



## FAIR HOUSING IN THE COVID-19 CRISIS

### INFORMATION AND GUIDANCE FOR HOUSING PROFESSIONALS FROM THE FAIR HOUSING CENTER

The COVID-19 pandemic has impacted every Ohioan. The Fair Housing Center has found that this crisis harms vulnerable black and Latinx Ohioans disproportionately. The pandemic brings to light critical concerns related to housing discrimination including harassment or other discrimination against Asian people, people who have tested positive for COVID-19 or who are suspected of having it, and other protected classes. Civil rights provided under the Fair Housing Act help protect Ohioans during this crisis. The Fair Housing Center provides the following guidance to help housing providers comply with fair housing laws during the COVID-19 crisis.<sup>1</sup>

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<sup>1</sup> This guidance is provided for educational purposes and represents The Fair Housing Center’s interpretation of best practices during the COVID-19 crisis, not legal advice.

## THE COVID-19 CRISIS IS DISPARATELY HARMING BLACK AND LATINX OHIOANS

It is no secret that minorities in the United States face worse health outcomes than whites. The COVID-19 pandemic has exposed longstanding health inequities in neighborhoods of color. These inequities, caused by decades of systemic discrimination and patterns of segregation, mean that black and Latinx residents are less likely to have access to affordable healthcare and other vital resources, while also experiencing higher levels of exposure to health hazards resulting from poor quality housing, air, and water. People of color face a greater risk of contracting COVID-19 while also lacking access to the social, financial, and healthcare supports that are necessary to successfully recover.

The COVID-19 crisis particularly harms black and Latinx Ohioans. As of April 24, 2020, the Ohio Department of Health estimated that 22% of COVID-19 cases affected black Ohioans.<sup>2</sup> Census estimates for Ohio indicate that blacks comprise 13% of Ohio's population. COVID-19 impacts Ohio's black population at about double their portion of the population. By comparison, 50% of COVID-19 cases impacted whites, though whites comprise more than 80% of Ohio's population. COVID-19 is more likely to harm Latinx Ohioans as compared to whites as well. The Ohio Department of Health reports that about 4% of COVID-19 cases affected Latinx Ohioans, while Latinx Ohioans comprise about 3% of the total population of Ohio.

The economic impact of the crisis will also very likely impose a disproportionate harm on black and Latinx Ohioans. In other words, the crisis not only directly impacts minorities with a greater likelihood of infection, it also imposes a greater likelihood of economic harm on black and Latinx Ohioans. This economic impact may lead to an inability to make rental payments and other expenses necessary to maintain housing.

The Fair Housing Act protects all citizens. During this COVID-19 crisis, we expect that there will be a greater civil rights impact on vulnerable minority populations, and offer guidance on how you may be sure you are complying with fair housing civil rights laws.

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<sup>2</sup> The Ohio Department of Health, COVID-19 Dashboard (April, 2020), available at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/dashboards/key-metrics/cases>

## PROBLEMATIC HOUSING PRACTICES DURING THE CRISIS

The Fair Housing Center frequently receives requests for assistance from people who face housing discrimination, and those in landlord-tenant disputes. The Fair Housing Center also regularly communicates and shares information with other fair housing organizations and others in the housing industry. The following practices have been reported to The Fair Housing Center related to the COVID-19 crisis:

- Landlords refusing to make repairs, even where they are urgently needed
- Landlords pursuing “self-help” evictions including utility shut-offs
- Sudden, drastic rent increases
- New leases required when tenants had been month-to-month for years
- Laid-off workers living at extended-stay hotels being forced to leave
- Landlords threatening eviction after tenants disclose testing for COVID-19
- Landlords trying to require reports from tenants on travel and illnesses
- Landlords locking shared laundry rooms
- Landlords reporting a tenant’s illness to other tenants in buildings
- Tenants concerned about potential loss of housing choice voucher benefits if they cannot find housing within the voucher tolling period
- Landlords charging interest on unpaid rent where the lease does not provide for such fees
- Landlords prohibiting visitors of any kind

The Fair Housing Center understands that this crisis is difficult for everyone. We ask that you refrain from these practices, and find creative ways to continue to do business and keep yourselves and your tenants safe.

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### THESE PRACTICES HAVE A GREATER IMPACT ON BLACK AND LATINX OHIOANS

In Ohio, though blacks represent only 13% of the total population, they comprise 24.5% of all renters in Ohio. Latinx Ohioans comprise about 3.9% of Ohio’s population and 4.7% of all renters. By comparison, whites comprise about 80% of Ohio’s population but only 68.2% of renters.

## THE FAIR HOUSING ACT HELPS PROTECT OHIOANS DURING THIS CRISIS

The Fair Housing Act can provide an important resource to protect Ohioans during this crisis.

### COVID-19 AS A DISABILITY AND REASONABLE ACCOMMODATIONS

The Fair Housing Act prohibits landlords and other housing providers from discriminating against tenants with disabilities. The Act defines a person with a disability as someone who has a physical or mental impairment that substantially limits a major life activity, a record of having such impairment, or someone who is perceived to have an impairment.<sup>3</sup> Diagnosis of a disease, like COVID-19, is not always a disability under the Act, but it can be if, for example, the disease limits a major life activity or the person is regarded as having such an impairment.<sup>4</sup>

- **Housing providers should not discriminate against persons with COVID-19 in leasing, evicting, or other policies or practices.**

In addition, the Fair Housing Act prohibits landlords from asking whether an individual has a disability or about the type or severity of a disability.<sup>5</sup> This includes applicants and current tenants.<sup>6</sup>

- **Questions about exposure to COVID-19 or whether the person was tested for COVID-19 likely violate the Fair Housing Act.**

Finally, persons with disabilities may request reasonable accommodations under the Fair Housing Act. A reasonable accommodation is a change in a housing provider's rules, policies, or practices that are necessary for a person with a disability to enjoy the housing.<sup>7</sup> For example, a tenant disabled by COVID-19 could request a room with an additional bedroom to help maintain better social distancing.

- **Persons disabled by COVID-19 may make requests for reasonable accommodations, just as other persons with disabilities may.**

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<sup>3</sup> 42 U.S.C. § 3602(h)

<sup>4</sup> *See e.g.*, *Marriot Senior Living Services, Inc. v. Springfield Tp.*, 78 F. Supp. 2d 376, 379 n.2 (E.D.Pa. 1999) (though old age itself is not a disability per se, elderly people who can no longer live safely on their own covered under the Act).

<sup>5</sup> 24 C.F.R. § 100.202(c)

<sup>6</sup> *See, e.g.*, Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, questions 16-18.

<sup>7</sup> 42 U.S.C. § 3604(f)(3)(B).

## HARASSMENT AND OTHER DISCRIMINATION

### NATIONAL ORIGIN DISCRIMINATION

Some media outlets have reported discrimination based on national origin based on the false assertion that persons from Asia, or people of Asian descent, are responsible for the COVID-19 crisis. Under the Fair Housing Act, it is illegal to refuse to lease, sell, finance or insure property based on a person's national origin.

- **Do not refuse to rent to a person of Asian heritage or simply because that person is Asian.**

### SEXUAL HARASSMENT IN HOUSING

As the COVID-19 crisis jeopardizes the ability of tenants to pay rent, and otherwise destabilizes housing, we have seen that some housing providers have taken advantage of these vulnerabilities through sexual harassment. HUD's regulations interpreting the Fair Housing Act recognize both "quid pro quo" and "hostile environment" sexual harassment as illegal.<sup>8</sup>

- **If a housing provider requests sex in exchange for housing, the housing provider violates the Fair Housing Act.**
- **Or, if a housing provider creates a hostile environment through sexual harassment, they may also violate the Fair Housing Act.**

The landlord can be "vicariously liable for a discriminatory housing practice by [its] agent or employee ...."<sup>9</sup> In other words, if a property manager on site takes advantage of the housing instability caused by the COVID-19 crisis, the owner of the property may be liable.

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<sup>8</sup> 24 C.F.R. § 100.600(a)

<sup>9</sup> 24 C.F.R. § 100.7(b)

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## POLICIES OR PRACTICES THAT HARM BLACK AND LATINX PERSONS DURING THE CRISIS

Acts can sometimes have unintended consequences. A housing provider violates the Fair Housing Act when its policies or practices in response to COVID-19 have a discriminatory effect, even when the provider had no intent to discriminate. Where a policy or practice has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.<sup>10</sup>

- **Housing providers should exercise caution when invoking policies or practices regarding the COVID-19 crisis, since they could disparately impact black and Latinx persons.**

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### VIOLATIONS OF THE CARES ACT COULD ALSO VIOLATE THE FAIR HOUSING ACT

In March 2020, Congress enacted the CARES Act which temporarily prohibits some landlords from evicting and charging fees or other penalties for nonpayment of rent.<sup>11</sup> Generally, tenants living in federally subsidized housing or housing with a federally-backed mortgage, such as Fannie Mae or Freddie Mac, are covered by the CARES Act protections. It is unclear how and to what extent the government will enforce the CARES Act protections. But if a landlord's violation of the CARES Act also disparately impacts black and Latinx persons, the tenant may be able to challenge the practice under the Fair Housing Act. For instance, if a landlord chooses to violate the CARES Act and charge fees for nonpayment of rent that disproportionately impact black or Latinx renters, the policy could also violate the Fair Housing Act.

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<sup>10</sup> 24 C.F.R. § 100.500; accord *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015).

<sup>11</sup> "During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not—**(1)** make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or **(2)** charge fees, penalties, or other charges to the tenant related to such nonpayment of rent." 116 P.L. 136, 2020 Enacted H.R. 748, 116 Enacted H.R. 748, 134 Stat. 281, 116 P.L. 136, 2020 Enacted H.R. 748, 116 Enacted H.R. 748, 134 Stat. 281; "A multifamily borrower that receives a forbearance under this section may not, for the duration of the forbearance—**(1)** evict or initiate the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges; or **(2)** charge any late fees, penalties, or other charges to a tenant described in paragraph (1) for late payment of rent." *Id.*

## KEY TAKEAWAYS

Persons with COVID-19 or perceived as such are likely protected by the Fair Housing Act

- Housing providers cannot discriminate against persons with disabilities that limit a major life function, which could include persons with COVID-19.
- Persons with COVID-19 may request reasonable accommodations to change policies or practices necessary to accommodate their disability.

Housing providers cannot ask about COVID-19 testing or diagnosis

- The Fair Housing Act prohibits landlords from asking whether an individual has a disability or about the type or severity of disability.

Housing providers cannot take advantage of the housing instability caused by the crisis through sexual harassment

- The Fair Housing Act prohibits landlords and other housing providers from quid pro quo sexual harassment or from creating a hostile environment through sexual harassment.

Housing providers cannot discriminate based on national origin

- The Fair Housing Act prohibits landlords from discriminating against persons based on the false assertion that Asian people caused the pandemic.