



HOUSING THE
NEXT
GENERATION

2014 NAA STUDENT HOUSING
CONFERENCE & EXPOSITION



What You Don't Know (About Fair Housing) Can Hurt You!

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Student Housing is Special – But Not *That* Special

You are *not* exempt from Federal law (race, color, national origin, religion, sex, familial status and disability protections) or State and local laws (perhaps marital status, age, sexual orientation, source of income, personal appearance, place of matriculation, etc.).



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Student Housing is Special – But Not *That* Special

- Know *all* the protections for where your communities are located
- Craft policies accordingly

Because not doing it right
can cost you lots of dollars!



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Competing Laws

Design and Construction

Fair Housing Act v. Americans with Disabilities Act

- **Student housing might be considered “housing at a place of education” if it is “owned by or operated on behalf of” a place of education.**
- **“Housing at a place of education” triggers the Americans with Disabilities Act, as well as the Fair Housing Act.**



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Accessible Housing

- **Possibility of ADA “transient lodging” requirements**
- **Possibility of ADA “residential dwelling unit” requirements (also Section 504 UFAS requirements)**
- **Always FHA accessibility requirements**



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ADA Transient Lodging

- **ALL doors must provide clear width**
- **% of rooms must provide enhanced accessibility**
- **% of rooms must provide accessible communication features**
- **% of rooms must provide roll-in showers**

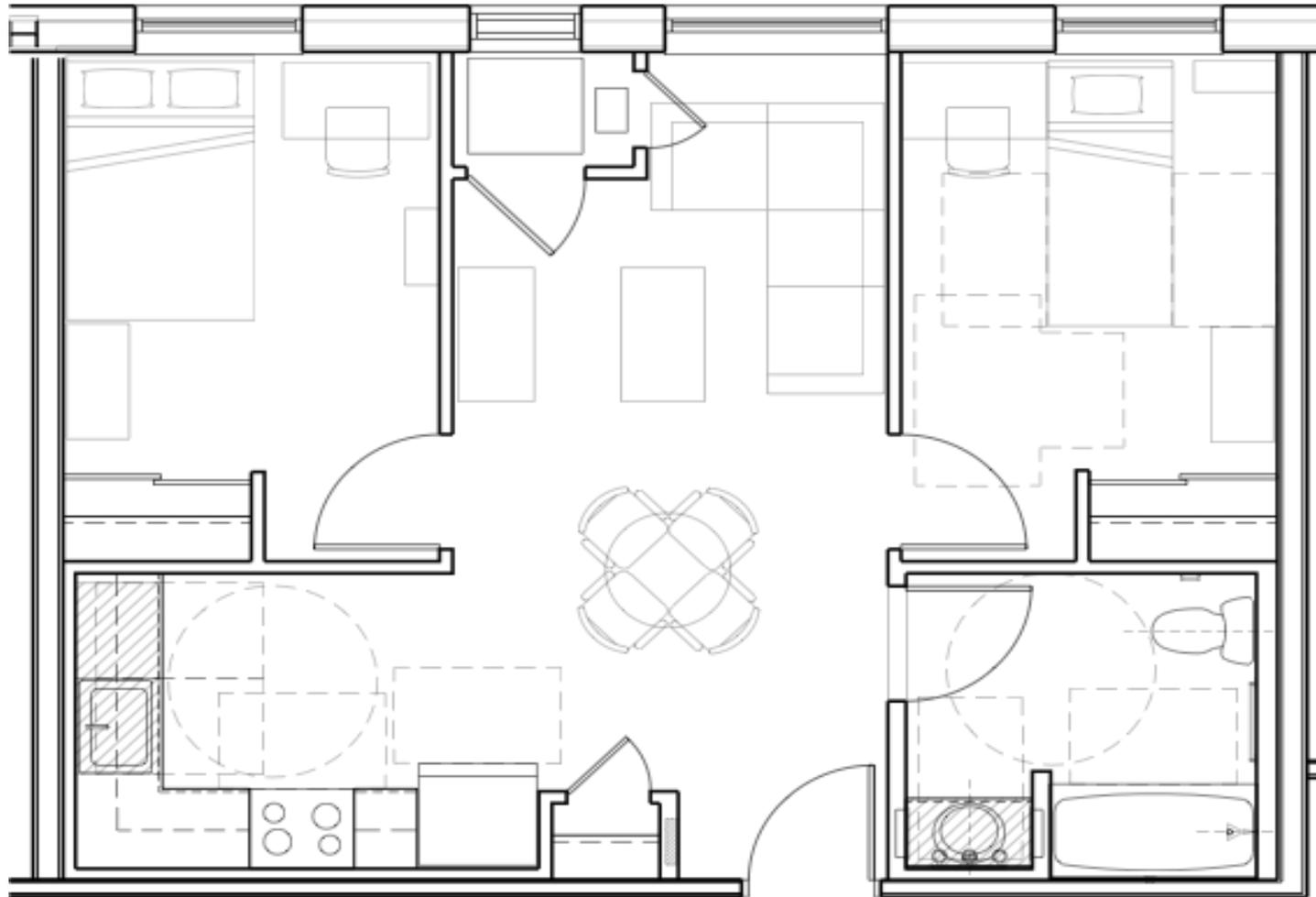


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Transient Lodging Room



ADA Residential Dwelling

- **% of units must provide enhanced accessibility**
- **% of units must provide accessible communication features**
- **ADA accessible parking numbers**
- **ADA accessible common areas**



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Fair Housing Act Accessibility

- **Any new construction, however financed**
- **ALL ground floor units, or ALL units if the building has an elevator**
- **Accessible common areas**
- **Accessible parking**



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Competing Laws

Fair Housing Act v. Americans With Disabilities Act

Not all disabilities involve mobility...

Under the FHA and ADA, the following are considered disabilities of

EQUAL LEGAL STANDING:

- **Physical disabilities you can see**
- **Physical disabilities that you cannot see**
- **Emotional or mental disabilities**



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Competing Laws

Fair Housing Act v. Americans With Disabilities Act

Which brings us to the ever-challenging topic of Persons with Disabilities (PWDs) and...

- **Service Animals!**



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Competing Laws – Service Animals

Fair Housing Act v. Americans With Disabilities Act

- **Beginning on March 15, 2011, only dogs are recognized as service animals under Titles II and III of the ADA.**
- **A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.**
- **Generally, Title II and Title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.**

- (ADA 2010 Revised Requirements)



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Competing Laws

Fair Housing Act v. Americans With Disabilities Act

- Thus, therefore, so and ergo, only a dog meeting the ADA definition of a service animal must be allowed to accompany its PWD in the non-housing portions of a university.
- However, under the FHA, for university housing and private sector student housing...



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Competing Laws – Service Animals

Fair Housing Act v. Americans With Disabilities Act

...there are two kinds of service animals...

- Working animals – guide dogs, mobility assistive dogs, guide horses, monkeys
- Companion or emotional support animals – which may be animals such as cats, dogs, guinea pigs, chickens, iguanas, and others.

**One type of animal is
just as valid as the other!**



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Competing Laws – Service Animals

Fair Housing Act v. Americans With Disabilities Act

- ...work with your legal counsel to craft a policy/forms providing for a review of all requests from a PWD to have a service animal.
- And if you decide to say no to a request, involve your counsel first!



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Competing Laws -Parking

Fair Housing Act v. Americans With Disabilities Act

- **Again, if the student housing is considered “housing at a place of education,” ADA parking requirements will apply as well as FHA new construction parking requirements.**
- **May require more or different accessible parking.**



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Competing Laws – Shuttle Service

Fair Housing Act v. Americans With Disabilities Act

**“No good deed
(or sometimes marketing plan)
goes unpunished.”**

- **Yes, shuttles are a competitive amenity.**
- **But be sure that they are accessible (PWDs can get on and off) and that PWDs can get to them.**



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Lease Terms - Occupancy

- Many student housing communities rent by the bedroom.
- Many student housing communities have a “1 per bedroom” occupancy limit in these apartments.
- Many student housing communities are in violation of the Fair Housing Act’s prohibition on familial status discrimination.



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- **Consider “all student / faculty” limitation**
- **Consider allowing children under a certain age when sharing bedroom with parent, OR**
- **Ignore and hope for the best**



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Lease Terms – Roommate Matching

3 Considerations

1. From a risk management standpoint consider delegating roommate matching to a third-party provider (not unlike how many landlords delegate criminal background checks and credit checks to third-party providers).



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Lease Terms – Roommate Matching

3 Considerations

2. Should you choose to do roommate matching, advise prospects that matching will not be based on criteria related to protected classes: race, color, religion, national origin, familial status or disability. The only exception is gender, allowed in order to designate a unit all female or all male if it has shared bathrooms or kitchens.



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Lease Terms – Roommate Matching

3 Considerations

3. Should you choose to do roommate matching, advise prospects that you will not intervene (or excuse from leases, or relocate someone) in disputes based on protected class status.



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Lease Terms – 9 Month Leases for Students Only?

A fair housing issue? Maybe, maybe not...

1. Many if not most students are younger. If the community is located where "age" has been deemed a protected class (additional to the federal ones), then such a policy does not treat people fairly based on age. This is the "discriminate impact" argument that did not get resolved by the Supreme Court late last year (case settled), but HUD seems committed to the disparate impact concept.



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Lease Terms – 9 Month Leases for Students Only?

A fair housing issue? Maybe, maybe not...

2. Many "traditional students" will not have children. Someone may make the argument that such a policy favors people without children over those who do have children (and fair housing protection under the FHA).



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Lease Terms – 9 Month Leases for Students Only?

A fair housing issue? Maybe, maybe not...

3. If a particular college or university is, for example, an historic black college (Morehouse in Atlanta with a student body essentially male and African-American), or with a religious affiliation, someone may make the argument that this favorable treatment of a shorter lease commitment is statistically being made to a particular race or religion. (The disparate impact argument again.)



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Sex – Transgender

Note that the term is “transgender”
not “transgendered”.

1. What sex/gender is a transgender person?
2. Which pool restroom does a transgender person use?
3. With whom does a transgender person room?



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Sex Harassment

Can be a fair housing violation.

- Have policies for roommate-to-roommate harassment.
- Have policies as to employee-to-resident harassment.
- Have policies as to resident-to-employee harassment.
- Social media policies should address this topic as well; SM provides a new methodology for harassment.



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Social Media

Issues to Consider
(and not just fair housing ones)

Postings by Residents



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Social Media

Issues to Consider
(and not just fair housing ones)

Postings of Residents
(the model release issue)



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Social Media

Issues to Consider
(and not just fair housing ones)

Postings of Staff
(the model release issue)



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Social Media

Issues to Consider

(and now the fair housing one!)

Human Models

***Diversity is a must!**

***White Only is a “no-no”**

***Include International Students**

***Modesty**



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Social Media

And don't forget the EHO logo!



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Thank you!