

Overview of Fair Housing Laws

October 29, 2020



**IOWA CIVIL RIGHTS
COMMISSION** 

Fair Housing Laws

- ▶ Iowa Civil Rights Act of 1965
- ▶ Fair Housing Act – Title VIII



Fair Housing Laws

- ▶ Fair housing law prohibits housing discrimination against members of a protected class.
- ▶ A protected class is a group of people who share common characteristics, and due to those shared characteristics, have been historically denied equal access and opportunity in housing.

What is Discrimination?

- ▶ Disparate Treatment
(discriminatory intent)
- ▶ Disparate Impact
(discriminatory effect)

Who is Protected Under Fair Housing Law?

Race

Color

National Origin

Disability

Sex

Familial Status

Gender Identity

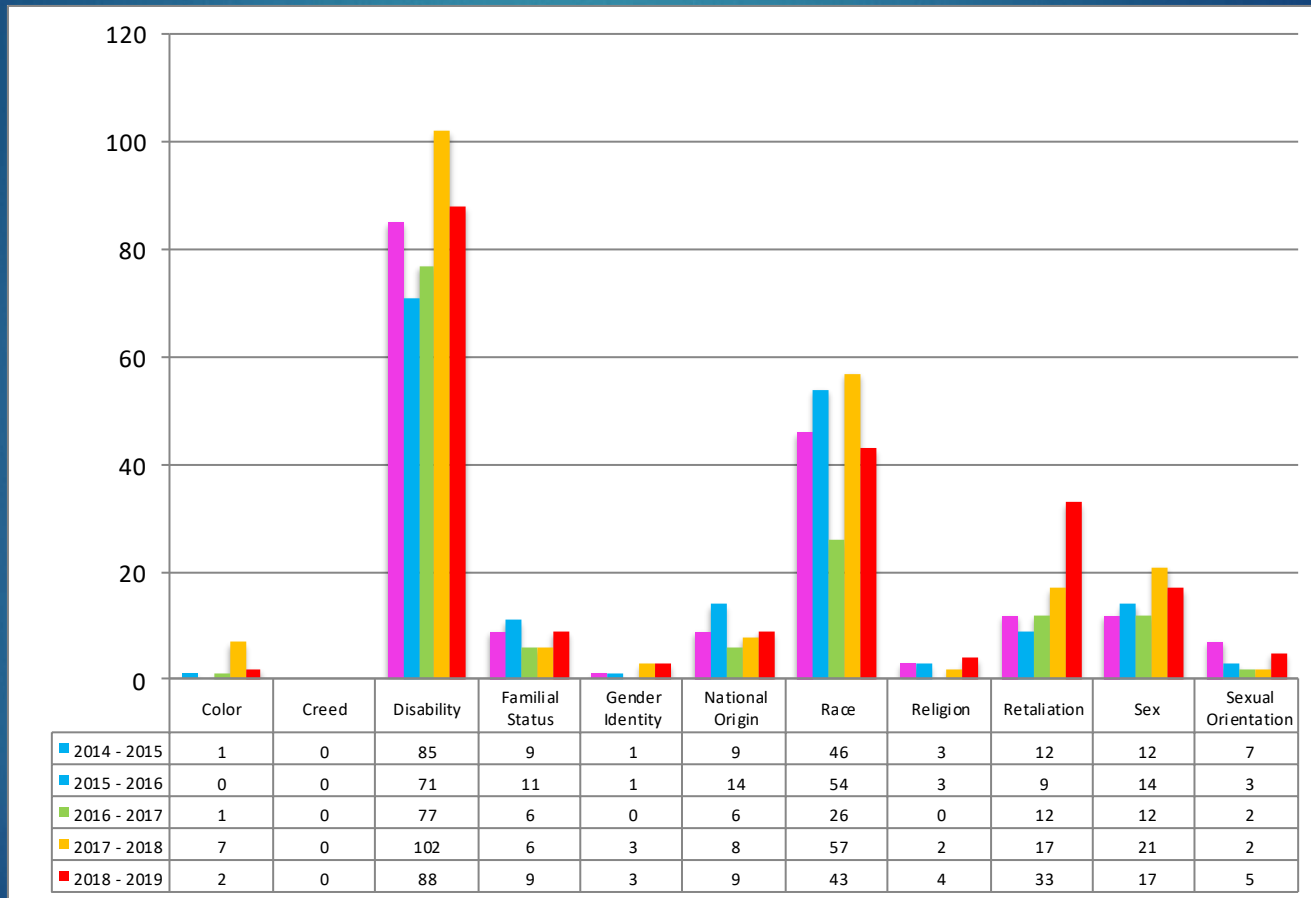
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Sexual Orientation

Religion



Cases Docketed in Housing by Basis



Who Must Obey the Law?

“Housing Providers”

- ▶ Property Owners
- ▶ Management Companies
- ▶ Employees or Agents of Owner or Management Company
- ▶ Real Estate Agency, Brokers, Agents
- ▶ Architects, Builders, Designers
- ▶ Newspapers, Television



Exemptions

- ▶ Owner-Occupied Property up to Four Housing Units
- ▶ “Housing for Older Persons”
 - ▶ 80% age 55+
 - ▶ 100% age 62+
- ▶ Co-ed Living Space

What is a Dwelling?



What is a Dwelling?



Discriminatory Practices

Refusal to Rent, Make Unavailable



[42 U.S.C. 3604 § 804(a)]

[Iowa Code § 216.8(1)(a)]

Discriminatory Practices

Terms and Conditions



[42 U.S.C. 3604 § 804(b)]

[Iowa Code §216.8(1)(b)]

Discriminatory Practices: Discriminatory Statements

A housing provider cannot advertise that certain persons are not solicited or welcome as buyers or tenants because of a protected characteristic.



[42 U.S.C. 3604 § 804(c)]
[Iowa Code §216.8(1)(c)]



Discriminatory Practices: Discriminatory Statements

The law applies to:

- Spoken statements made to buyers or renters.
- Visual representations.
 - Published or printed statements.
- Postings on the internet.

Discriminatory Practices: Harassment

Quid Pro Quo (“This for That”):
when a housing provider
conditions access or provision of
services to a tenant through an
unwelcome sexual demand or
request for sexual favors in lieu of
rental payment or under of
threat of eviction.

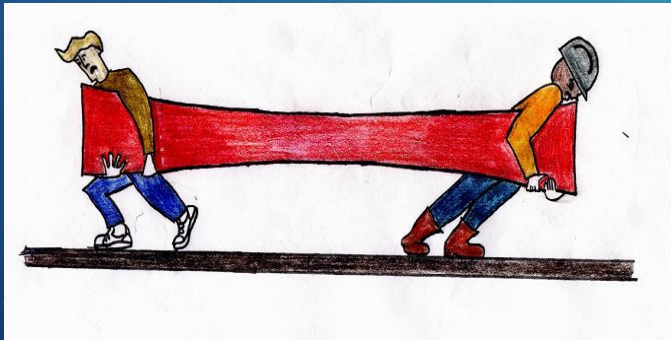
Discriminatory Practices: Harassment

Hostile Environment: when a housing provider or other person with decision making authority creates or allows an abusive housing environment or interferes with the tenant's peaceful enjoyment of the property

[42 U.S.C. 3174 § 818]
[Iowa Code § 216.11A]

Discriminatory Practices

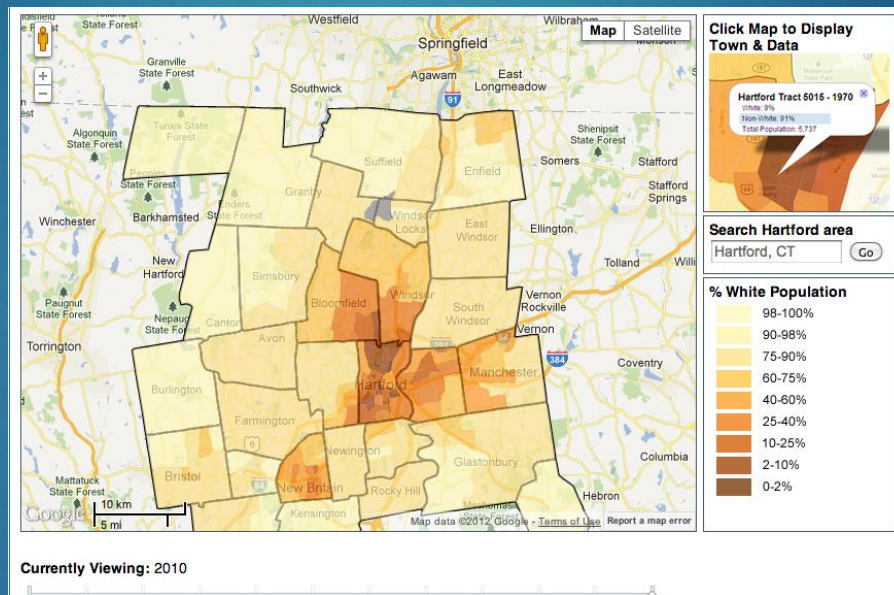
A housing provider cannot aid, abet, compel, or coerce another person to engage in an unfair or discriminatory practice.



[42 U.S.C. 3617 § 818]
[Iowa Code §216.11(1)]

Discriminatory Practices

Blockbusting



[42 U.S.C. 3604 § 804(e)]
[Iowa Code §216.8A(2)]

Retaliation

No person may retaliate against another person because he or she has engaged in one or more of these protected activities:

- ▶ Opposed discrimination
- ▶ Obeyed anti-discrimination law
- ▶ Participated in an anti-discrimination agency proceeding

[42 U.S.C. 3617 § 818]

[Iowa Code § 216.11A]

Disability

Discrimination based on disability is prohibited in housing



Discriminatory Practices

Design and Construction

Covered Multifamily Dwellings

- ▶ All ground floor units in buildings comprised of four or more dwelling units

- ▶ All units in buildings comprised of four or more dwelling units if an elevator is present

Discriminatory Practice



Failure to meet Design & Construction Requirements

- ▶ An accessible entrance on an accessible route
- ▶ Accessible public/common use areas
- ▶ Doors sufficiently wide

Discriminatory Practices

- ▶ Accessible routes into/through dwelling
- ▶ Accessible light switches, electrical outlets, and thermostats
- ▶ Reinforcements in bathroom walls to accommodate grab bars
- ▶ Kitchens and bathrooms with sufficient maneuverability space

[42 U.S.C. 3604 § 804(f)(3)(C)]

[Iowa Code § 216.8A(3)(c)(3)]

Discriminatory Practices

Refusal to Permit Reasonable Modification

[42 U.S.C. 3604 § 804(f)(3)(A)]

[Iowa Code §216.8A(3)(c)(1)]



Discriminatory Practices

Refusal to Make Reasonable Accommodation

[42 U.S.C. 3604 § 804(f)(3)(A)]

Iowa Code §216.8A(3)(c)(2)



Reasonable Accommodation

**What is a
reasonable
accommodation?**

Reasonable Accommodation

A change, exception, or adjustment

- ▶ To a rule, policy, practice, or service
- ▶ That may be necessary for a person with a disability
- ▶ To have an equal opportunity to use and enjoy a dwelling

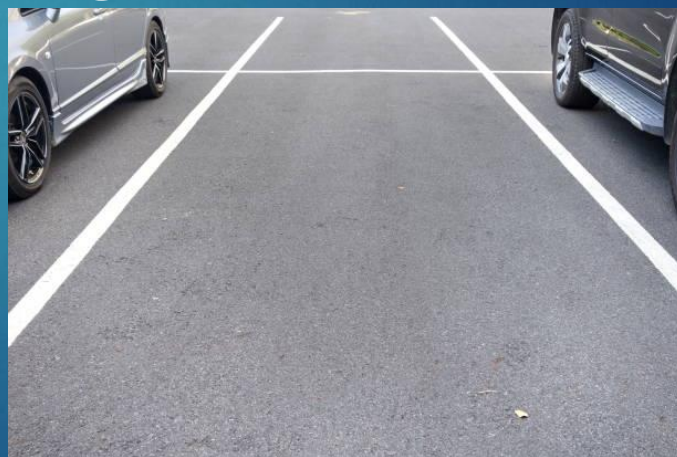
Parking



For a person with a disability that limits or restricts their mobility, lack of sufficient parking can be a significant barrier to the full use and enjoyment of their dwelling.

Parking

When a resident with a disability complains to the property manager about the lack of suitable parking or requests additional suitable spaces, the resident is requesting a reasonable accommodation.



Assistance Animals:

- ▶ Works, provides assistance or performs tasks for the benefit of a person with a disability
- ▶ Provides emotional support that alleviates symptom or effect of disability

Assistance Animals

- ▶ New Iowa Law went into effect May 2019.
- ▶ Amended Iowa Code § 216



Assistance Animals



- ▶ Companion animal
- ▶ Emotional support animal (ESA)
- ▶ Therapy animal

Assistance Animals



An assistance animal:

- ▶ Is not a pet;
- ▶ Does not require special training.

Assistance Animals

- ▶ Type of animal: 2020 HUD Guidance.
- ▶ Is the animal commonly kept in households?
 - ▶ Examples: dog, cat, small bird, rabbit, hamster, gerbil, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure.

Reasonable Accommodation

**What is a request
for a reasonable
accommodation?**

Assistance Animals

- No magic words!
 - Don't have to use the words "reasonable accommodation."
- Promptly respond to request



Assistance Animals



**How is a request
for a reasonable
accommodation
evaluated?**

Assistance Animals



1. Does the person have a disability?
2. Does the person have a disability-related need for the assistance animal?

Assistance Animals



**Does the person have a
disability?**

(physical or mental impairment
that substantially limits
one or more major life activities)

Assistance Animals



**Does the person have a
disability-related need
for the assistance animal?**

(afford a person with disabilities an
equal opportunity to use or enjoy the
dwelling)

Assistance Animals

Can a housing provider request documentation?



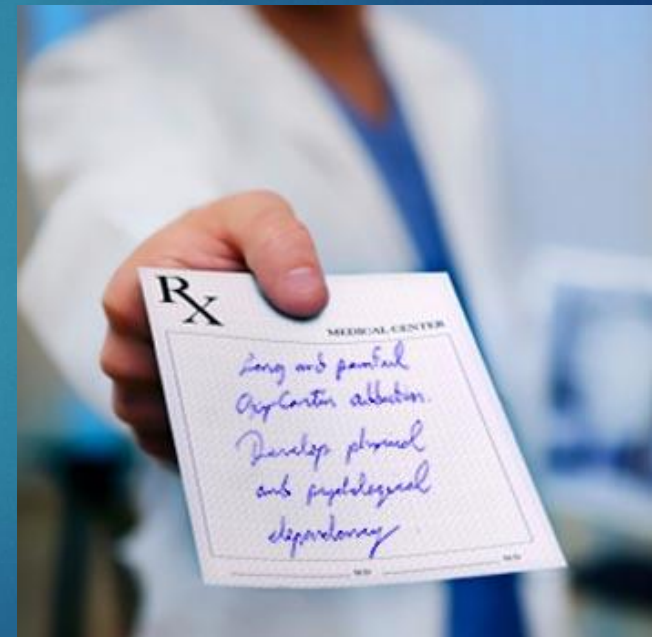
Assistance Animals

- ▶ Is the disability and the need obvious or known?
- ▶ If a person's need is obvious, then no more information can be requested.
- ▶ If disability is known or obvious, but the disability-related need is not, only request information necessary to evaluate the request.

Assistance Animals

Statements from:

- ▶ Doctors
- ▶ Physician assistants
- ▶ Psychiatrists
- ▶ Psychologists
- ▶ Social workers



Assistance Animals

Finding of disability by licensee under Iowa Code chapter:

- ▶ 148 (physicians)
- ▶ 148C (physician assistants)
- ▶ 152 (nurses)
- ▶ 154B (psychologists)
- ▶ 154C (social worker)
- ▶ 154D (counselors, therapists)

Iowa Code § 216.8C(1)

Assistance Animals

If a patient or client requests, that licensee

“...shall make a written finding regarding whether the patient or client has a disability and, if a disability is found, a separate written finding regarding whether the need for an assistance animal or service animal is related to the disability.”

Iowa Code § 216.8C(1)

Assistance Animals

- a. The licensee has met with the patient or client in person or by telemedicine.
- b. The licensee is sufficiently familiar with the patient or client and the disability.
- c. The licensee is legally and professionally qualified to make the finding.

Iowa Code § 216.8C(2)

Assistance Animals

New Health Care Professional Form

- ▶ Created as required by the amended Iowa Civil Rights Act.
- ▶ Find on Commission's website:
<https://icrc.iowa.gov/>



Iowa Code § 216.8C(3)

Assistance Animals



A landlord may deny a request for an exception to a pet policy if a person, who does not have a readily apparent disability, or a disability known to the landlord, fails to provide documentation indicating that the person has a disability and the person has a disability-related need for an assistance animal or service animal.

Iowa Code § 216.8C(5)

Assistance Animals



This section **does not** limit the means by which a person with a disability may demonstrate, pursuant to state or federal law, that the person has a disability or that the person has a disability-related need for an assistance animal or service animal.

Iowa Code § 216.8C(6)

Assistance Animals

**What are the
exceptions?**

Assistance Animals



When accommodation may not be reasonable:

- ▶ Undue financial and administrative burden;
- ▶ Fundamental alteration to essential nature of services;
- ▶ Direct threat to health or safety.

Assistance Animals

Undue financial **AND**
administrative burden

- ▶ Cost of the requested accommodation
- ▶ Financial resources of provider
- ▶ Benefits of the accommodation
- ▶ Availability of alternative accommodations.

Assistance Animals

Fundamental alteration to the essential nature
of the housing provider's services



Assistance Animals

Poses a direct threat to health
or safety of others

- ▶ Does **specific assistance animal** pose a direct threat?
- ▶ Would **the specific assistance animal** cause substantial damage to property of others?

Assistance Animals

- ▶ Individualized assessment based on objective evidence about specific animal
- ▶ No breed, size, or weight limitations.
- ▶ No requirement for insignia

Assistance Animals

- ▶ *Cohen v. Clark*, No. 18-2173 (Iowa 2020)
- ▶ How does a housing provider deal with accommodation requests which conflict?
 - ▶ Must balance needs of tenants with burdens imposed by those needs.
 - ▶ First in time is one factor that can be considered.
 - ▶ Must be more than mere inconvenience for tenant in question.

Assistance Animals

- ▶ Subject to local licensing and vaccination requirements.
- ▶ Multiple animals?
 - ▶ Each must be individually assessed.

Assistance Animals

What about tenant rules and regulations?

- ▶ Tenant has to follow rules of complex.
- ▶ Tenant is responsible for damage to property.

Iowa Code § 216.8B(3)

Assistance Animals



A landlord **shall** waive lease restrictions and additional payments normally required for pets on the keeping of animals for the assistance animal...of a person with a disability.

Iowa Code § 216.8B(2)

Questions?

