

serving public housing authorities since 1951



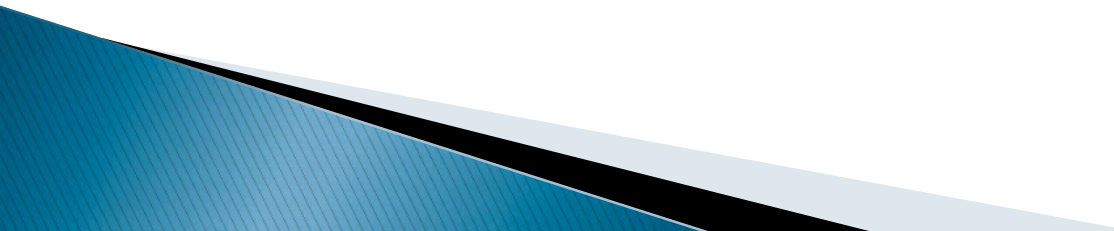
TEXAS HOUSING ASSOCIATION

Fair Housing and Disability Rights Workshop (100.2)

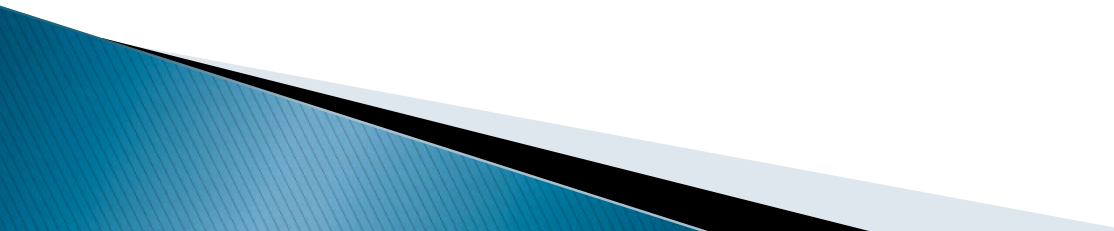
Pre-Test

- ▶ What do you know about Fair Housing and Disability Rights?

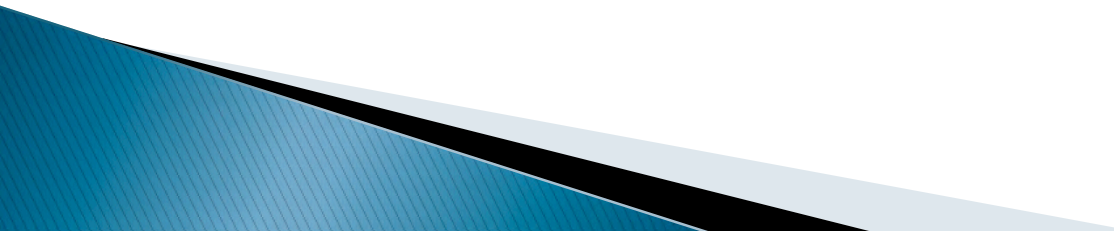
Disability Awareness & Sensitivity

- ▶ Many PHA staff will encounter applicants, residents and other staff with a wide range of disabilities;
 - ▶ Disabilities can be physical, sensory, cognitive, mental or emotional
 - ▶ Not all disabilities are perceptible
 - ▶ People with disabilities experience significant discrimination
- 


Disability Awareness & Sensitivity

- ▶ People with disabilities are the lowest income group in the US & most likely to need low income housing
 - ▶ Disability Rights are Civil Rights
 - ▶ PHA may not require anyone to disclose a disability BUT
 - ▶ If not disclosed, PHA can't make reasonable accommodations
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Disability Awareness & Sensitivity

- ▶ PHA **may** ask all applicants/ residents if they need special features in a unit or other accommodation in PHA procedures
 - ▶ PHA cannot require people to accept accommodations
 - ▶ PHA may verify the presence of a disability, but not the nature or extent of the disability
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Disability Awareness & Sensitivity

- ▶ Receipt of Social Security disability or SSI disability income is verification of disability
 - ▶ Not receiving disability income does not prove a person does not have a disability
 - ▶ PHAs have significant obligations to make their facilities/ programs accessible to and usable by people with disabilities
 - ▶ PHA's responsibilities are different in the public housing and HCV programs
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Disability Awareness & Sensitivity

SUMMARY

- Although Applicants may occasionally tell staff about their diagnoses or treatment, staff may never ask about these topics, nor should such information, if volunteered, be placed in a file.

Historical Background

1968

1937

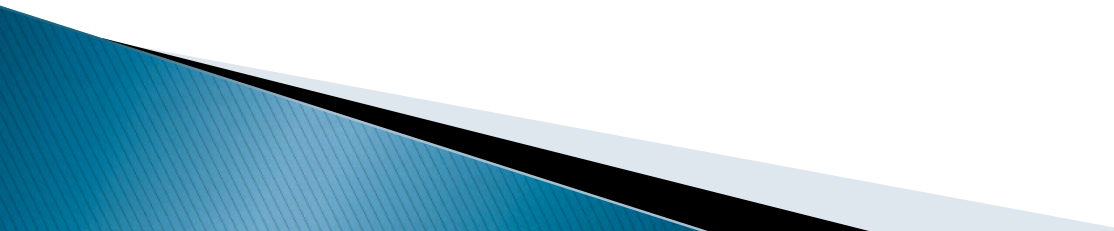
1973

1990

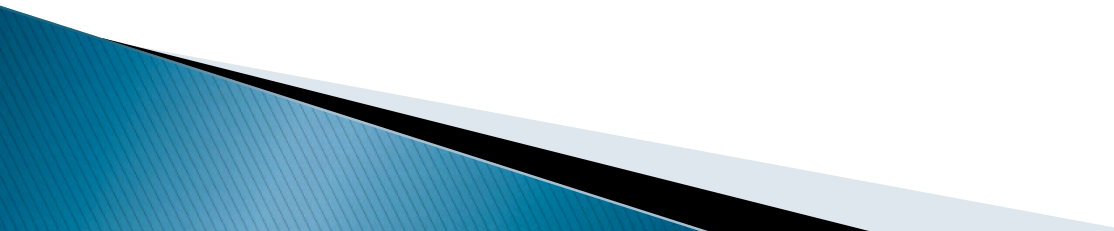


1988

Historical Background

- ▶ Public housing originated with the 1937 Act, as a New Deal program to create jobs and housing for working families
 - ▶ Until 1964 the program was segregated by race and national origin, not just in the South, but in many parts of the U.S.
 - ▶ The 1968 Fair Housing Act extended protections in privately owned and managed housing.
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Historical Background

- ▶ Although HUD was enforcing the Civil Rights Act and, later, the 1968 Fair Housing Act, many public housing sites were located in racially impacted neighborhoods, making desegregation not impossible but a challenge
 - ▶ HUD's first regulation, 24 CFR Part 1, deals with the way PHAs make offers of public housing.
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Historical Background

- ▶ In the early days of public housing, little thought was given to the rights and housing needs of people with disabilities.
 - Units were not constructed for wheelchairs
 - Sites were not laid out for people with mobility impairments
 - There was open discrimination against people with mental and emotional disabilities
 - PHAs had policies that invaded the privacy rights of people with disabilities;

Discriminatory Effect

- ▶ A practice is deemed to have a discriminatory effect “where it actually or predictably results in a disparate impact on a group of persons or creates, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, or national origin.”

Protected Classes

Race

Color

Religion

sex

**National
Origin/
Ethnicity**

Disability

**Familial
Status**

**Sexual Orientation &
Gender Identity**

Race

- ▶ A family, people, or nation belonging to the same group
- ▶ A class or kind of people unified by shared interests
- ▶ A category of humankind that shares certain distinctive physical traits, habits, or characteristics
- ▶ LAW: Civil Rights Act of 1964

Ex: white, black, American Indian, Asian, Pacific Islander

Color

- ▶ The term "color" usually refers only to skin
 - ▶ Color or pigmentation
 - According to the NC State University Office of Institutional Equality and Diversity
 - ▶ LAW: Civil Rights Act of 1964
- Example: any shade from white to black

Religion

- ▶ A personal set or institutionalized system of religious attitudes, beliefs, and practices
- ▶ Belonging to a cause, principle, or system of beliefs held to with ardor and faith
- ▶ LAW: Civil Rights Act of 1964

Example: Christian, Jewish, Islam, Buddhism, Hindu, Baptist, Methodist, Pentecostal, Church of Christ, etc.

Sex

- ▶ Of the male or female gender
- ▶ Having characteristics associated with either male or female behaviors
- ▶ LAW: Equal Pay Act of 1963

Civil Rights Act of 1964

Example: Male, female

National Origin/ Ethnicity

- ▶ It involves the common consciousness of shared origins and traditions with a unique character, background, or affiliation
- ▶ Ethnicity has to do with culture: a group of people with shared meanings, languages, foods, etc.

LAW: Civil Rights Act of 1964

National Origin/ Ethnicity

- ▶ Example: Think of an African who just recently immigrated to the United States. While they would be categorized as black, they are totally ethnically distinct from most black Americans who have lived here for centuries
- ▶ The only ethnicity PHAs track is Hispanic/Latino and every individual is classified as either Hispanic/Latino or non-Hispanic/non-Latino

Disability

- ▶ Limitation in the ability because of a physical or mental impairment
- ▶ A restriction or disadvantage
- ▶ LAW: Architectural Barriers Act, Section 504 of the Rehabilitation Act of 1973, Fair Housing Amendments Act and Americans with Disabilities Act

Example: blind, deaf, mentally challenged, uses a wheelchair, etc.

Familial Status

- ▶ Of, relating to, or suggestive of a family
- ▶ Having any family relations
- ▶ LAW: Civil Rights Act of 1968; Title VIII –
Cannot discriminate for having children,
exception for senior housing

Example: single, married, divorced, separated,
children, adoptive or foster parent, grandparent,
single parent, etc.

Employment Related Protected Class

- ▶ Age
 - Age 40 and over
 - LAW: Age Discrimination in Employment Act of 1967

Example: Any individual age 40 years old or older involving employment

Sexual Orientation and Gender Identity

*** Not a Protected Class but is in Fair Housing Law ***

- ▶ Sexual Orientation is an individual's physical and/or emotional attraction to the same and/or opposite gender.

Example: heterosexual, bisexual, homosexual

Sexual Orientation and Gender Identity

*** Not a Protected Class but is in Fair Housing Law ***

- ▶ Gender Identity is a person's innate, deeply felt psychological identification as male or female, which may or may not correspond to the person's body or designated sex at birth

Example: transgender, transsexual, cross-dresser

The 2 Major Federal Civil Rights Laws

- ▶ The Civil Rights Act (1964)

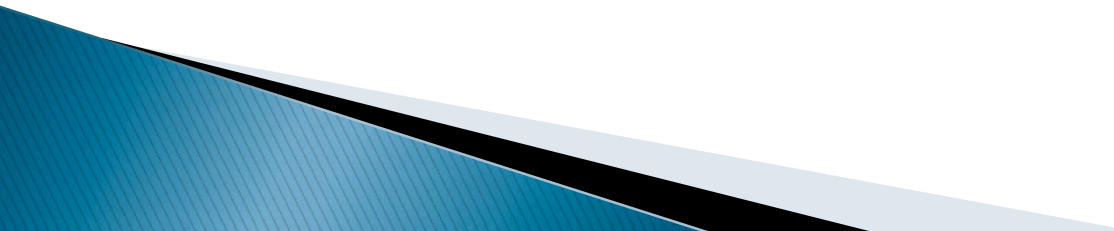
Prohibits recipients of Federal housing assistance from discriminating based on race, color, or national origin.

- ▶ The Fair Housing Act (1968)

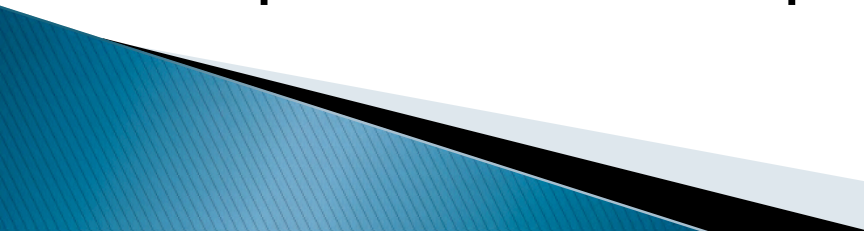
Prohibits discrimination based upon race, color, religion, sex, national origin, disability or familial status in most housing transactions.

HUD added protections based on sexual preference and gender identity by regulation in 2012

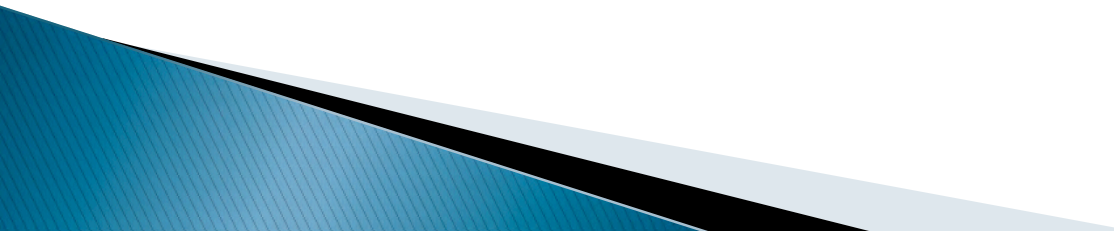
PHA Obligations Under the Civil Rights Acts

- ▶ PHAs must design and carry out their policies and systems in a way that does not discriminate against applicants, residents or staff based up race, color, religion, sex, national origin, disability or familial status. There must be no “disparate treatment” based upon these protected classes.
- 


What is “Disparate Treatment”?

- ▶ “Disparate treatment” occurs when people in similar situations experience different outcomes based upon/because of their race, color, religion, national origin, disability or familial status.
 - ▶ Example: A PHA has 2 properties, one is primarily occupied by Hispanic families and the other by non-Hispanic families. One property is much older than the other and needs a lot of repairs. This is disparate treatment.
- 

Disparate Treatment vs Disparate Impact

- ▶ Disparate treatment = intentional act
 - ▶ Disparate impact = practices that are facially equal in their treatment of groups but may fall more harshly on one group than another
 - ▶ Disparate impact / treatment are types of discrimination specific to groups of protected classes
- 

Disparate Impact

- ▶ How could this affect PHAs?
 - Lawsuits about administration of the HCV waitlist
 - Demolition of distressed properties
 - City land use ordinances prohibiting new construction of housing or voucher administration.
 - Zoning laws
 - Inability to develop tax credit housing in a racially impacted area.
- 

Example of a Disparate Impact

In 2008, New Orleans housing organizations and local homeowners accused HUD and the Louisiana Recovery Authority of discriminating against black homeowners in the aftermath of Hurricanes Katrina and Rita. The Road Home program was supposed to provide storm victims with funding to rebuild their homes, but based their compensation on their house's original value rather than the cost of damage. Houses in black neighborhoods that were identical to houses in white neighborhoods were given far less money to rebuild.


In 2011, HUD agreed to pay roughly \$62 million under a new Blight Reduction Grant Adjustment program. The funding will serve 1,460 eligible homeowners in four parishes that suffered the most damage.

Example of a Disparate Impact

Prior to 1974, New Bedford had two distinct police categories: males were "police officers" and females were "police women." At that time, male applicants were ineligible for positions as police officers if they failed to meet a minimum height requirement of five feet six inches. In February 1974 the city abandoned these separate job categories, and thereafter both men and women competed for positions as "police officers." Women applicants were then also required to meet the same requirements to become police officers.

Since the minimum height requirement of five feet six inches excluded far more women than men from competing for positions as police officers, the requirement was found to have a disparate impact on women.

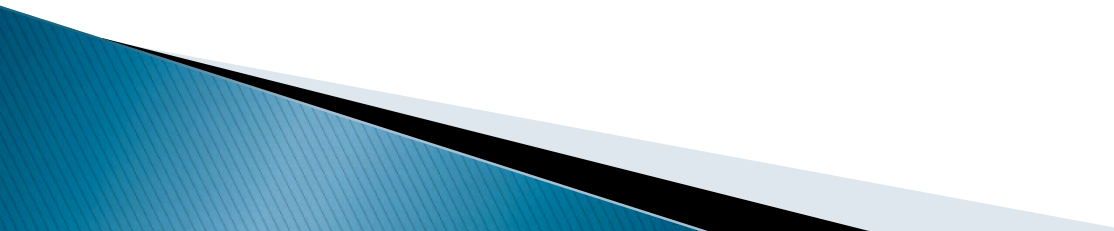
How PHAs Get in Trouble with Civil Rights Laws

- ▶ Admissions and Occupancy process
 - How the waiting list is opened/closed
 - How applications are taken
 - How applications are processed
 - How applicants' are screened
 - How qualified applicants get unit offers
 - What happens to applicants who refuse offers/transfers
- 

How PHAs Get in Trouble with Civil Rights Laws

- ▶ Services/property management
 - Maintenance
 - Access to Manager/Leadership
 - Social services
 - Capital improvements
 - Resident leadership
 - Board membership
- 

How PHAs Get in Trouble with Civil Rights Laws

- ▶ Lease enforcement
 - Non-payment of rent or charges
 - Housekeeping
 - Unauthorized occupants/visitors
 - Criminal activity
 - Non-compliance with rules
 - Disturbing neighbors
- 

Burden of Proof

- ▶ Practice may be lawful if it is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant; and,
- ▶ Those interests could not be served by another practice that has a less discriminatory effect.
- ▶ If plaintiff proves discriminatory effect, PHA must prove that the practice is necessary.
- ▶ The plaintiff may still win if another practice that is less discriminatory can be used.

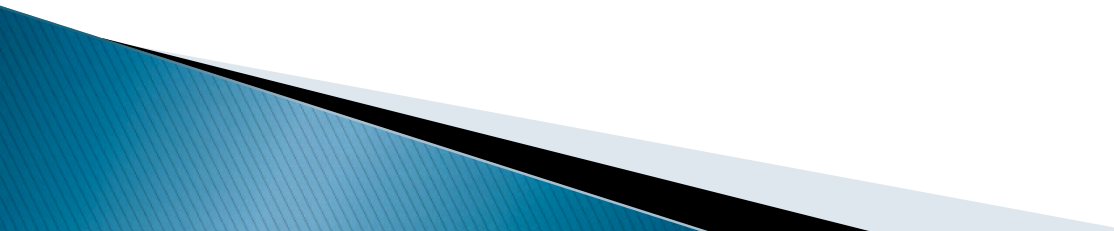
The 4 Major Federal Disability Rights Laws

- ▶ The Architectural Barriers Act (1968)
- ▶ Section 504, Rehabilitation Act (1973)
 - Including Uniform Federal Accessibility Standards (UFAS)
- ▶ The Fair Housing Amendments Act (1988)
- ▶ The Americans with Disabilities Act (1990)

The 4 Major Federal Disability Rights Laws

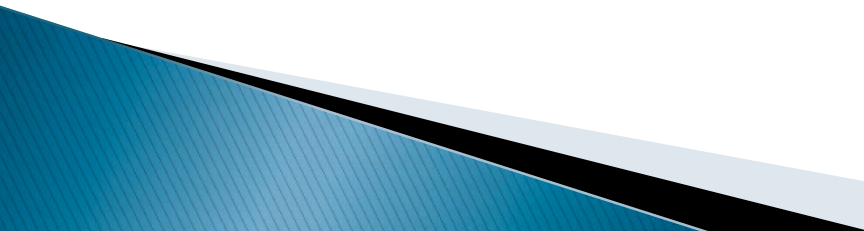
- ▶ The Architectural Barriers Act of 1968 required that:
 - Buildings financed in whole or part by the US government be accessible to people with mobility impairments (including people using wheelchairs, walkers and crutches)
 - HUD develop standards to achieve this objective

The 4 Major Federal Disability Rights Laws

- ▶ Section 504 of the Rehabilitation Act of 1973:
 - Governs disability rights in HUD assisted housing programs:
 - HUD's regulations are at 24 CFR§8
 - Rule addresses definitions, employment, program accessibility and enforcement
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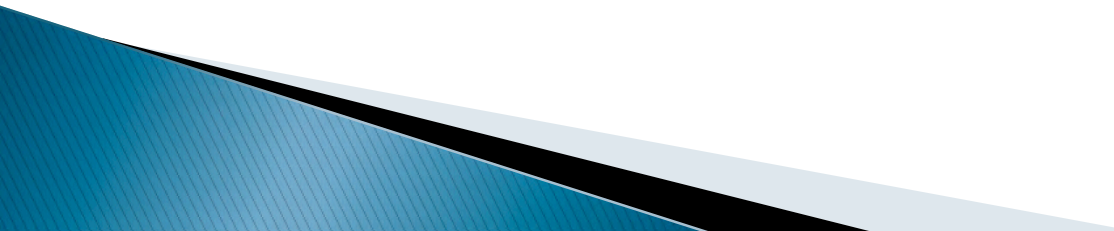
The 4 Major Federal Disability Rights Laws

▶ Section 504:

- Contains the standard for unit accessibility: the Uniform Federal Accessibility Standard (UFAS) (24CFR§8.32)
 - UFAS implements the Architectural Barriers Act
 - UFAS contains specifications and drawings for each accessible element
- 

The 4 Major Federal Disability Rights Laws

▶ Section 504:

- Defines terms: accessible unit & route, adaptable unit, individual with disability & qualified individual with disability
 - Prohibits discrimination based on disability
 - Requires PHAs to communicate with people with disabilities in a way they understand
- 

The 4 Major Federal Disability Rights Laws

- ▶ Section 504 - Program accessibility rules:
 - Non-housing facilities, §8.21
 - New Construction (also applies to comp mod), §8.22
 - Minor alterations, §8.23
 - Existing housing, §8.24

The 4 Major Federal Disability Rights Laws

- ▶ Section 504 - Program accessibility rules:
 - The Public Housing Program § 8.25
 - Needs assessment
 - Self evaluation
 - Transition plan

The 4 Major Federal Disability Rights Laws

- ▶ Section 504 - Program accessibility rules:
 - Occupancy requirements § 8.27
 - UFAS units must be offered first to current residents who need them, then to applicants

The 4 Major Federal Disability Rights Laws

- ▶ Section 504 - Program accessibility rules:
 - Occupancy requirements
 - Units can be offered to families who do not need accessibility features, but they must agree to move on 30 days notice
 - Distribution of accessible units §8.27
 - Accessible units should be distributed throughout all properties

The 4 Major Federal Disability Rights Laws

- ▶ Section 504 - Program accessibility rules:
 - HCV program §8.28
 - Homeownership, rental rehab & historic properties §8.29, 8.30. 8.31
 - Accessibility standards (UFAS) §8.32
 - Housing Adjustments (duty to modify policies, procedures and practices) §8.33

The 4 Major Federal Disability Rights Laws

- ▶ The Fair Housing Amendments Act (1988)
 - Applies to real estate practices in non-assisted rentals & sales (e.g. market rate units in Mixed Finance properties)
 - Regulations: 24 CFR §100.200
 - Accessibility standard is ANSI A117-1986
 - Landlords must permit residents with disabilities to modify facilities (at the residents' expense)

The 4 Major Federal Disability Rights Laws

- ▶ Title II: Americans with Disabilities Act (1990)
 - Extends Section 504 protections to all programs of non-federal governments
 - Applies to activities that do not receive federal financial aid; covers non-housing programs
 - Expands employment protections: 29 CFR part 1630

The 4 Major Federal Disability Rights Laws

- ▶ Title II: Americans with Disabilities Act (1990)
 - Establishes standards for public areas (lobbies, community rooms, offices, etc.)
 - Covers non-housing programs

Other Federal Laws

- ▶ 1937 Housing Act (Public housing law)
 - Defines “person with disability” for programmatic purposes (eligibility, certain deductions)
 - Establishes method to designate housing for elderly or disabled families
 - Requires PHAs to do affirmative marketing