

Fair Housing in Homeless Housing Programs

*Detroit, Hamtramck and Highland Park, Michigan
February 10, 2016*



About CSH

Advancing housing solutions that:



Improve the
lives of
vulnerable
people



Maximize public
resources



Build strong,
healthy
communities

Who's in the Room?



What We Heard.... Survey Responses

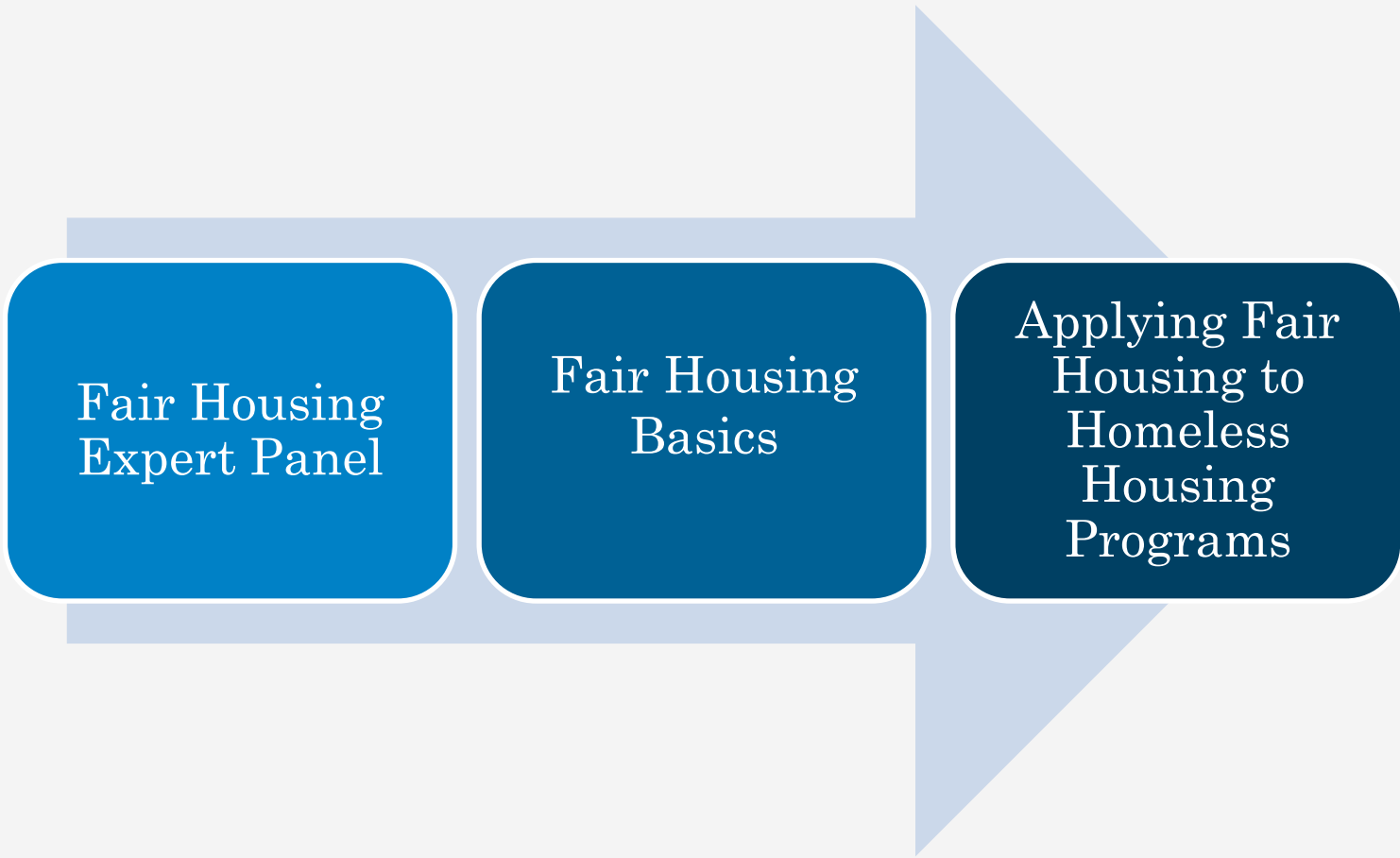
Participants are primarily housing and service providers (42%) and government (23%)

Front Line Staff

72% have not had Fair Housing Training

Today's Agenda

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Fair Housing
Expert Panel

Fair Housing
Basics

Applying Fair
Housing to
Homeless
Housing
Programs

Impact on Homeless Housing Providers

- **Who may be held responsible for housing discrimination?**
 - All parties related to the transaction
 - Responsible to respond to the allegations, produce documentation, and be available for interviews.
 - Funders can be liable as well.

- **Best Practice**
 - Educate all staff regarding fair housing requirements
 - Establish and train staff on policies and procedures that comply with fair housing
 - Establish a fair housing response protocol

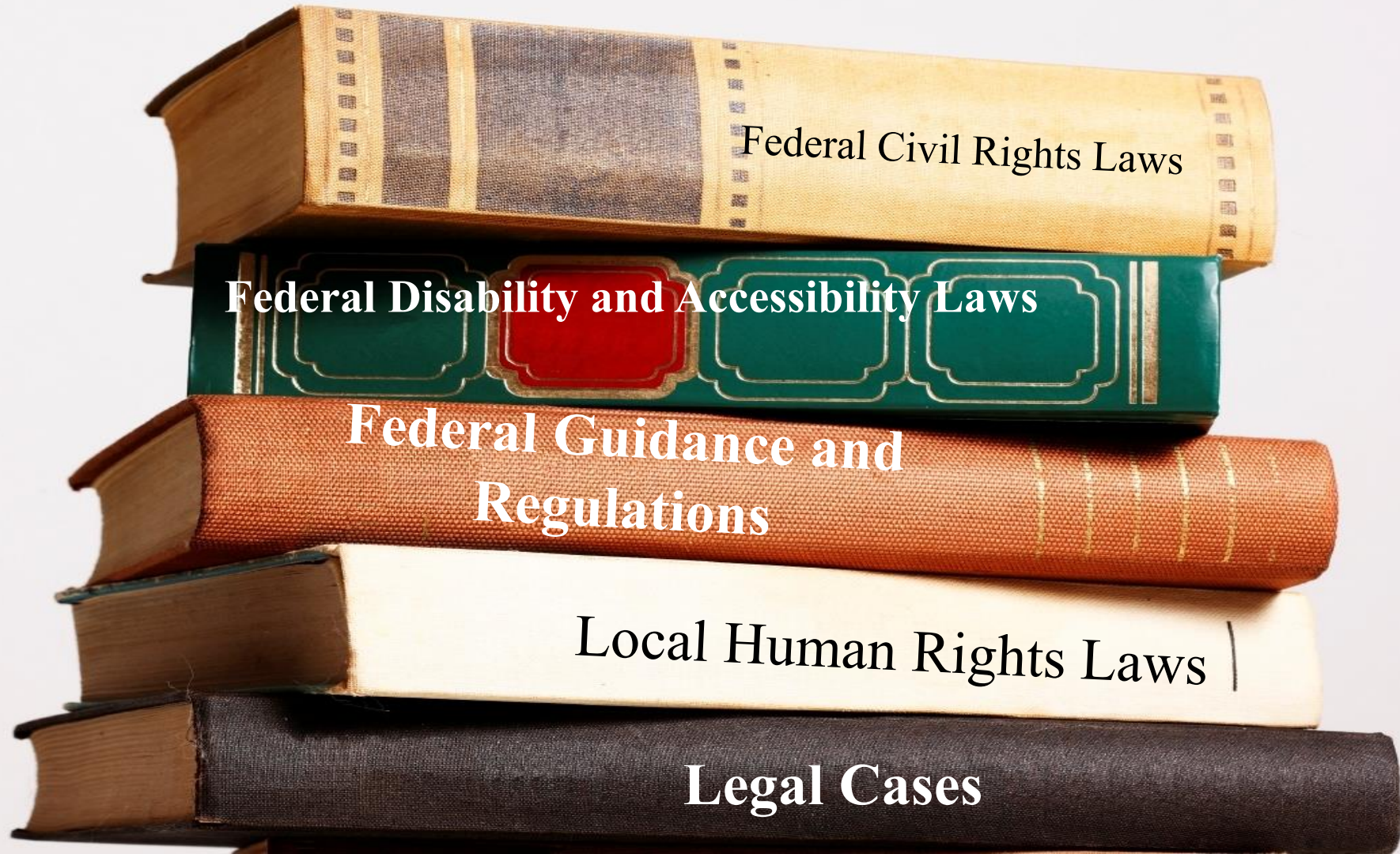
Local Expert Panel

- **Margaret Brown**, Executive Director, Fair Housing Center of Metropolitan Detroit
- **Marlene Cain**, Civil Rights Manager, Michigan Department of Civil Rights
- **Larry Alcantar**, Equal Opportunity Specialist, HUD Detroit Field Office

Break

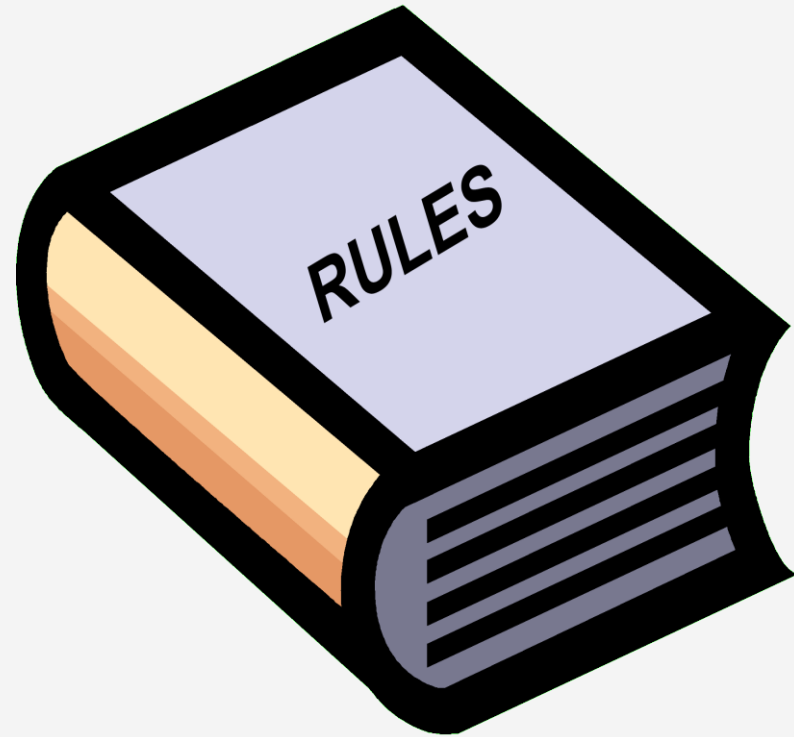


Complex Regulatory Environment



Recent Guidance and Regulations

- DOJ/HUD Olmstead Guidance
June 2011/2013
- Disparate Impact Rules; 2013
- Tenant Preference Guidance
June/July 2013; July 2014
- Affirmative Marketing Regulations;
2015
- Victims of Domestic Violence Act
2013; Rule 2015 (draft)
- Transgender Placement 2015



Key Fair Housing Concepts



Equal Access and Treatment

Protected Classes

Disparate Impact

What is Fair Housing?

Provide Equal Access without Discrimination

**Sale of
housing**

**Rental of
housing**

**Design
(accessibility)
of housing**

**Mortgage
lending**

Advertising

Insuring

What's Covered?



Federally Protected Classes

Race

Color

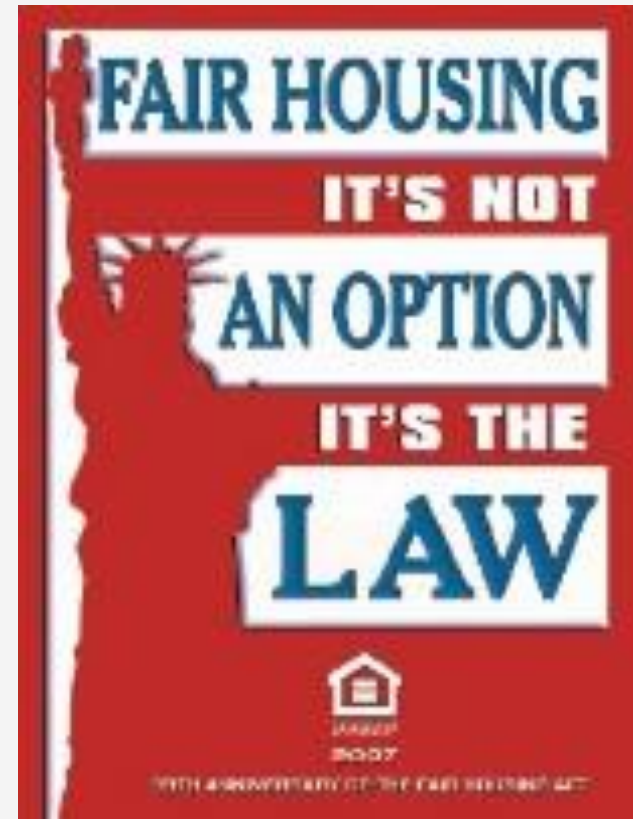
National Origin

Religion

Sex (Gender)

Disability

Familial Status



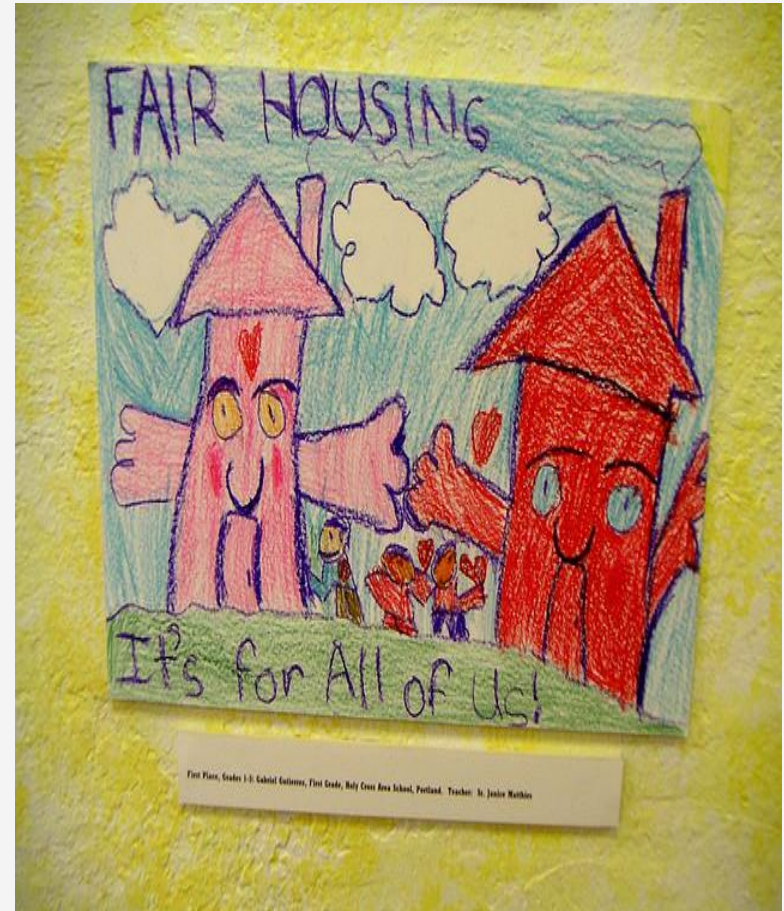
Local Laws Add Protected Classes

Michigan State Laws: Elliott-Larsen and Disability Rights

Age

Marital Status

City or County Residential Housing



Fair Housing Complaint Process

- **Complaints can be filed with:**
 - HUD
 - State or local agencies –
 - Michigan Civil Rights Commission and Michigan Department of Human Rights
 - Fair Housing Center of Metropolitan Detroit

- **Time Sensitive Steps:**
 - Incidents in previous 180 days
 - Option of referral to Courts for temporary relief
 - Notice of complaint and response
 - Investigation and mediation

Putting Law into Practice

- **Preferencing**

- **Eligibility, Screening and Selection**



- **Coordinated Entry**

- **Lease and Program Rules**

Serving Designated Populations



Persons with Disabilities

People with HIV / AIDS



People in Recovery

Veterans



True or False?

It is illegal to require that a person be homeless in order to be accepted as a tenant in the building.



FALSE

- **Projects may be legally restricted to people who are homeless at the time of application for housing.**

Homelessness is an economic and social condition that is not a prohibited classification under federal law.

HUD Guidance issued to assist homeless housing providers to prioritize housing for chronically homeless

Eligibility & Screening Criteria

- **What are common eligibility requirements in your community?**
- **Have you shifted to a Housing First model on a community level?**
- **Are your PSH projects low barrier?**

Disparate Impact*

Intent vs. Impact

Does a practice or policy have adverse discriminatory effect on a protected class?

- Occupancy restrictions for a specific tenancy may have adverse impact of discriminating against another protected class
- Certain program rules that dictate resident behaviors could impact protected classes

*** Supreme Court case involving the Texas Department of Housing and Community Development confirmed applicability of Disparate Impact in Fair Housing**

Disparate Impact – Now you Explain?

- **Property rules prohibit residents under age 45?**
- **Investment guidelines give priority to rehabilitation in disinvested communities.**
- **Not pets allowed.**

Program Eligibility/Tenant Selection

Objective Screening Policy

Screening Policy Applies to All

Waiting List Policies

Evaluating the Application

Screening in vs. Screening out

Parties should work together to formulate reasonable and consistent criteria

Purpose is to determine if applicant can comply with lease and pay rent on time

Screening vs. needs assessment

Design appeal process before denying anyone!

What To Consider

Project Screening Criteria

- Protected Classes
- Disparate Impact



Discussion and Case Studies

Tenant Selection and Preferencing



Scenario – Preferencing and Tenant Selection

Your transitional housing program targets applicants that are adult, male, veterans, that have a mental health condition. The program provides monthly substance addiction counseling group sessions that all residents are required to attend.

- **What protected class issues could be raised with this type of preference? Disparate impact?**
- **How would your answers be different if this was set up as an application screening restriction instead of a preference?**

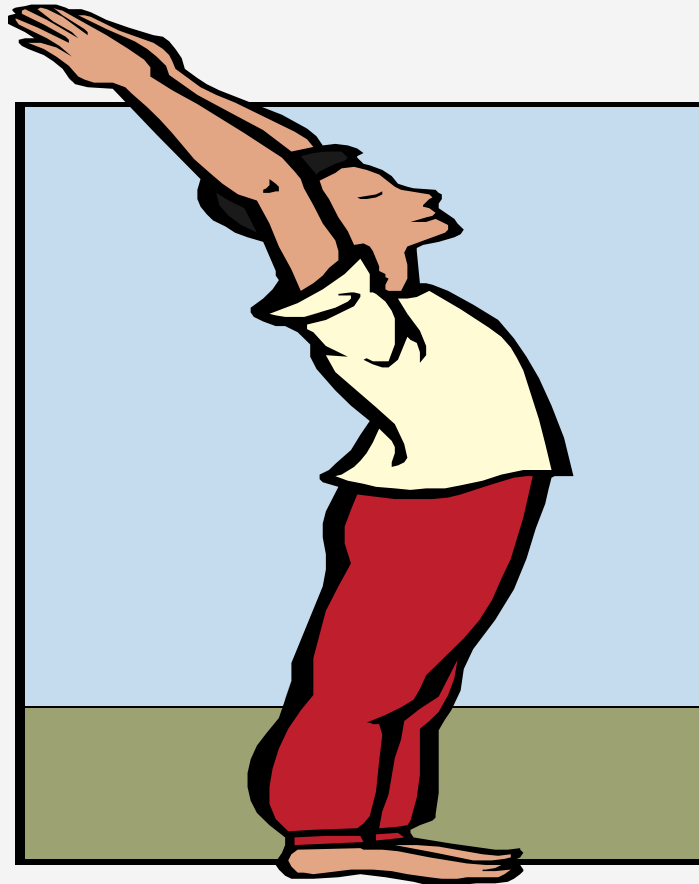
Key Responses to Preferencing and Tenant Selection Scenario

- **Protected Classes and Disparate Impact**
 - Demonstrate legitimate business necessity
 - Privacy issues

- **Voluntary Services**
 - Exceptions: case management in RRH
 - Substance use counseling in targeted program

- **Preference**
 - Establish written procedures
 - Work with Coordinated Entry System
 - Outreach and managing existing waitlists

Break

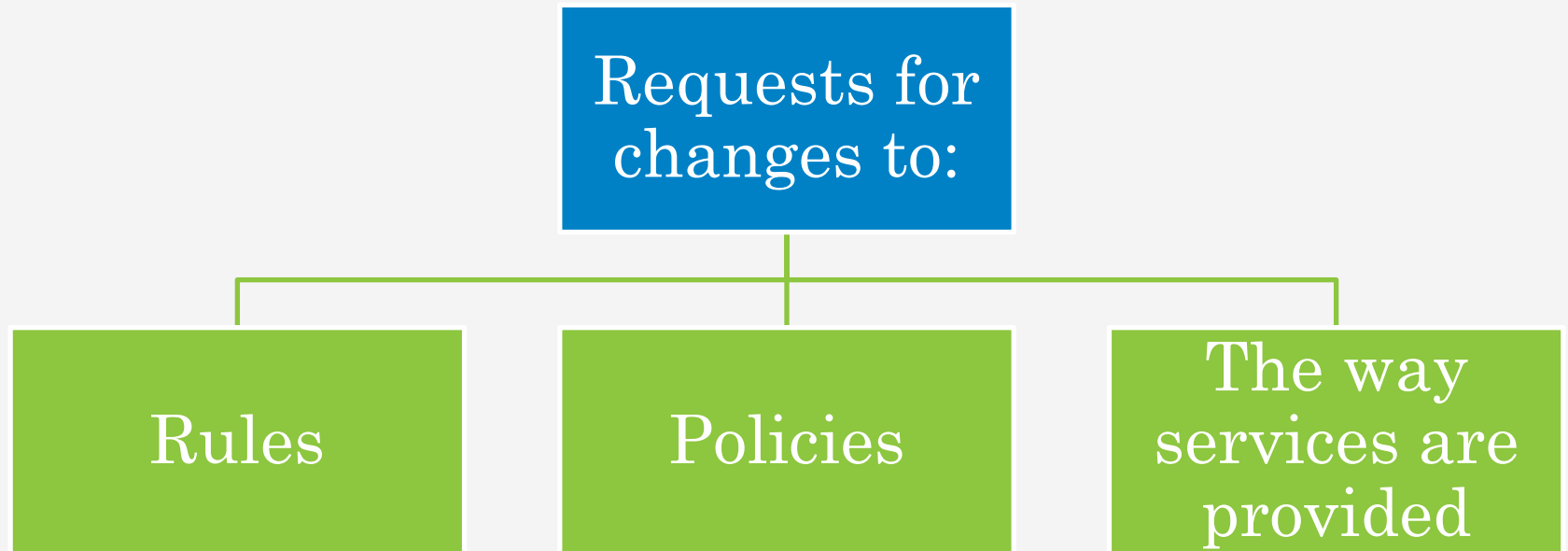


Reasonable Accommodation

Anyone engaged in a real estate transaction must make reasonable accommodations and modifications for persons with disabilities



Reasonable Accommodations




Reasonable Modifications



A **structural change** made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.

Who Qualifies?

Individuals with a physical or mental impairment that *substantially* limits one or more major life activities



Individuals who are regarded as having such an impairment



Individuals with a record of such impairment

What to Request?

Request

Verification the person meets the Act's definition of disability

Description of the requested accommodation and/or modification

Description of relationship between the person's disability and the need for the requested accommodation and/or modification

When Can a Request be Denied?

When the request was not made by or on behalf of a person with a disability

There is no disability-related need for the accommodation and/or modification

If the request is not reasonable

Discussion and Case Studies

Reasonable Accommodation



Reasonable Accommodations #1

Tony applies for housing and property management finds that he has a bad tenancy record with previous evictions. Behavioral problems such as disturbing neighbors, creating loud noise in unit and in common spaces, and others resulted in evictions from other housing. Based on his housing record, Tony was denied by property management.

Tony has a disability and takes medications to help manage symptoms. Tony attempted to explain to staff that he is regularly taking his medications and receiving support from case management to better manage symptoms; however it didn't impact his denial.

- *Questions – Could Tony submit a reasonable accommodation request? If so, what would be required to document (provide specific examples of documentation)? What additional questions would you ask?*

Reasonable Accommodation #2

- Shelia has a disability and is exiting an institution where she has lived for 75 days. It has been determined that Shelia will require in-home care attendant in order to live in the community. Shelia includes in the housing application that she has made arrangements for care to be provided by a local service agency. Shelia is approved for a unit that will accommodate her and attendant and moves into the property. She gives her attendant a key to her unit and a key to the front entry. She receives a letter from property management that only tenants are allowed keys to the front entry and threatened eviction.
- *Question – Should Shelia request a reasonable accommodation in this situation? If yes or no, why? What would Shelia have to document in a request (specific examples)?*

Reasonable Accommodation #3

Louis, a veteran that has been living in a one-bedroom unit at a pet-free property for 3 months, submits a reasonable accommodation request to property management staff. The request is to allow for the tenant to have a small service dog to help manage his anxiety and panic attacks. The dog identifies when Louis is going to have a panic attack and jumps onto his chest. Louis holds the dog to help calm the attack.

The accommodation was approved however property management required Louis to take the dog out the service elevators which closes during the overnight hours and the dog must be crated and held by Louis in all common areas.

Question – What did Louis have to present for his accommodation to be approved? Was the property management accommodations appropriate for Louis situation?

Joe applies for housing and is denied by Property Management because he has a criminal history. The project has a zero tolerance for any type of criminal history. Joe lived on the streets for several years and has a series of arrests related to drug and alcohol use.

Question – Could Joe make a reasonable accommodation request? What would Joe need to include in the request? What would Joe have to show and document to property management to allow him into housing despite the zero tolerance rule?

Break



Lease Agreement

Formalizes the
rights and
responsibilities of
both the landlord
and tenant

Legally
enforceable

States clear
expectations



Fair Housing & Program Rules

Participation in Services

Housing First

Quality of Life

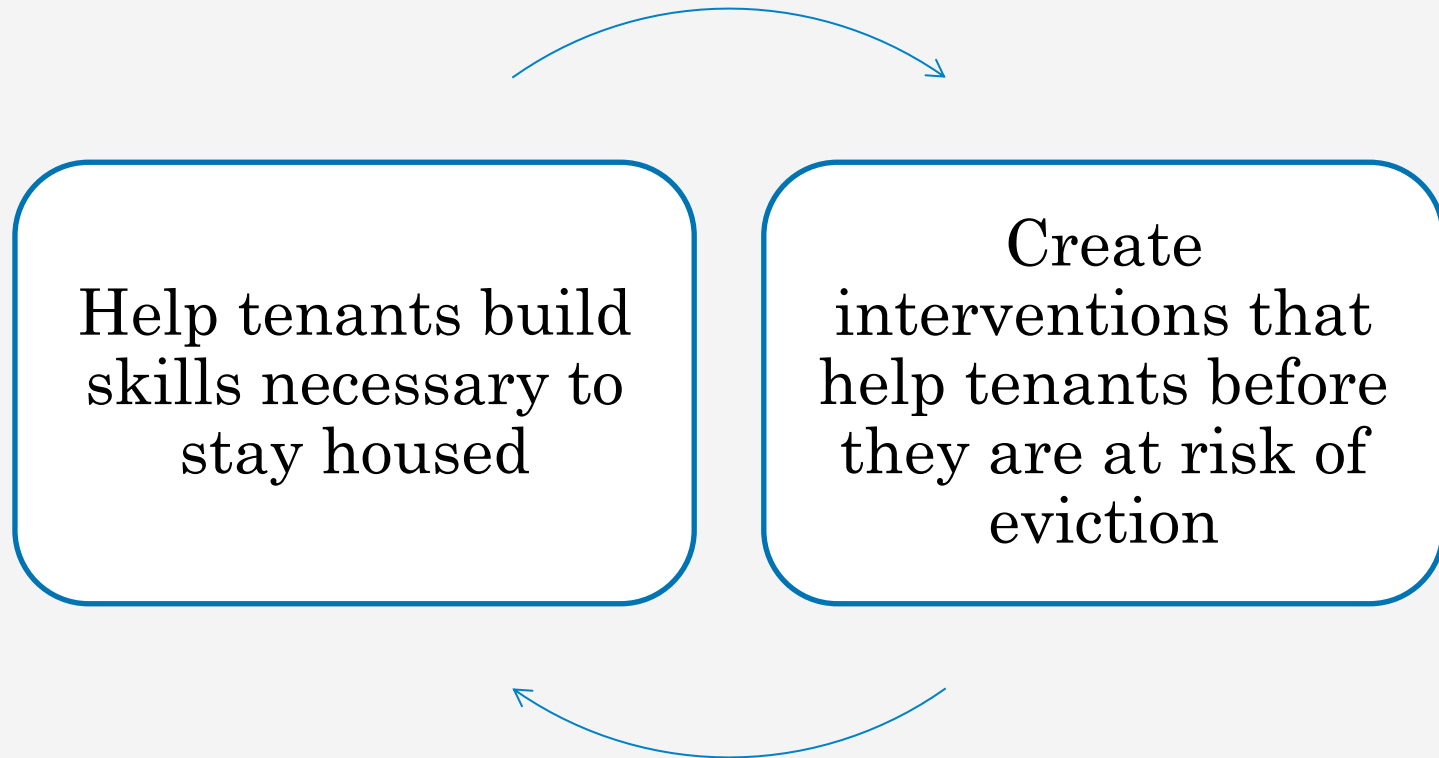
Guests

What is Not Protected?



- **Lease Violations**
- **Actions that are threatening or potentially harmful to others**
- **Illegal Substance Use**

Eviction Prevention



Eviction Prevention

Process

Created Eviction Prevention Strategy

Eviction Prevention Committee oversees implementation

- Developed natural consequences for lease violations
- Reviews all recommendations for eviction

Created special supports for new tenants to assist them in adjusting during their first three months in housing.

Discussion and Case Studies

Program Rules and Leases



Lease and Property/Program Rules

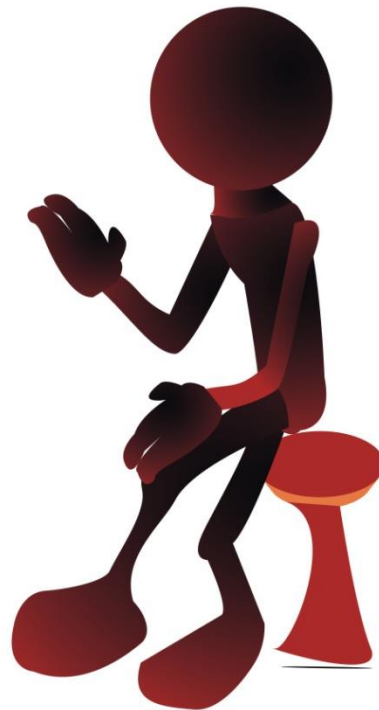
Match the term, rule, condition to the document?
What FH issues could arise?

Term/Condition Rule	LEASE	PROPERTY RULE	BOTH	NEITHER
No Smoking				
Rules for Guests				
Mandatory participation in mental health counseling services				
Quiet hours for children 10PM- 6AM				
Rent Payments due no later than the 5 th of the month				
No use of alcohol in property common areas				
No loud noises that disturb neighbors				
Household size				
Responsibilities for unit maintenance				
Pet Policy				

Key Lease and Program Rule Highlights

- **Lease:** terms related to payment of rent, access and proper care and use of unit.
- **Discriminatory Impact:** Avoid rules impact on protected classes
- **Consistency:** Apply all rules consistently for all
- **Reasonable Accommodation:** Adopt procedures and document

Questions and Answers



Action Items

- Connection to Local Experts
- Utilize Existing Resources
- Review Screening Criteria & Program Rules through a Fair Housing Lens



Fair Housing Resources

CSH Resources

- “Between the Lines” 2010 http://www.csh.org/wp-content/uploads/2011/12/Tool_BTL_National1.pdf
- “Dimensions of Quality” 2013 <http://www.csh.org/qualitytoolkit>

State Resources and Local Resources:

- **Michigan Fair Housing Laws:**

http://www.michigan.gov/documents/mshda/mshda_cd_fairhousing_laws_499050_7.pdf

- **Michigan State and Local Fair Housing Enforcement Agencies**

<http://www.civilrights.org/fairhousing/laws/state-agencies.html#Michigan>

<http://www.fairhousingdetroit.org/>

Thank You For Participating!

The Source for
Housing Solutions

