

# Intermountain Fair Housing Council Affirmatively Affirming Fair Housing



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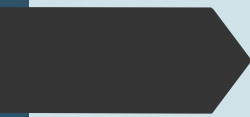
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# Our Mission

- ▶ IFHC is a nonprofit organization whose mission is to ensure open and inclusive housing for all people throughout Idaho.
- ▶ The IFHC's organizational purpose is to advance equal access to housing for all persons.
- ▶ The IFHC attempts to eradicate discrimination through education on the fair housing laws, housing information and referrals, housing counseling and enforcement including testing and filing complaints under the federal Fair Housing Act with the Department of Housing and Urban Development or by filing complaints in federal court.

# The Fair Housing Act

- ▶ On April 11, 1968, Title VIII of the Civil Rights Act was passed. The Fair Housing Act opens doors for so many people throughout the United States with the goal of ending segregation and eliminating discrimination.
- ▶ The Fair Housing Act or Title VIII of the Civil Rights Act protects persons from discrimination in housing transactions based on race, color, national origin, religion, sex (sexual orientation and gender identity), physical and mental disabilities and familial status (the presence of children under the age of 18.) (42 USC 3601 et seq.)



# The Four Elements of a Fair Housing Case

01

a discriminatory act occurred

02

a member of a protected class was discriminated against

03

the dwelling is one of four or more units or properties owned by the person or entity in the business of housing

04

it is within the time limitations (Statute of Limitations)

# Discriminatory Housing Practices

- **Making Housing Unavailable**  
42 U.S.C. sec. 3604(a); examples at 24 CFR sec. 100.60
- **Discriminatory Terms and Conditions**  
42 U.S.C. sec. 3604(b); examples at 24 CFR sec. 100.65
- **Discriminatory Statements**  
42 U.S.C. sec. 3604(c); examples at 24 CFR sec. 100.75
- **Steering**  
42 U.S.C. sec. 3604(d); examples at 24 CFR sec. 100.80
- **Coercion and Intimidation**  
42 U.S.C. sec. 3617

# The Fair Housing Act continued...



<https://www.loudounhabitat.org/blog/2019/4/22/fair-housing-act>

**The Fair Housing Act, Title VIII of the Civil Rights Acts, prohibits discrimination in housing.**

<https://www.justice.gov/crt/fair-housing-act-1>

- 1968** – Fair Housing Act is initially passed including Race, Color, Religion and National Origin
- 1974** – Sex is added as a protected class (includes sexual orientation/gender identity)
- 1988** – Disability and Familial Status are added as protected classes

# Housing Covered under the Fair Housing Act

includes but is not limited to:

- ❖ Condominiums
- ❖ Duplexes
- ❖ Multi-unit dwellings (apartments) with 4 or more units
- ❖ Manufactured homes
- ❖ Group homes for the recovery of drug addicts and alcoholics
- ❖ Seasonal bungalows
- ❖ Private homes/single family dwelling
- ❖ Vacant land
- ❖ Homeless shelters
- ❖ Shelters for victims of domestic violence
- ❖ Hospice
- ❖ Nursing Home
- ❖ Assisted Living

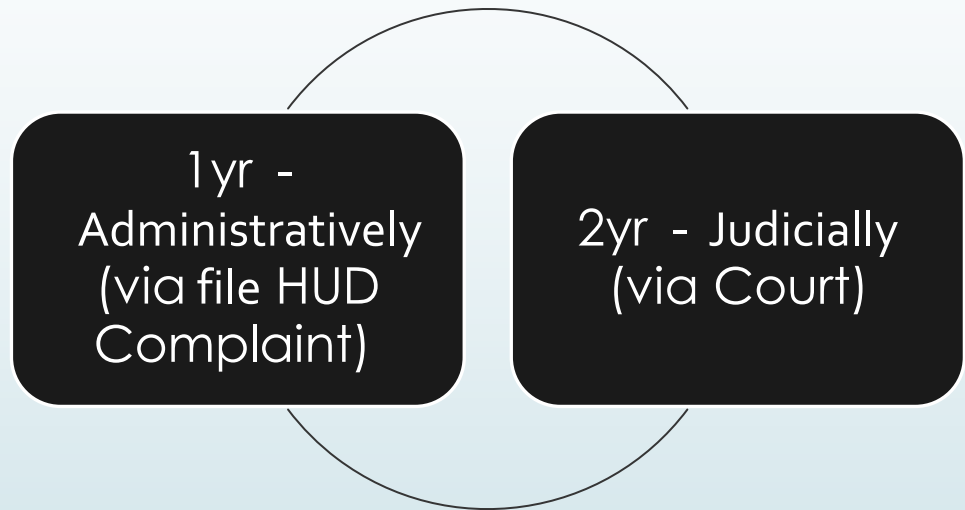
## Fair Housing Act Applies to Many Different Housing Transactors:

- ▶ Advertising media
- ▶ Residential landlords
- ▶ Rental agents
- ▶ Housing Agents/Managers
- ▶ Real Estate Brokers and Salespersons
- ▶ Homeowners
- ▶ Homebuilders
- ▶ Refugee Agencies
- ▶ Banks, Savings and Loan Associations, Mortgage Lenders or other financial institutions
- ▶ Developers and contractors
- ▶ Landowners
- ▶ Condominium developers or owners
- ▶ Homeowner and Condo Owner Associations



# Within The Statute of Limitations

1. Complaints must be filed through the HUD administration process within one (1) year of the date of discrimination.



2. If HUD finds there is reasonable cause (there was discrimination), then a charge will be issued and may:

- Go to trial before an administrative law judge
- Go to court where the complaint will be represented by the Justice Department

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process)

# 56 Years of Fair Housing

- ❖ Upon signing the law, President Johnson said, “It proclaims that fair housing for all human beings who live in this country is now a part of the American way of life.”
- ❖ There literally have been thousands of race-based laws that prohibited people's right to home ownership, land access, housing opportunities. To overcome those systems, they included the affirmatively furthering fair housing provision, which says that any jurisdiction, any entity that receives any federal funds for housing or community development purpose must proactively promote fair housing.
- ❖ Know your fair housing history:  
<https://www.segregatedbydesign.com/> and  
<https://ifhcidaho.org/fair-housing-history-of-idaho/>

# Housing Barriers still exist

- ▶ These housing and community planning barriers may be:
  - ▶ segregated neighborhoods
  - ▶ discriminatory rental or real estate ads
  - ▶ lack of local and state laws which protect persons in housing based on sexual orientation, gender identity, families with children, source of income (SSI, SSDI, Vouchers, Refugee Assistance, Veterans benefits, etc.)
  - ▶ inaccessible housing and communities
  - ▶ denial of housing to veterans with disabilities
  - ▶ unhealthy air quality
  - ▶ lack of mass transit to one's neighborhood
  - ▶ crime, poor schools and health clinics, and lack of jobs
  - ▶ mass evictions

# Fair Housing Hot Topics

- **Discriminatory Land Use Decisions**
- **Language Access Plans**
- **Accessibility**

# Idaho Cases & National Fair Housing

- ▶ In ***Community House, Inc. v. City of Boise***, the City of Boise was ordered to pay \$1 million to Community House, a shelter/housing provider when the City violated the State constitution and the Fair Housing Act. (2011)
- ▶ The City gave a deal to a religious organization to lease and then own Community House's building, evicting women and families with children from the shelter, and passing a discriminatory ordinance making the shelter for men only and retaliating against Community House through a hostile takeover of the building and programs.
- ▶ Under the Fair Housing Act, a City cannot favor one gender over another nor pass a law that does so. Moreover, it cannot favor or disfavor a religious group or adults over families with children. The City could not retaliate against Community House in its assertion of its or its residents fair housing rights.

# Turning Point, Inc. v. Caldwell (1996)

- ▶ In ***Turning Point, Inc.***, shelter providers for persons who are homeless argued that Caldwell set the occupancy limitation so low that it failed to make reasonable accommodation for persons with disabilities.
- ▶ Turning Point also alleged that Caldwell's required annual review of occupancy conditions was discriminatory toward persons with disabilities and denied persons with disabilities housing.
- ▶ The Court ruled that the City should have eliminated the annual review of a special use permit and unreasonable occupancy limits because Caldwell had the power to declare and abate nuisances such as too many people living under one roof in an unsafe manner.
- ▶ However, the City could set reasonable occupancy limits that did not discriminate.

# Alamar Ranch v. Boise County (2009)

- ▶ Alamar Ranch sued Boise County alleging three separate violations of the Fair Housing Act: (1) failure to grant a reasonable accommodation for the construction of housing for persons with disabilities, (2) adverse treatment of persons with disabilities and (3) intentional interference with the construction of housing for youth with disabilities by giving into the community opposition to the housing center.
- ▶ Alamar Ranch prevailed and the jury awarded Alamar \$4 million in damages

# Department of Justice v. City of Wendell

- ▶ In July of 2008, the Department of Justice initiated a compliance review of the City of Wendell after receiving a complaint regarding the accessibility of the City's sidewalks, the city hall building, and the library.
- ▶ In September of 2008, the Department of Justice conducted a survey of city buildings, parks, programs, and services.
- ▶ In the end, the City staff worked with the Department of Justice to reach an agreement to make programs, services, buildings, and the community accessible.



# Westchester County Case

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- ▶ The importance of local and state government fair housing compliance was made evident on August 10, 2009, with the landmark \$62.5 million settlement in *U.S. ex rel. Anti-Discrimination Center v. Westchester County*.
- ▶ Anti-Discrimination Center was the first to use the False Claims Act to enforce a county's obligation to "affirmatively further fair housing" under the Fair Housing Act or 42 U.S.C. Section §3608.
- ▶ Westchester failed to integrate the predominantly white Westchester County while promising to do so and certifying it was while receiving HUD and other federal funds.
- ▶ Westchester County was required to develop no less than 750 affordable housing units in predominantly white communities to help integrate Westchester County.

## Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.

- ▶ On June 5, 2015, in a 5-4 split, the US Supreme Court held that disparate-impact claims are cognizable under the Fair Housing Act.
- ▶ The Court reaffirmed the consistent finding of the federal courts over the past four decades that the Fair Housing Act bars not only intentional discrimination, but also policies that have an unwarranted disparate impact.
- ▶ Courts have consistently recognized that policies and practices that unnecessarily limit housing opportunities or otherwise perpetuate segregation because of race, color, national origin, religion, sex, disability, or familial status violate the *Fair Housing Act*.

# Disparate Impact Analysis

- ▶ Under the Court's ruling in *Inclusive Communities*, to prove a case of disparate impact housing discrimination, the following must occur:
- ▶ First, a plaintiff must make out a prima facie case, drawing an explicit, causal connection between a policy or practice and the disparate impact or statistical disparity. As Justice Kennedy wrote, "A disparate-impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity." Justice Kennedy also noted that "policies are not contrary to the disparate-impact requirement unless they are artificial, arbitrary, and unnecessary barriers."
- ▶ Second, a defendant must have the opportunity to prove that the policy is necessary to achieve a valid interest. If a defendant can't not prove that, then a plaintiff's claim of disparate impact must prevail.
- ▶ Finally, if a defendant has shown that the policy is necessary to achieve a valid interest, the plaintiff must then show that there is "an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs." If a plaintiff cannot do so, then their disparate impact claim must fail.

# Disparate Impact Claim & AFFH Review

- ▶ HUD's adoption of the final disparate impact rule in 2013 and the Supreme Court's ICP decision—crucial tools for enforcement of the AFFH requirement
- ▶ In many cases, a disparate impact claim in federal court is a step that triggers HUD AFFH Review
- ▶ 2023 Final Rule with Fact Sheet:  
[https://www.hud.gov/press/press\\_releases\\_media\\_advisories/hud\\_no\\_23\\_054](https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_054)
- ▶ HUD AFFH Proposed Rule, Toolkit, Fact Sheet, Etc.:  
<https://www.hud.gov/AFFH>

## Language Access Plan & Title VI



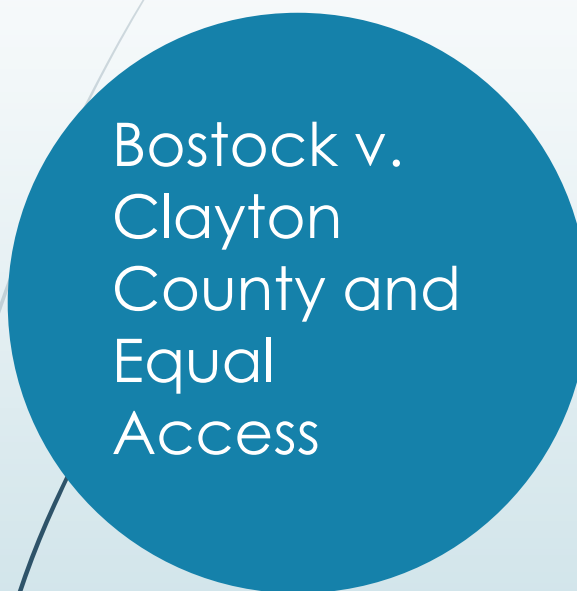
### **If federally assisted:**

- Have a Language Access Policy
- Have procedures
- Provide interpretation
- I Speak Card
- Translation - vital docs
- Staff training
- Engage in affirmative marketing
- Monitor and evaluate

# Language Access Resources



- U.S. Department of Justice  
[www.lep.gov](http://www.lep.gov)
- Court House or Boise Interpreters
- Universities, Agencies, Community Groups
- **IFHC Language access guide link**  
<https://ifhcidaho.org/language-access-guide/lep-table-of-contents/>
- Apps
- **Gary Hanes**  
[www.gehanes.com](http://www.gehanes.com)
- Offers to Interpret  
<https://www.gehanes.com/offers-to-interpret-in-24-languages/>



Bostock v.  
Clayton  
County and  
Equal  
Access

- ▶ On June 15, 2020, the Supreme Court issued a decision in *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020), which held that Title VII's prohibition against sex discrimination includes sexual orientation and gender identity.
- ▶ Following that decision on January 20, 2021, President Biden issued Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.
- ▶ Pursuant to that Executive Order, HUD's Office of Fair Housing and Equal Opportunity issued a memorandum on February 11, 2021, "[Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act](#)," which addresses discrimination because of actual or perceived sexual orientation and gender identity under the Fair Housing Act and allows one to file a fair housing complaint with HUD.

# HUD RULE: Equal Access

- HUD Rule Adopted March 2012; Biden-Harris Reaffirm 2021
  - Equal Access
  - Definitions
    - ▶ Sexual Orientation: Homosexuality, Heterosexuality, Bisexuality
    - ▶ Gender Identity: Actual or perceived gender related characteristics
  - Inquiries—can't inquire into one's sexual orientation/gender identity
  - Equal Access Rule applies to HUD programs: FHA insured loans, Section 8, public housing, CDBG, etc. The Fair Housing Act applies too as well as to non-HUD funded/private housing or housing transactions.  
<https://www.hudexchange.info/programs/fair-housing/lgbtqia-fair-housing-toolkit/lgbtqia-protections/huds-equal-access-rule/>



# DOJ-HUD Joint Statement

- ▶ Reasonable Accommodations Under the Fair Housing Act, May 17, 2004
  - ▶ <https://www.justice.gov/crt/us-department-housing-and-urban-development>
  - ▶ Includes examples
  - ▶ A federal agency's interpretation of its own regulations is given great weight

IFHC RAR Resources and Guides:

<https://ifhcidaho.org/resources/guide-to-reasonable-accommodations-under-the-fair-housing-act/>

<https://ifhcidaho.org/wp-content/uploads/2023/09/final-GUIDE-TO-REASONABLE-ACCOMMODATIONS-2217-attorneys-2-1.pdf>

# Commonly requested accommodations

- ▶ Additional time to move out for people with mobility impairments
- ▶ Waive a “no cosigners” rule for someone whose only source of income is disability
- ▶ Assigned parking spaces for people with parking cards
- ▶ Overlook a previous eviction or arrest if they happened during a period of untreated mental illness if the individual taken steps to eliminate the previous threat:
  - ▶ If individual has received intervening treatment of medication
- ▶ Allow a group home for people with disabilities to operate in a neighborhood that tries to prohibit them
- ▶ And, of course, animals.

# HUD 2020 GUIDANCE



## Department of Housing and Urban Development Fair Housing and Equal Opportunity Office Service and Assistance Animal Resources

In December of 2022, The Department of Housing and Urban Development Fair Housing and Equal Opportunity Office released The Assistance Animals and Fair Housing – Navigating Reasonable Accommodations suite of technical assistance (TA) products:

- A webinar
- A fact sheet
- An interactive tool on housing requests for assistance animals
- The Notice FHEO-2020-01: Assessing a Person's Request to Have an Assistance Animal (January 28, 2020)
- The Joint Statement of HUD and DOJ on Reasonable Accommodations Under the Fair Housing Act.
- You can find these resources by visiting: [Assistance Animals and Fair Housing: Navigating Reasonable Accommodations Fact Sheet - HUD Exchange](#).

The Suite of TA products is designed to educate housing providers, HUD Grantees, representatives of entitlement communities, participating jurisdictions, public housing agencies, HUD counseling agencies, housing transactors, advocates, and people with disabilities.

## What's Next...

- **These national and Idaho cases and hot topics illustrate the importance of cities, counties, the State, Housing Authorities taking their obligation to affirmatively further fair housing seriously**
- **And addressing discriminatory barriers to fair housing choice with meaningful community participation in an accessible manner**
- **And complying with civil rights laws**
- **And addressing more than a century-long systemic racism and other discriminatory acts**

# Fair Housing Education

- ▶ **Education truly is the best medicine to prevent fair housing violations.**
- ▶ **Fair housing education and research may have prevented costly fair housing violations in these cases.**
- ▶ **The cost of discrimination in fair housing cases is high and may lead to loss of much needed community planning and development funds and or huge damage awards.**

# Fair Housing Builds Community

- ▶ Fair housing is best described as building a community in which all persons have access to a healthy environment they can enjoy.
- ▶ For training, questions, concerns, contact Intermountain Fair Housing Council at 208-383-0695 or 800-717-0695, [contact@ifhcidaho.org](mailto:contact@ifhcidaho.org) or visit IHFC's website at [www.ifhcidaho.org](http://www.ifhcidaho.org).

**Questions?**