must allow the landlord **reasonable time** to repair the defective condition. How much time is reasonable time? There is no universal answer. The reasonableness will be determined by the nature of the defect and whether or not the ability to correct the defect is within the landlord's immediate control. A reasonable time to fix a damaged roof might be measured in weeks; but lack of heat in the winter months must be remedied within a day or two at most.
- **The tenant must be able to show that the landlord was either unwilling or unable to repair the property within a reasonable amount of time after being given notice of the defect before using a remedy to address the problem.**

### Tenant Remedies for a Breach of the Implied Warranty of Habitability

There are a few legal remedies for a breach of the Implied Warranty of Habitability that can be used alone or in combination:

- Terminate the lease and move out
- Withhold all or part of the rent
- Repair and deduct
- File a legal action to seek compensation

### Keep in Mind the Following:

- A tenant will have a viable defense to an eviction if they have properly used any of the remedies available under the Implied Warranty of Habitability.
- If a tenant has exercised one of these remedies, you may want to contact an attorney or a landlord association for advice relevant to your situation. There are limitations that apply to these remedies and proceedings. Any of these remedies can be complicated and each individual circumstance is different. Proper legal advice is invaluable.
- Be prepared in case the tenant brings a warranty issue up in court as a defense to a nonpayment of rent claim. You will need to have documentation that you corrected the defects that allegedly made the unit uninhabitable—receipts, photos, and code inspection report. You will also have to show that you corrected these defects within a reasonable amount of time. Receipts from contractors and a letter of approval from code enforcement is ideal.
- Make sure that you keep all receipts of any costs incurred in making repairs.
- Make sure that you document all repairs with before and after photos.

**Remedy #1: Terminate the lease and avoiding any further duty to pay rent.**

The tenant has the right to terminate the lease and move out of the premises if the tenant has given notice of the premise's defects to the landlord and after a reasonable amount of time, the landlord was unwilling or unable to make the repairs.

If a tenant decides to use this remedy, they must vacate the leased premises. They cannot terminate the lease and remain in the property. They can lose the security deposit or be sued for non-payment of rent if they do not vacate the property. All move out procedures must be followed including surrendering all keys to the landlord.

**Remedy #2: Withhold all or part of the rent until the defect is remedied.**

Under Pennsylvania Law, a tenant may withhold rent if they can prove the dwelling unit is not habitable and have taken the proper steps of informing the landlord of the problem and giving the landlord a reasonable amount of time to fix the defect that caused the rental unit to be uninhabitable. As long as there is evidence that the dwelling unit is not habitable, the tenant will have a defense if the landlord files any legal proceeding for non-payment of rent.

- The tenant should give you notice, preferably in writing, that the problem exists.
- The tenant should have allowed you a reasonable time for repair.
- The tenant should be able to prove that the landlord has failed to make the repairs requested.
- Consult an attorney if you are unsure of how to proceed, have concerns about defending yourself against a violation of the implied warranty, or need additional information.

**Remedy #3. Repair defects and deduct the cost of repairs from the monthly rent.**

This remedy permits the tenant to repair the defect or correct the conditions that cause the rental property to be uninhabitable. The tenant may then deduct the cost of repairs from the rent. The amount of the cost of repairs that can be deducted from the rent is limited.

- Before proceeding, the tenant should give the landlord notice in writing that they intend to exercise this remedy and submit cost estimates.
- The amount must be **reasonable** and **necessary** to make the dwelling unit habitable.
- The tenant will need to notify the landlord again when the work is completed.
- A tenant is not permitted to deduct for the expenses that make the dwelling unit more desirable. Only costs incurred to make the premises safe and compliant with the warranty of habitability are deductible.
- The tenant should provide receipts of any costs incurred in making repairs.

**Remedy #4: File legal action to recover cost of repairs, a retroactive rent rebate, and/or compensation for any other damages suffered while the dwelling unit was not habitable.**

This remedy is rarely used but is a possibility if a tenant has already spent some of their own money on repairs or if they are moving out and believe they deserve a retroactive rent reduction because the home had serious issues of habitability.

- A tenant can take this legal action if they are still living in the home or if they are moving out.
- The burden is on the tenant to prove that the Implied Warranty of Habitability prerequisites were followed and that expenses or other losses have been incurred due to the landlord's breach of the Implied Warranty of Habitability.

## Who Is Responsible for Extermination?

The Implied Warranty of Habitability requires a landlord to provide safe and sanitary conditions for tenants. An apartment or house infected with bed bugs, cockroaches, fleas, mice, or other vermin is not in a safe and sanitary condition. A code officer may come out to the property to inspect and issue a citation to the landlord if an infestation exists. Tenants may be able to exercise legal remedies to deal with the infestation themselves if the landlord refuses to exterminate. Remember that the Implied Warranty of Habitability cannot be waived and any attempt to waive it is void and unenforceable. This applies to extermination as well. Lease terms attempting to make the tenant responsible for all extermination costs may not be enforceable. If the landlord can prove that the property was free of all infestation and the tenant is responsible for the infestation, the landlord can try to seek damages to recover the cost of extermination.

## Repairs Not Covered Under the Implied Warranty of Habitability

Cosmetic repairs such as repainting or installing upgraded cabinetry or fixtures are not included in the Implied Warranty of Habitability. If the lease does not address repainting the apartment and if a tenant alters the condition of the property by repainting, then generally, the landlord is not responsible for reimbursing the tenant for costs. The landlord can require the tenant to return the property to its original condition when they move out. Tenants should get your permission (preferably in writing) before they repaint or make any changes to the property.

# UTILITIES

## Who Is Responsible for Paying the Utility Bill?

Whether a lease is written or verbal, both parties must agree on which party is responsible for paying the utility bills. The tenant may be responsible for some utilities, such as electric and gas, while the landlord may be responsible for others, such as water and sewer. Make sure that the lease outlines who is responsible to pay for which utilities.

## Does There Have to Be an Individual Meter for Each Apartment?

If the tenant is responsible for paying the utility bill, the Pennsylvania Utility Code requires the landlord to ensure that each residential unit is individually metered. This means that there cannot be a "foreign load" on the tenant's utility bill—the tenant's wiring cannot include the common areas or another apartment. If there are three units in a building, then there must be three separate meters for each of the apartments and a separate meter for the common areas.

If a rental unit is not individually metered, then the landlord is responsible for the utility bill—including any past due balance. The utility company should not bill the tenant for the service until it is confirmed that the wiring has been corrected.

## Utility Shut-Offs

If you receive notice that utilities will be shut off at the rental property, you need to act quickly to protect your rights. It is more difficult to get service turned back on after a shut off. No matter who is responsible to pay for the utilities, a utility company cannot cut off service without the following:

- A 10-day written notice before a shut-off
- An attempt to contact the resident or an adult in the household personally at least 3 days before the shut-off
- An attempt to contact an adult in the household at the time of the shut-off
- During December to March, if the utility company has not made personal contact prior to shut-off, it must post a notice in an obvious place at the rental property stating the utilities will be shut off and must give at least 48 hours' notice

After a 10-day notice has been given to a tenant by a utility company, the company has 60 days to turn off the tenant's utility without another 10-day notice.

If the utility company turned off service without prior notice, it has broken the law. Contact the utility company and demand that the service be restored immediately. Ask to speak to the supervisor and write down the name of the person you speak with. If necessary, call the Public Utility Commission at 1-800-692-7380.

ⓘ For more information on the Responsible Utility Customer Protection Act visit www.puc.pa.gov/general/consumer_ed/pdf/Act201.pdf

## Steps to Avoid a Utility Shut-Off

If the utility is in the tenant's name, it is the tenant's responsibility to contact the utility company immediately with any billing dispute or payment problem in order to avoid having the utilities shut off.

- The tenant should contact the utility company at the phone number on the notice and ask to set up a payment agreement. The length of payment agreements is determined by law. If their household

is low income, they should inform the utility company as there are longer payment agreements available for low income households. The utility company is only required to provide one payment agreement for the same debt. If a utility is not providing a payment term you can report them to the Public Utility Commission (PUC) at 1-800-692-7380. The PUC can issue a payment agreement.

- The tenant or landlord can also show the bill was paid or show that there is a disagreement (dispute) about the bill. If you dispute the bill or disagree with the meter readings, you must notify the utility company and tell them that you dispute the bill. The service will not be able to be shut off during the period that you are waiting for a response to your inquiry or dispute. The tenant will still be obligated to pay all utility bills that are not in dispute, including any bills that are received while the complaint is ongoing. If you and your utility company cannot agree, call the Public Utility Commission (PUC) at 1-800-692-7380.
- The utility company cannot shut off service if the tenant obtains medical certification that someone in the home is seriously ill or someone has a medical condition that will be made worse by a shut off. After informing the utility company about this medical condition, the tenant will need to get a doctor or nurse practitioner to call or send a statement to the utility company confirming the medical condition. The shut off can be stopped for a maximum of 30 days at a time. The medical certification can be renewed two additional times. If the service has already been shut off, this will require the utility company to restore service. Payments will still have to be made on any undisputed utility bills.
- If the tenant is a victim of domestic violence and has a valid Protection from Abuse Order (PFA), there are special procedures and protections for handling the utility service. The tenant can call the utility company to inform them of the PFA so these special procedures and protections can be put in place. The tenant may be required to provide a copy of the PFA to the utility company.
- If the tenants are a low income household, there may be special arrangements or programs that can help.

*See Resources for Tenants Having Trouble Paying Utility Bills for information on programs that help low income customers on page 72.*

## Utility Shut-Offs Due to Landlord Failing to Pay

If the landlord is responsible for paying for utility service and fails to pay the utility bill or if the landlord instructs the utility company to shut off the service, the Utility Services Tenants Right Act requires that the tenant be notified by the utility company at least 30 days in advance.

Once the utilities have been shut off, the situation may become more complicated. If you, as the landlord, do not make the necessary payments to restore service, then a tenant may have to make the payments in order to get the service restored. Any bill which the tenant pays on behalf of the landlord to get the service restored can be deducted from their rental payments. The tenant may also be able to have the utility service transferred to their own name.

There is a provision within the Pennsylvania Utility Code that makes it unlawful for a landlord to retaliate against a tenant for exercising their rights under the Pennsylvania Utility Code. Any landlord, agent, or employee of the landlord who threatens or retaliates against a tenant can be liable for damages equal to two months' rent or the actual damages sustained by the tenant, whichever is greater, and legal costs and reasonable attorneys' fees.

There is an anti-retaliation provision in the law that presumes illegal retaliation if an owner seeks to raise the rent or evict a tenant within six months of the tenant exercising their rights under the Pennsylvania Utility Code, except in cases of nonpayment of rent. Note that these rights cannot be taken away even if the lease says the tenant has waived these rights.

A landlord is not legally allowed to interfere with a tenant's utility service, even if they are behind in rent. Even when the water, sewer, gas or electric is included in the monthly rental payments, a landlord cannot legally shut off a utility service. This may be considered an illegal attempt to evict without going through proper legal procedures.

## Getting Utility Service Back On

Between April 1 and November 30, if you or the tenant pays the amount owed in full or arranges for a payment agreement (if eligible) and meets any other conditions required by the utility company, service must be restored within 3 days.

Between December 1 and March 31, the service must be restored within 24 hours if you or the tenant pays the amount owed in full or arranges for a payment agreement (if eligible) and meets any other conditions required by the utility company.

## Resources for Tenants Having Trouble Paying Utility Bills

If a tenant has not paid the utility bills or they are behind in paying, the utility company can shut off the service to your rental property after giving proper notice. *See Utility Shut-Offs on page 70.* However, even if a tenant cannot pay the whole amount owed, they can take steps to keep the utility service on.

- Electric, gas, and some water companies have **Customer Assistance Programs (CAPs).** CAPs are available to low-income customers who have difficulty paying their full monthly bill. These programs provide discounts to the monthly bill as well as past debt forgiveness in exchange for the customer making regular monthly payments.
- Utility companies must allow a tenant to pay their bill on a budget plan, so that winter payments are not extremely high while summer payments are low. Under a budget plan, payments are averaged so that each monthly payment is the same.
- Tenants may be eligible for the **Low Income Home Energy Assistance Program (LIHEAP).** This program may be able to help low income tenants in paying their utility bills or other costs of keeping warm (space heaters and home repairs). The Department of Public Welfare operates three energy programs—the Energy Assistance Cash Grant, the Crisis Grant, and the Crisis Grant Weatherization Repair Assistance. If a tenant is experiencing a heating crisis, they may be eligible for benefits through the LIHEAP crisis program. Emergency situations include broken heating equipment or leaking lines that must be fixed or replaced, a lack of fuel, shut-off of a main or secondary heating source, a danger of being without fuel (less than a 15-day supply), or a pending termination of utility service (received a notice that service will be shut off within the next 60 days).
- Each electric and gas company has a **Hardship Fund** to which low-income customers may apply in order to avoid shut-off or to have service reconnected.
- The **Weatherization Assistance Program** and the **Residential Low Income Usage Reduction Program** are free services provided to eligible low-income utility customers. Services provided may include a home energy survey, weatherization services, and usage reduction education.

ⓘ The Pennsylvania Public Utility Commission has many resources to help keep individuals and families warm during Pennsylvania winters. Visit their website at www.puc.pa.gov to learn more.

- If the property is **outside of Philadelphia,** tenants can visit the $1 Energy Fund at www.dollarenergy.org or call 1-800-683-7036 or contact the utility company for information on programs that may help with paying the utility bill.
- If the property is **in Philadelphia,** tenants can visit the Utility Emergency Services Fund (UESF) at www.uesfacts.org or call (215) 972-5170 for information on a program that may help with utility bills.
- For more information about LIHEAP, call the Pennsylvania Department of Human Services at 1-800-692-7462 Monday through Friday (individuals with hearing impairments may call 711). Tenants can also apply for LIHEAP at www.compass.state.pa.us. If they need help filling out a COMPASS application, they can call the HELPLINE at 1-800-692-7462 between 8:30 a.m. and 4:45 p.m., Monday through Friday. If a tenant is hearing impaired, they can call TTY/TTD at 1-800-451-5886.

  Tenants can also call the local County Board of Assistance or the Community Action Program serving your area. Local religious and community organizations may also offer emergency financial help.
- **You can refer tenants to COMPASS to see if they are eligible for public benefits** such as LIHEAP (Energy Assistance), Food Stamps, Medical Assistance, CHIP, Cash Assistance, Child Care Works Program, School Meals, Longer Term Living Services, and Early Intervention, Intellectual Disability or Autism Services. Those wishing to inquire if they are eligible for benefits should visit www.compass.state.pa.us
- **If someone needs help filling out their COMPASS application,** they can call the HELPLINE at 1-800-692-7462 between 8:30 a.m. and 4:45 p.m., Monday through Friday. Those who are hearing impaired can call TTY/TTD at 1-800-451-5886. If there is a question during non-business hours or e-mail is preferred, they can be contacted by email through their website.

# SECURITY DEPOSITS

A security deposit is money that belongs to the tenant but is held by the landlord for protection against damages. The tenant is responsible for the rental payments for the entire length of the lease. When the lease has expired, the tenant should have the security deposit returned to them minus the cost to repair any damages to the property.

All or part of the security deposit can be withheld at the end of the lease term if the tenant:

- Damages the rental property
- Fails to clean the unit properly
- Fails to pay the last month's rent or owes any rent
- Breaches the lease by moving out before the end of the lease term without advance notice and obtaining the agreement of the landlord

Without the agreement of the landlord, the security deposit may not be used as the last month's rent. The security deposit should not be used to pay for damages from previous tenants or for normal wear and tear on the property.

## Limits on the Amount of the Security Deposit

Pennsylvania law limits the amount of security deposit a landlord can demand. During the first year of the lease, the security deposit cannot be more than the equivalent of two months' rent. A landlord might ask the tenant to pay a security deposit plus "the last month's rent". Regardless of what a landlord may call these payments, a "last month's rent" payment is still part of the two-month maximum escrow during the first year.

During the second year or during any renewal of the original lease, the security deposit cannot exceed one month's rent. If a tenant's rent increases, the landlord can also increase the security deposit to equal one month's rent at the new rate for the first five years of the lease. After five years, the landlord cannot increase the security deposit even if the rent is increased.

If a tenant has paid two months' security deposit (or one month's security deposit and "the last month's rent"), then after the first year, the tenant may ask the landlord to return the amount of money held that is greater than one month's rent. This is done by writing a letter requesting this money be returned.

As a landlord, you should keep detailed records of the amount of the security deposit paid by the tenant along with information regarding what bank account the money is in and any interest rate that is paid on the deposit.

## Interest on the Security Deposit

If more than a **$100** security deposit is collected:

- The funds must be placed in a separate account.
- The account must be with an institution regulated by the Pennsylvania or Federal banking authorities.
- The landlord must notify the tenant in writing with the name and address of the depository (bank) and amount of deposit.
- **After the second year,** the interest earned on the tenant's money (less a 1% administrative fee to landlord) must be paid to the tenant annually on the anniversary date of the lease.
- The law does not specify how much interest a tenant must receive.

During times when interest rates are very low, after a landlord deducts the 1% fee, there may be no interest due to the tenant. However, as a matter of doing good business, a landlord should notify a tenant in writing that there is no interest due.

## Return of the Security Deposit

Within thirty (30) days after the termination of the lease, the landlord must give the tenant:

- A check for the entire amount of the security deposit **or**
- A written list of any damages caused by the tenant and any remaining security deposit money (plus interest, if any) minus the cost of the repair of damages

If the landlord fails to do either one of the above within 30 days, he or she has forfeited the right to withhold any of the security deposit or interest and has also given up the right to sue the tenant in court for damages. On the 31st day, the tenant can sue the landlord for **double** the amount of the security deposit held in escrow plus interest (if any). The burden of proof will be on the landlord to prove that there were actual damages to the rental unit caused by the tenant. These requirements cannot be waived in a lease and any attempt to do so is void and unenforceable.

**NOTE:** Landlords are held to the 30-day deadline only if the tenant has provided a forwarding address in writing and has returned the keys to the unit.

**Remember, if proper notice is not given, the tenant is potentially breaching the lease and may forfeit a refund of the security deposit. If they do not formally end the lease, owe rent, or have not properly surrendered possession of the unit, the landlord may refuse to return the security deposit.**

If you fail to return the security deposit and provide the tenant with a written list of damages within thirty (30) days, or if you fail to pay you the difference between the amount of the security deposit and actual damages to the rental unit within thirty (30) days, you will forfeit:

- All rights to keep any portion of the security deposit (including interest)
- All rights to sue the tenant for damages to the rental unit (however, you may still sue the tenant for collection of unpaid rent or breach of lease)

A tenant can file a civil complaint with the Magisterial District Court and sue the landlord for double the amount of the security deposit (including interest, if applicable). A landlord **will not** be able to file a counterclaim for damages.

If a landlord provides the tenant with a list of damages and a refund within thirty (30) days and the tenant disagrees with the amount of the damages, the tenant can file a civil complaint with the Magisterial District Court. The tenant will have to prove that the landlord has improperly charged them for damages. Again, photos and other documentation will be helpful for this process. The landlord is entitled to file a counterclaim against the tenant.

Both landlords and tenants have to pay filing fees to the Magisterial District Court in order to file a civil complaint. If the Judge's decision is in the landlord's favor, the filing fees and expenses shall be paid by the tenant. The following documents should be brought to any court proceeding:

- A copy of the signed lease
- Documentation or proof that the key(s) were returned or not returned
- Documentation or proof that the tenant provided a forwarding address or failed to provide a forwarding address
- A copy of any correspondence that you sent to the tenant regarding the security deposit
- A copy of any correspondence with the tenant explaining why the full amount of the security deposit was not returned
- All rent receipts (or canceled checks)
- Security deposit receipt (or canceled check)
- Photos or videos (be prepared to say who took them and when) showing proof of the condition of the leased premised before the tenant moved in
- Any witnesses who know the condition of the rental property before the tenant moved in and after they moved out
- All receipts for repairs and cleaning the unit

If the tenant fails to give a forwarding address, they are still entitled to the security deposit. However, because of the difficulty the landlord may have in locating the tenant, the landlord does not have to return it within 30 days.

**Any lease clause that says a tenant has waived these rights is unenforceable and therefore void.**

## What Can Be Charged Against the Security Deposit?

A landlord may retain some or all of the security deposit to make repairs for damage other than normal wear and tear. A landlord can keep a security deposit to cover any unpaid rent at the end of the lease term. A security deposit may also be forfeited if the tenant breaks the lease early. The landlord can charge the tenant for cleaning a rental unit after move-out if the tenant failed to do so—but the charges should be reasonable and only bring the property back to the condition it was in before the tenant moved in.

A tenant is not responsible for damages caused by previous tenants. Proper photo documentation of the condition of the unit before the tenant moves in and after they vacate the unit is an essential part of protecting the landlord's interest should damages occur.

## Normal Wear and Tear

Normal wear and tear is the ordinary deterioration of a property due to normal everyday use. It is not damage caused by abuse or neglect. There is a difference between normal wear and tear and damage done to a property. Carpet that is matted is normal wear and tear. Burns or extensive staining on a carpet is damage caused by negligence. Fading or yellowing paint is considered normal wear and tear. Large stains or holes in the wall are compensable damages to the landlord. The landlord should not charge the tenant for ordinary wear and tear. For example, if a landlord decided the apartment needed to be repainted at the end of a lease, a tenant should not be charged for the repainting unless the tenant caused more than normal wear.

# AT THE END OF THE LEASE

## Automatic Renewal and Non-Renewal of Leases

Leases are legal contracts whether they are verbal or written. A lease may specify that it automatically renews if no notice is given by either party. The lease may automatically renew for another year or on a month-to-month basis.

Both landlords and tenants, who do not wish to renew the lease at the end of the lease term must ensure that they give proper notice in accordance with the lease requirements. For example, a lease may state that either party must give 30 days written notice before the end of the lease term if they do not wish to renew the lease. Notice of non-renewal should always be given in writing. At the end of the lease, neither party is legally obligated to renew the lease with the other party, but landlords need to take care that non-renewal decisions are not retaliatory or based on discriminatory reasons.

While a reason for non-renewal does not need to be stated, under state and federal fair housing laws, landlords are prohibited from retaliating against a tenant for exercising a fair housing right or assisting others in exercising their fair housing rights. Pennsylvania Landlord Tenant law additionally prohibits a landlord from retaliating against a tenant for joining a tenants association. This includes a landlord's refusal to renew a lease because a tenant has joined a tenants' association.

Examples of retaliatory non-renewals:

- A tenant requests a reasonable accommodation to have an assistance animal. The landlord grants permission but, several months later, refuses to renew the lease despite having a history of regular lease renewals and having no evidence of the tenant breaching the lease.
- A landlord issues a non-renewal notice after a tenant has filed a fair housing complaint alleging sexual harassment by a maintenance person employed by the landlord.
- A landlord issues a non-renewal to a tenant after the tenant has provided fair housing information and assistance to another tenant who alleged racial discrimination.

In addition to fair housing laws which prohibit retaliation, landlords cannot subject tenants to differing terms and conditions or enforce rules differently based on a protected class. Landlords must enforce rules and breaches of the lease consistently without regard to protected class status. If a landlord chooses not to renew the lease of a tenant, alleging a breach of the lease, such as repeated late rental payments, and the tenant files a discrimination complaint with FHEO, the landlord must show that other tenants have been treated in a similar manner.

The best way for a landlord to avoid liability is to embrace fair housing practices and document adherence to policies that are applied uniformly. Landlords should make decisions regarding non-renewal using only objective verifiable criteria. Landlords should establish a record keeping system which show that policies are being applied uniformly. If a landlord needs to defend against a discrimination complaint, they should be able to show justification for the non-renewal and have documentation that the non-renewal is based on permissible reasons and is not retaliatory or discriminatory.

## Military Exemption

If a tenant is a military service member or serves with the Pennsylvania National Guard, the tenant has the right to terminate or cancel a lease without penalty if they are called for duty for consecutive periods longer than 30 days. This does not apply for training purposes. The tenant is required to provide a written notice to the landlord by personal service or by first class mail.

A landlord cannot evict a tenant who is called up for active duty without a special court action. The court can stay any proceedings for 6 months.

## Rent Increases

Pennsylvania has no rent-control law. Landlords may raise the rent as much as they want. However, changes must be made in accordance with the lease.

- The rent increase must follow the proper notice procedures outlined in the written or verbal lease.
- A landlord may not raise the rent in the middle of the lease term unless the tenant agrees to the rent increase.
- A landlord cannot raise rent in retaliation because the tenant exercised a legal right. The landlord is not allowed to raise the rent because a tenant filed a complaint of discrimination or contacted code enforcement.
- If a landlord raised the rent because a tenant filed a complaint of housing discrimination, this will complicate your legal liability as it will be seen as a retaliatory action.

## If the Lease Is Not Renewed

- Tenants should give the landlord proper notice that they will be vacating the rental property.
- This notice must be in accordance with the provisions of the lease. Notice of non-renewal of the lease should be delivered as outlined in the lease with the proper amount of notice that is required.
- The tenant is required to give the landlord their new address in writing at or before the time they move out. A tenant must do this even if it does not say so in the lease.
- The tenant should clean the dwelling unit as thoroughly as possible before moving out. Remember that the tenants should clean the inside of the stove and the refrigerator and dispose of any trash. A tenant should not leave anything behind. If the tenant has failed to do any of these things, you should document it with photos and receipts for cleaning.
- In order to get the security deposit refunded, the tenant must have paid all rent due.
- It is a good idea to inspect the dwelling unit with the tenant before they move out. Go over any damages that you find. Allow the tenants to repair any damages that are minor and easy to fix.
- Take photographs of the empty unit. This is the time to go over your pictures, checklist, or any other documentation of the original condition of the rental unit before the lease term began.
- A tenant must return the keys to the rental unit to the landlord immediately after vacating the property.

# EVICTION

An eviction is a legal action initiated by the owner of a property or an authorized agent of the owner to force a tenant to move out of the property. A court ordered eviction is the only legal way a landlord may force a tenant to leave a rental property. A lawful eviction requires a court proceeding. The length of the process will vary depending on the circumstances of the eviction.

**A landlord can bring an action to evict a tenant if:**

- The tenant fails to pay rent,
- The tenant fails to move out at the end of lease term, or
- The tenant violates terms of the lease agreement.

Examples of violations of the lease agreement include:

- Consistent late payment of rent
- Damaging the rental unit beyond normal wear and tear
- Using the rental unit for purposes not permitted under the rental agreement (for example, operating a business, allowing unauthorized persons to live in the rental unit, etc.)
- Keeping a dog, cat, or other animal that is not a service animal when pets are not permitted in the lease
- Engaging in criminal activity
- Improper storage or disposal of garbage that attracts insects, rodents, etc.
- Failure to abide by the proper rules and regulations that are either in the lease, attached to the lease, or given at the signing of the lease

## Before Proceeding With Eviction

If you believe that a tenant is going to contest an eviction, you may want to consider an alternative. You can try offering the tenant a financial incentive to move out of the leased premises.

A major factor that tenants often give as a reason why they cannot move is that they do not have the extra money to rent a moving truck or pay the security deposit for a new apartment. A small financial incentive may enable you to arrive at a compromise with the tenant rather than waiting for the eviction to play out in court. This could result in being able to move in new tenants more quickly. A lengthy legal process can be more expensive than offering an amount of money to the tenants to vacate the unit.

## Order of Eviction Proceedings

### Notice to Quit

A landlord begins the eviction process by giving the tenant a **"Notice to Quit"**. This notice can be posted on the tenant's door or the landlord may hand it to an adult in the rental unit. This notice cannot be sent by regular or certified mail. Any notice that is only sent by mail can be considered void and may be argued as such in court.

The amount of time the landlord is required to give a tenant to vacate should be written in the lease. If the lease says five days, the tenant should be given at least five days. The lease may have a "Waiver of Notice" which states that the landlord does not have to give the tenant any prior notice.

Check the **Eviction Timetable** on page 85 to see how much notice is required if it is not specified in the lease. Unless specified in the lease, the amount of notice required depends on the reason for the eviction.

The Notice to Quit must include the name of the landlord, name of the tenant, address of the rental property, the reason for the notice (such as failure to pay rent for a specific time period or for some other violation of the lease), and a date by which the landlord wants the tenant to vacate the rental property. The notice must be clear, decisive, and free from ambiguity.

### What if the landlord does not give proper notice?

The assertion that a landlord did not give proper Notice to Quit as outlined in the lease or by Pennsylvania law is one of the most common reasons why landlords are unsuccessful in their first attempt to evict a tenant. If the tenant can demonstrate that the landlord failed to give proper Notice to Quit in accordance with the provisions in the lease, the Judge will likely dismiss the case and require the landlord to restart the eviction process giving the tenant proper Notice to Quit. Make sure that the Notice to Quit is also delivered to the tenant in the manner required in the lease (i.e. posting on tenant's door).

### What if the tenant does not move out by the deadline?

If the tenant does not move out by the end of the lease term or the deadline that you set in the Notice to Quit, you will have to file a landlord/tenant complaint with the Magisterial District Court.

You must follow the legal civil proceedings for evictions in Pennsylvania. "Self-help evictions" are illegal. It is impermissible to bypass the civil procedure and try to lock tenants out. A landlord is prohibited from turning off utilities, threatening tenants, blocking access to rental unit, removing windows and doors, or taking any other action to engage in a self-help eviction. Attempting to evict a tenant yourself, without a constable and a court order, can lead to a police report being filed against you. While the civil eviction procedure can be frustrating and time consuming, you can be held liable for damages to the tenant for engaging in a self-help eviction. Only a constable with an order of possession from the Court can remove and lock out a tenant.

Communicate with your tenant in writing during the eviction process and keep your communications factual. Avoid unnecessary face to face contact with the tenant unless you have a neutral third party present.

## Filing a Landlord/Tenant Complaint at the Magisterial District Court

If the tenant has not moved within the time stated in the notice to quit and you wish to repossess the property, you must go to the Magisterial District Court in order to file a Landlord/Tenant Complaint. You can also seek reimbursement for past due rent. These issues can be processed on the same complaint.

ⓘ Specific forms which must be filed can be found here:
www.pacourts.us/forms/for-the-public

You do not require a lawyer at the Magisterial District Court level and you can present your case without an attorney. You may want to contact a landlord organization or an attorney to discuss your specific circumstances so that you will know your rights and be prepared. You will have to pay all applicable court fees and filing fees. Keep in mind that attorney's fee will not be recoverable unless

it is expressly stated in your lease that the tenant is responsible for reasonable attorney's fees should you prevail in the court proceeding.

After filing the landlord/tenant complaint, a court hearing will be set for seven (7) to fifteen (15) days after the complaint is filed. A hearing can be continued, or postponed, upon request if there is a reasonable need for a continuance.

Both parties will receive a copy of the landlord/tenant complaint from the Magisterial District Court via first class mail and the tenant will also have a copy served by a sheriff or a constable.

## The Hearing at the Magisterial District Court

If you are late or fail to appear at the hearing, a judgment may be entered against you by default. Plan to arrive early because even if you are only a few minutes late, a judgment can be entered against you. Your presence is vital at the hearing. If someone other than the Court tells you that the hearing was canceled or postponed, check with the Court to determine if this is true. If you cannot go on the scheduled date of the hearing or an emergency arises, call the Magisterial District Court's office as soon as possible before the court date and ask if the hearing can be continued to allow you to attend.

If you and the tenant come to an agreement before the court date or if someone other than the court tells you that "everything is taken care of", plan to attend the hearing anyway or check with the Court to see if the hearing is still scheduled. See **Q & A: Magisterial District Court** on page 87 for more information about the hearing and what to expect.

Any time before the hearing, the tenant can file a cross-complaint (or "counterclaim") or assert any other claim against the landlord.

## Presenting Your Case at the Hearing

As the plaintiff, you will have the burden of proving your case by a preponderance of the evidence. This is where diligent record keeping is critical. You will want to bring all of your records with you to court as well as all of the evidence that you have to prove your case.

- Be sure to bring a copy of the signed lease agreement with you!
- Rental payment records
- If there was any damage done to the apartment, you will want to have photographs which clearly show the damage.
- Copies of all correspondence with the tenant (including the Notice to Quit).
- Proof that you gave the Notice to Quit in accordance with the lease terms
- Copy of your rental license
- Witnesses (if witnesses do not agree to come voluntarily, you can ask the Magisterial District Court to issue subpoenas. There will be a cost associated with issuing subpoenas, however this is a recoverable cost.)

You will need to be prepared to defend yourself against any counterclaim the tenant may file against you.

- For example, if the tenant improperly withheld rent, you will want to show that the tenant did not give you reasonable time to make repairs. Show correspondence between you and the tenant which shows that you agreed to fix the problem within a reasonable period of time. Be able to show that the tenant refused to wait and improperly withheld rent.
- If the tenant withheld rent due to alleged uninhabitable conditions, be sure to have copies of code enforcement inspections showing that the property meets all local code requirements.

*See Q & A Magisterial District Court on page 87.*

## Judgment

After the hearing, the Magisterial District Judge will either make a decision that day or within three (3) days. The Judge will issue a written **Notice of Judgment.** The Notice will tell you what type of judgment has been entered.

- Possession Granted if Money Judgment Not Satisfied
- Possession Granted
- Possession Not Granted
- Money Judgment

If the Judgment is for **Possession Granted if Money Judgment Not Satisfied** (commonly referred to as "Pay and Stay"), the tenant will have the opportunity to pay any money that is owed in full at any time prior to the eviction date to avoid an eviction and remain in the rental property.

- If the landlord is paid in full, including judgment costs, within 10 days of the judgment, no order for possession can be requested.
- If within 10 days, the tenant does not either pay or file an appeal and pay a bond if required, the landlord may request an **Order for Possession.** Court costs will go up if the landlord requests an Order for Possession and these costs can be added to what the tenant owes.
- A forced removal date can be executed as early as 12:01am on the 11th day after the Order for Possession is posted on the door of the leased premises by a constable. Up to and including that date, a tenant can still pay the judgment in full to avoid the eviction.
- If the tenant pays the full amount owed on the date of the eviction, they will have to pay the constable directly and they will have to pay in cash. If the tenant attempts to pay by check, the constable will not accept a check and the eviction will proceed as scheduled.

## Order for Possession

If the judgment is **Possession Granted,** the tenant will have to move out of the home even if they pay all of the money owed in full. If a tenant disagrees with the decision and wants to stay in the home, they will need to file an Appeal to the Court of Common Pleas within 10 days of the judgment date and post a bond.

After the 10-day appeal period has passed, the landlord can file for an Order for Possession. When the landlord has obtained an Order for Possession, the tenant will be served a notice by a constable either in person or by posting the notice on the door.

- The constable's notice will say that the tenant has ten (10) additional days to vacate the dwelling from the date of service.
- This notice is a final deadline to vacate.
- If the tenant does not move by the end of the ten (10) day period at the time and date in the notice, the constable may forcibly remove the tenant and padlock the door to the rental unit.

The tenant should make plans to move out as soon as possible before the scheduled eviction date. They should move all of their belongings out of the rental unit before the scheduled eviction because they will only have minutes to vacate when the constable arrives. Tenants are required to remove their belongings upon relinquishing possession of a rental property (including at the time of an eviction). If tenants have not removed their belongings when the constable evicts them, the landlord must still comply with the Abandoned Personal Property Act.

**Keep in Mind: It takes at least twenty (20) days after the hearing before the legal lockout can occur.**

### What happens if I come to an agreement with the tenant?

If you come to an agreement with the tenant, and do not execute on the Order for Possession, the constable will not be notified to evict. Generally, this happens when the landlord and tenant work out a payment agreement and you agree that the tenant can stay. If you are able to work out an agreement, make sure to get the agreement in writing.

A landlord can request a re-issuance of an Order for Possession generally within 120 days of the judgment date.

### What happens if I lose my case or if I am not satisfied with the judgment?

You can file an appeal for a new hearing with the Court of Common Pleas. You will probably want to consult an attorney at this point as the Court at this level is not as easy to navigate by a layperson without an attorney.

## Appeal Process

There are often two parts to a Judge's decision: **Possession** (eviction) and **Money Judgment.**

Both tenants and landlords have the right to appeal a judgment. Appeals are filed with the Prothonotary at the Court of Common Pleas. To appeal a decision by a Magisterial District Court, you will need to bring a copy of the Judgment with you to the Prothonotary's Office. It is advised that you seek the counsel of an attorney if you chose to file an Appeal, as the process at this court level is more complicated. The party appealing is called the appellant, or sometimes the petitioner. The other party is the appellee or the respondent.

**If the tenant is appealing a Judgment for Possession and they want to stay in the rental property, they have ten (10) days from the judgment date to appeal the decision.**

The tenant must also file a Supersedeas to stop the sheriff or constable from removing them from the property. If the tenant does not tell the Prothonotary's Office that they want to stop the lock out and does not file a Supersedeas, then they will only be appealing the money judgment and the lock out will still occur as scheduled.

The tenant will have to pay filing fees and the Supersedeas requires the tenant to pay a bond in the amount of the money judgment or 3 months' rent, whichever is less. (If the tenant has a very low income, they may only have to pay a third of the rent as a bond when they file the appeal.) This money will be placed in an escrow account. Tenants will also be required to pay the monthly rent to the Court every 30 days from the date of the appeal. If the tenant fails to do this, the Supersedeas may be terminated and the eviction may proceed. Make certain that you keep track of this deadline as some months have more or fewer than 30 days.

**If either party does not want to appeal a Judgment for Possession, but only wants to appeal the Money Judgment, they have thirty (30) days from the date of the judgment to appeal.**

Appeals are filed with the Prothonotary at the Court of Common Pleas. You will need to bring a copy of the Judgment with you to the Prothonotary's Office. No bond is required to appeal a money judgment.

## What Happens if There is No Appeal?

If the Magisterial District Court grants a **Judgment for Possession,** then the landlord must wait ten (10) days to request a document called an Order for Possession from the Magisterial District Court. A constable or sheriff's deputy will serve the Order for Possession on the tenant that gives the tenant an additional 10 days to vacate the premises. If the tenant does not move within 10 days after they receive the Order for Possession, the constable or sheriff's deputy will physically remove them from the property.

If the Magisterial District Court grants a **Money Judgment** in your favor, then the tenant will have 30 days to pay the judgment. If they do not pay it, you can go to the Magisterial District Court and request the issuance of a document called an **Order for Execution.** A constable or sheriff's deputy will serve the Order for Execution on the tenant by giving a notice or posting it on the door of the property. At the time the Order for Execution is given, the constable or sheriff's deputy will make a list of the property that may be sold to pay off the judgment. This list is called a levy. This property can be sold several weeks after the levy is made at a constable or sheriff's sale, unless it is valued at less than $300 ($600 if the individuals are married and both spouses were sued). A tenant can file an Appeal or objection to the sale of property.

## Garnishment of Wages

When a court has rendered final money judgment against a tenant, Pennsylvania law allows the landlord to seek to garnish the tenant's wages. Specific limitations exist. The landlord must deduct the security deposit from the amount in the judgment unless the security deposit has already been applied to payment of the rent due. The landlord must prove that the security deposit has been applied to payment of rent due or damages. The attached wages cannot be more than 10% of the tenant's net wages per pay period. The amount of the wage attachment cannot place the tenant below certain poverty income guidelines. A court filing to attach wages must be commenced within five (5) years of the judgment date. This filing is made at the Prothonotary of the Court of Common Pleas.

# Eviction Notice Timetables

## Landlord/Tenant Eviction/Nonrenewal Process Timetable for Apartment or House:

| If the Reason for Eviction is: | A Landlord Must Give a Tenant: |
|---|---|
| Non-Payment of Rent | 10 Days' Notice |
| Acts Relating to Illegal Drugs | 10 Days' Notice |
| Expiration/General Breach of a Month-to-Month Lease or Indefinite Term Lease | 15 Days' Notice |
| Expiration/General Breach of a Year or Less Lease | 15 Days' Notice |
| Expiration/General Breach of a Lease Longer than One Year | 30 Days' Notice |

## Landlord/Tenant Eviction Process Timetable for Mobile Home Park:

| If the Reason for Eviction is: | A Landlord Must Give a Tenant: |
|---|---|
| General Breach of Lease for Less Than One Year or Indefinite Term | 30 Days |
| General Breach of Lease for Longer Than One Year | 3 Months from the date of service |
| Failure to Pay Rent Between: April-August | 15 Days |
| Failure to Pay Rent Between: September-March | 30 Days |

## Landlord/Tenant Eviction Process Timetable for Legal Proceedings and Appeal to Common Pleas:

| | |
|---|---|
| Magisterial District Judge Schedules Hearing | 7-15 Days After Landlord Files Complaint |
| Magisterial District Judge Will Enter Judgment at Conclusion of Hearing or Within | 3 Days |
| Order for Possession by Landlord | After the 10 Days Following the Day of the Disposition |
| Constable Executing the Order for Possession Can Evict the Occupants if They Remain on the Premise More Than: | 10 Days after Service of the Order for Possession |
| Judgment Affects Delivery of Possession of Residential Property, Appeal Within: | 10 Days after Disposition |
| Judgment is for Money, or Possession of Non-residential Property, Appeal Within: | 30 Days after Disposition |

## Abandoned Personal Property Act

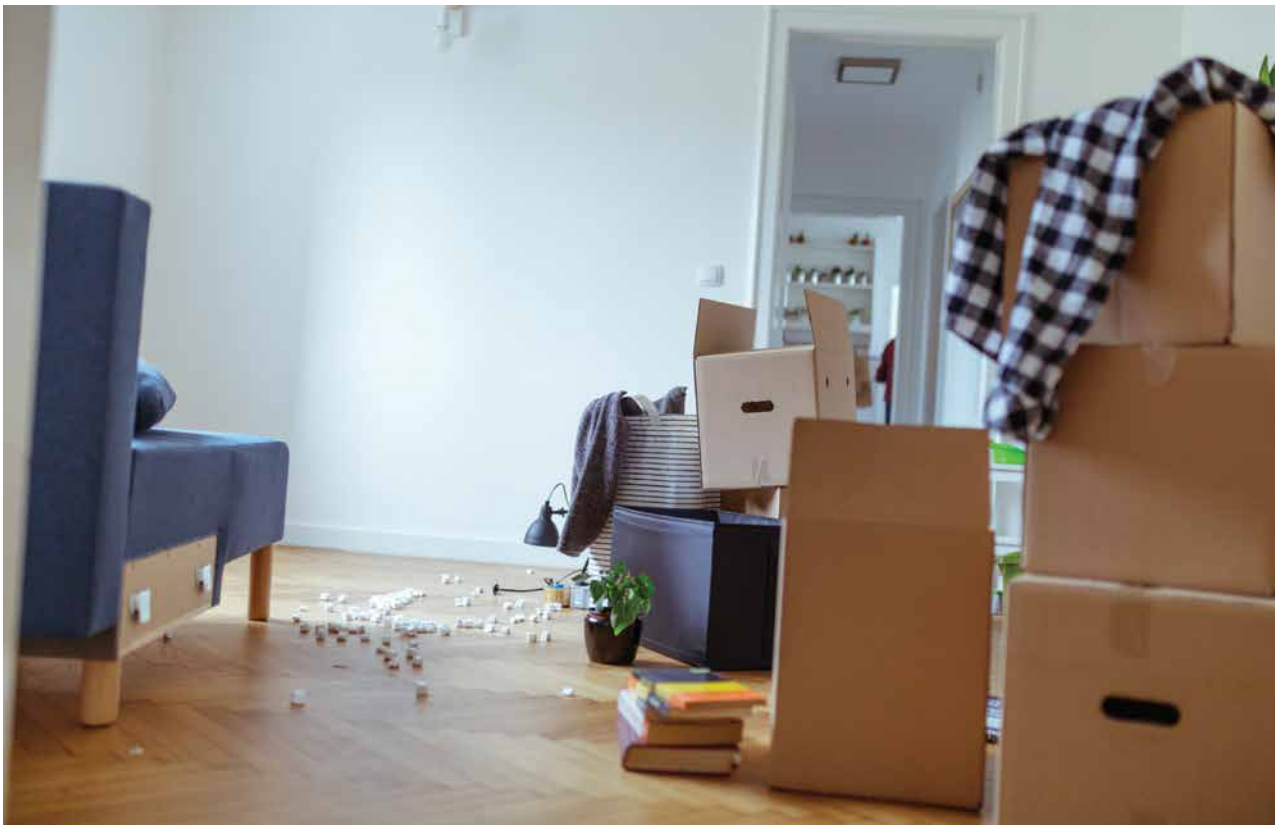
The Abandoned Personal Property Act is an amendment to the Pennsylvania Landlord Tenant Law and addresses the rights of landlord and tenants when a tenant has left property behind in a rental unit after relinquishing possession of the unit to the landlord. This Act applies both when a tenant is forcibly evicted by a constable with an Order of Possession or when they voluntarily vacate a rental unit and provide notice that they have vacated and provide a forwarding address.

Tenants who have been evicted or have moved out, have ten (10) days to contact the landlord and let the landlord know that they intend to retrieve their personal property which was left behind. If a tenant notifies the landlord within ten days that they wish to retrieve their property that was left behind, then the landlord is obligated to retain custody of the tenant's possessions for thirty days. If the tenant does not retrieve their personal property within thirty (30) days, the landlord can dispose of the property.

If a tenant has moved out and has left personal property behind, the landlord must send written notice informing the tenant of the personal property they left behind. The lease should indicate how this notice is to be provided to the tenant. The notice may be sent by mail to the forwarding address provided by the tenant or by delivery in person. If the tenant does not leave a forwarding address, a notice can be sent to the old address and to any emergency contacts previously provided by the tenant.

If a tenant has been evicted, the landlord does not have to send notice to the tenant about any personal property left in the unit. It is the responsibility of the tenant to contact the landlord within ten (10) days to let the landlord know that they left possessions behind and wish to retrieve them.

After ten (10) days from the day the tenant was evicted or from the postmarked date of the landlord's notice to the tenant to retrieve property, the landlord can begin charging a fee for storing the tenant's possessions. The tenant must be allowed thirty (30) days to collect their possessions. Any possessions they have not collected after thirty (30) days can be disposed of by the landlord.



# Q&A Magisterial District Court

### What is a Magisterial District Judge?

A Magisterial District Judge is a locally elected official who can decide small civil lawsuits such as landlord tenant matters. The Magisterial District Judge used to be called a Magistrate or Justice of the Peace.

### Do I need an attorney?

No. Attorneys are not required during the hearing. However, if you would prefer to have an attorney present, you may retain one.

### Should I go to the Magisterial District Court hearing?

Yes! If you are late or fail to appear at the hearing, a judgment may be entered against you by default. In addition, the hearing gives you the chance to present your defense or cross-complaint against the other party. If you cannot go on the scheduled date of the hearing or an emergency arises, call the Magisterial District Court's office and ask if the hearing can be rescheduled. If you have a good reason for being late or missing the hearing, you must file a petition promptly after learning of the default judgment.

### What is a Plaintiff?

A plaintiff is the person bringing the lawsuit, the person who is suing the defendant. The defendant is the person being sued.

### What is a "Counterclaim"?

A counterclaim is a claim that the other party owes you money. For example, if a tenant paid for repairs (after notifying the landlord) in order to make the dwelling habitable and the landlord does not reimburse the tenant for the costs, the tenant may file a counterclaim. It must be filed with a Civil Complaint Form at the Magisterial District Court's office. There is no fee for filing the counterclaim, however the person filing the counterclaim will have to pay for the cost of serving the counterclaim on the other party. Both the landlord's complaint and the tenant's counterclaim will be decided at the hearing.

### How should I prepare for my hearing?

If you have a lawyer, you should go over the information that will be presented at the hearing with your lawyer. If you do not have an attorney, you should make a checklist of important points and a sequential outline of the events that happened. Be brief and to the point. Be ready to explain each item of evidence. Practice telling your side of the case. If you have taken photos, you should bring them to the hearing. Be prepared to identify who took the photos and when the photos were taken. Dress your best and arrive on time for the hearing.

### What will happen at the hearing?

At the hearing, all testimony is under oath. The Plaintiff (the person who filed the complaint) is allowed to testify first. Witnesses may also testify on their behalf. After the Plaintiff is done testifying, the Defendant will have a chance to ask questions of the people who testified. The Defendant will also be given an opportunity to present their case and their witnesses. The Defendant and their witnesses can be questioned by the Magisterial District Judge or by the Plaintiff.

Remember to maintain your composure and be polite. Be brief and to the point. Try not to ramble or the judge may cut you off. Address all of your questions and comments to the judge using "Your Honor" as a formal form of address. If you wish to ask a question of another party, first ask permission from the judge to ask a question. Say "Your Honor I would like to present evidence" or "Your Honor, I would like to ask Mr. or Ms. X a question." Do not interrupt the judge or the other party. You will have an opportunity to speak and explain your case.

### May I bring documents?

Yes, you can bring any documents that help prove your case. Any document important for the case must be presented at the hearing. The Magisterial District Judge will not give you a chance to go home and get any documents you forget to bring to the hearing. The Magisterial District Judge cannot consider written statements from people who do not come to the hearing to testify if the other party objects to the written statements. If someone has something important to say about your case, he or she will need to attend the hearing.

The Magisterial District Judge can consider bills, estimates, receipts, canceled checks or bank statements if it helps prove your case or the counterclaim. Be sure to bring your lease and any relevant correspondence between you and the tenants. Bring photos and witnesses.

### Can I subpoena someone to appear at the hearing?

Yes. You have the right to subpoena witnesses. You may wish to subpoena a code enforcement officer, housing inspector, or a repair person to testify about the condition of your property. A subpoena is a document that requires an individual to come to the court and testify even if they do not want to come. The witness can also be subpoenaed to bring certain documents needed to prove your defense or your counterclaim. You should obtain and serve subpoenas as soon as possible to be sure the witnesses get them in time for the court hearing.

### What happens after the hearing?

The Magisterial District Judge will make a decision either at the hearing or by mail within three (3) days. If the judgment is in the tenant's favor, the landlord is required to do what the Magisterial District Judge orders. If the judgment is in favor of the landlord, the tenant is required to do what the Magisterial District Judge orders.

*See Eviction: Judgment on page 82.*

### What if I do not agree with the Magisterial District Court's decision?

You have the right to appeal a judgment entered against you. Appeals are filed with the Prothonotary at the County Courthouse.

*See Eviction: Appeal Process on page 83.*

# RESOURCES



## Fair Housing

In you live in the City of Philadelphia or Bucks, Chester, Delaware, Lehigh, Northampton, or Montgomery Counties, you can contact the Housing Equality Center for technical assistance with fair housing issues including evaluating reasonable accommodation and modification requests. Fair housing posters and additional copies of this guide and other resources are available at no cost. You can also request training on fair housing. Call 267-419-8918 or 866-540-FAIR (3247) or email info@equalhousing.org or visit www.equalhousing.org

## Housing Choice Voucher Program

www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord

## HUD Fair Market Rents

www.huduser.gov/portal/datasets/fmr.html

## Local Code Enforcement Official

Each municipality has their own Code Enforcement Department. To contact your local Code Enforcement Official call the municipality (Township, Borough or City) in which you live.

## Magisterial District Court

To find the Magisterial District Court in your area, go to www.pacourts.us, click on 'Minor Courts' and then click on 'Magisterial District Judge'. You can search by county or zip code to get the contact information for the Magisterial District Judge servicing your area.

## PA Law Help

For Information regarding Legal Issues including Landlord/Tenant, Consumer, Children and Families, Employment, Health Law, Housing and Shelter, Public Benefits, Disability, Elder Law, Immigration Issues, Migrant Issues, and Veterans and Military visit the website: PALawHELP.org

## Pennsylvania Bar Association

The PBA Lawyer Referral Service (LRS) refers callers to lawyers in the counties that do not have a referral service of their own. This service covers 45 of the 67 counties in the Commonwealth of Pennsylvania, and can be reached by calling 800-692-7375 (for in-state callers only), 717-238-6807 or www.pabar.org.

### Pennsylvania Local Lawyer Referral Services

If you are looking for an attorney in a county listed below, please contact that county bar association's Lawyer Referral Service directly.

Allegheny County, Pittsburgh
(412) 261-5555

Beaver County, Beaver
(724) 728-4888

Berks County, Reading
(610) 375-4591

Blair County, Hollidaysburg
(814) 693-3090

Bucks County, Doylestown
(215) 348-9413
(888) 991-9922

Butler County, Butler
(724)-841-0130

Carbon County, Lehighton
(610) 379-4950

Chester County,
West Chester
(610) 429-1500

Cumberland County, Carlisle
(717) 249-3166

Dauphin County, Harrisburg
(717) 232-7536

Delaware County, Media
(610) 566-6625

Erie County, Erie
(814) 459-4411

Franklin County,
Chambersburg
(717) 267-2032

Lackawanna County, Scranton
(570) 969-9600

Lancaster County, Lancaster
(717) 393-0737

Lebanon County, Lebanon
(717) 273-3113

Lehigh County, Allentown
(610) 433-7094

Luzerne County, Wilkes-Barre
(570) 822-6029

Mercer County, Mercer
(724) 342-3111

Monroe County, Stroudsburg
(570) 424-7288

Montgomery County,
Norristown
(610) 279-9660

Northampton County, Easton
(610) 258-6333

Philadelphia County,
Philadelphia
(215) 238-6333

Washington County,
Washington
(724) 225-6710

Westmoreland County,
Greensburg
(724) 834-8490

York County, York
(717) 854-8755

## Resources To Provide To Tenants

### U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity (FHEO)

To file a housing discrimination complaint based on race, color, national origin, religion, sex, familial status, disability, or LGBTQ+ status: Call FHEO at 1-888-799-2085. To file an online complaint: visit www.hud.gov and click on "File a Discrimination Complaint." You may also email a complaint to complaintsoffice03@hud.gov or mail a complaint to FHEO, Attn: Intake Branch, 100 Penn Square East, Philadelphia, PA 19107. FHEO's TDD number is 1-800-877-8339. Complaints of housing discrimination must be filed with FHEO within 1 year from the date of the incident.

Fair Housing Accessibility FIRST is an initiative sponsored by HUD to promote compliance with the Fair Housing Act design and construction requirements. The initiative offers a toll-free information line and website with technical guidance for communities and developers. For more information, contact: (888) 341-7781 or www.fairhousingfirst.org.

## Pennsylvania Human Relations Commission (PHRC)

To file a housing discrimination complaint based on race, color, national origin, religion, sex, familial status, disability, LGBTQ+ status, age (over 40), or because you are a user, handler, or trainer of assistance animals for person with disabilities:

Call 215-560-2496 or 215-560-3599 (TTY) or visit www.phrc.pa.gov to download complaint forms. Complaints must be filed with the PHRC within 180 days of the incident.

## Pennsylvania Office of Attorney General, Bureau of Consumer Protection

This entity investigates consumer complaints, attempts to mediate and correct the problems for you. The Consumer Protection Hotline is 1-800-441-2555.

## Senior LAW Center

The Senior Law Center serves Pennsylvanians 60 years of age and older. Legal advice, counseling, information, and referral services are available at 1-877-PASRLAW (727-7529) or www.seniorlawcenter.org

To Check Eligibility for Public Benefits, such as LIHEAP (Energy Assistance), Food Stamps, Medical Assistance, CHIP, Cash Assistance, Child Care Works Program, School Meals, Long Term Living Services, and Early Intervention, Intellectual Disability or Autism Services, visit www.compass.state.pa.us If you need help filling out a COMPASS application, call the HELPLINE at 1-800-692-7462 between 8:30 a.m. and 4:45 p.m., Monday through Friday. If you are hearing impaired, call TTY/TTD at 1-800-451-5886. If you have a question during non-business hours or prefer to use e-mail, you may contact them by email through their website.

## PA Housing Search

The Pennsylvania Housing Finance Agency's search tool helps people search for housing by topics such as rent amount, area of interest, accessibility, or availability of public transportation. On the website, you can also find additional statewide information and resources, including a rental checklist, rent calculator, information on services, transportation, Frequently Asked Questions related to renting, and much more by visiting the "Info and Links" section of the website. www.pahousingsearch.com Toll-Free: 1-877-428-8844. TTY is 7-1-1.

## Public Housing Authorities

If you need public housing assistance or information about public housing programs, such as Housing Choice Vouchers (HCVs), please contact your local public housing authority (PHA). The HCV program is the federal government's major program that assists very low-income families, older adults, and individuals with disabilities with obtaining decent, safe, and sanitary housing in the private housing market. If you need assistance locating your local public housing authority, call 2-1-1 (United Way) for information.

## Quick Start Housing Resources

- www.phfa.org/mhp/serviceprovider
- Use this web page to find the contact information, by county, for a variety of housing providers including housing authorities, homeless providers, community action agencies, and more. Click on the "Hot Topics" button to see a drop down menu of counties in Pennsylvania and select the county to view.

## Accessibility Modifications

If you have a disability and need to make modifications to your home or need assistive technology devices or services to improve the quality of your life, the PA Assistive Technology Foundation can help people with disabilities and older Pennsylvanians get the assistive technology they need with low-interest and 0% interest financial loans, information and assistance about possible funding resources including public and private grants, financial education through various publications and individual counseling. The PA Assistive Technology Foundation helps Pennsylvanians of all ages, all income levels and all disabilities. www.patf.us

## Pennsylvania Assistive Technology Foundation

1004 West 9th Avenue #130
King of Prussia, PA 19406
(484) 674-0506 (voice)
(888) 744-1938 (toll free)
(484) 674-0510 (fax)
patf@patf.us

## Self-Determination Housing of Pennsylvania

A statewide non-profit organization that works to expand housing options for people with disabilities in Pennsylvania. SDHP provides information and resources to people with disabilities and their families about housing options. SDHP also administers several statewide and/or county-wide housing programs including the Regional Housing Coordinator Program and the PA Accessible Housing Program, a grant program for home modifications. www.inglis.org/programs-and-services/inglis-community-services/self-determination-housing-of-pennsylvania-sdhp

(610) 873-9595 (voice)
SDHPInfo@inglis.org

## Pennsylvania LINK to Aging and Disability Resources

- Toll Free HELPLINE: 1-800-753-8827
- Aging and Disability Resource Centers (ADRC) are a nationwide effort to assist older adults and individuals with disabilities who need help with activities of daily living. The ADRC in Pennsylvania is known as the Link.
- The PA Link can: easily connect you to local services through any LINK partner agency; help you explore existing options to ensure a secure plan for independence; assist you with applications to determine eligibility; and help you remain in, or return to, your community.

### Pennsylvania Utility Law Project

Facing a utility shut off? Already without service? Pennsylvania residents may be eligible for free legal help. Call 1-844-645-2500 or email utilityhotline@palegalaid.net

### Pennsylvania Utility Commission

Utility customers may call the PUC's hotline at 1-800-692-7380 regarding complaints, terminations or payment arrangements. They ask that you first call your utility to try to resolve the problem. www.puc.state.pa.us

### 2-1-1 United Way

www.pa211.org or dial 2-1-1. PA 2-1-1 is a free resource and information hub that can connect you with customized health, housing, and human services information. By calling 211, you can receive information related to food, housing, employment, health care, along with a variety of other services.

### National Domestic Violence Hotline

1-800-799-7233 (SAFE)
1-800-787-3224 (TTY)
Text "START" to 88788

### Pennsylvania Coalition Against Domestic Violence

Among the services provided to domestic violence victims are: crisis intervention; counseling; accompaniment to police, medical, and court facilities; and temporary emergency shelter for victims and their dependent children. Prevention and educational programs are provided to lessen the risk of domestic violence in the community at large. www.pcadv.org

1-800-932-4632

### Pennsylvania Legal Aid Network, Inc.

If you think you may qualify for free legal assistance, the Legal Aid office near you can be located by going to www.palegalaid.net. Scroll down the page and click on Legal Aid Providers in Pennsylvania, then search by your county. Or you can call 717-236-9486 and follow the prompts to hear the contact information for the Legal Aid office in your county.

If you do not qualify for legal aid or if the Legal Aid office you contact cannot help you for any reason, please check out PALawHELP.org to see what additional legal resources and information are available to you.


HOUSING EQUALITY CENTER of Pennsylvania