

# Assessing Policies For Fair Housing Compliance

Types of Violations	WA State Protected Classes	
<p>1) <b>Differential Treatment</b>—purposefully trying to exclude or offer worse terms, conditions or services because someone is in a protected class.</p> <p>2) <b>Disparate Impact</b>—policies that unintentionally excluding or offering worse terms, conditions or services to one or more protected classes.</p> <p>3) <b>Retaliation</b>—punishing, harassing or intimidating someone who attempted to exercise their fair housing rights or help someone else exercise those rights.</p>	<ul style="list-style-type: none"> <li>◇ Race</li> <li>◇ Color</li> <li>◇ National Origin</li> <li>◇ Immigration/ Citizenship status</li> <li>◇ Sex (biological, sexual orientation, gender identity)</li> <li>◇ Disability</li> <li>◇ Religion</li> </ul>	<ul style="list-style-type: none"> <li>◇ Familial status (presence of children under 18 years old in the home)</li> <li>◇ Marital status (singled, married, widowed, divorced)</li> <li>◇ Source of Income</li> <li>◇ <i>Check for locally protected groups</i></li> </ul>

## Fair Housing Compliance Checklist

- ⇒ **What is the policy being considered?**
  - ⇒ *Not sure where to start? Most fair housing violations are found in eligibility requirements, such as policies about criminal convictions, income, landlord references, residency and documents required to verify identity.*
- ⇒ **What is the business-related need for this policy?**
  - ⇒ **Is it intended to prevent a certain type of person from qualifying or participating in this housing opportunity?** If yes;
    - ⇒ Describe the type of person
    - ⇒ Is that “type of person” normally part of a protected class? If yes, the policy is likely a differential treatment violations
  - ⇒ **Is the policy likely to negatively impact one or more protected groups?** One way to check this is to do the following:
    - ⇒ List out the individuals/groups negatively impacted by this policy in the past 12 months
    - ⇒ List out the groups who benefited from this policy in the past 12 months
    - ⇒ Compare the two groups—if one or more protected groups are only in the adversely impacted group, that is likely a disparate impact violation.
- ⇒ **If the policy appears to negatively impact one or more protected groups, what is at least one different way to meet the business-related need without negatively impacting one or more protected classes?**

# Responding to Disability-Related Requests

## Fair Housing Definition of Disability

- 1) **Having impairments significantly impacting one or more major life activities, OR**
- 2) Having a record of such impairment, OR
- 3) Being perceived as having such an impairment
- 4) Includes temporary disabilities (WA state)

## Examples of Major Life Activities

- ◇ Walking, standing, climbing, balancing
- ◇ Holding, gripping, turning, carrying, lifting
- ◇ Seeing, hearing, smelling, tasting, touching
- ◇ Sleeping, eating, personal hygiene
- ◇ Memory retention and emotional regulation

### Checklist for Disability Related Requests

1. **Person meets above definition of disability**  
*A) If the disability is not observable, you may request 3rd party verification.*
2. **The requested change to policy, procedure, unit structure or common area is required/necessary because of the person's disability.**  
*A) If the request is not clearly connected to the disability is , you may request 3rd party verification.*
3. **The requested change is not an undue financial and administrative burden.**
4. **The requested change to policy, procedures, rules or services does not fundamentally alter the nature of the business.**

⇒ **For requests regarding changes to the structure of the unit or common areas, if you answered "yes" to #1 and 2 above, review the appropriate box(es) below:**

#### **For federally-funded properties, this disability-related request:**

- a) Can be completed to meet city/county standards (unit/common modifications)?
- b) Is not an undue financial burden

#### **For properties without federal funding, has the tenant/homeowner:**

- a) Acquired the necessary city/county permits (if needed)?
- b) Agreed to pay for the structure change?
- c) Agreed to convert the unit to the original condition if the modification makes the unit harder to rent?

- \* 3rd Party Verification—written by a professional who knows of and/or has treated the person's disability. Companies may not require 3rd party verifiers to complete their forms.
- \* Undue Burden— a documented, significant cost on a company's overall resources.

# Checklist: Third Party Verifications

## Fair Housing Definition of Disability

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- ◇ Memory retention and emotional regulation

### Checklist for 3rd Party Verifications

If a person's disability is not obvious, OR the request they are making is not obviously connected to their disability, a third party verification may be requested. Use this checklist to determine if the verification meets fair housing law requirements.

**If the answer is yes to all of the following, then the verification typically meets fair housing law's standards:**

- 1) The tenant/guest meets the definition of disability under the Fair Housing Act, the Americans with Disability Act, or provides a diagnosis that impairs one or major life activities?
  - a) *Tenants/guests are never required to disclose their diagnosis to their housing provider in order for their disability-related request to be approved.*
- 2) That the note-writer is a professional who knows of and/or has treated the person's disability?
- 3) A description of the change in policy, procedure, rules, services or unit/common area structure being requested?
- 4) That the requested change is necessary or required due to the person's disability?
- 5) The verifier's contact information?

**Times when housing providers may request additional information regarding a disability-related request:**

- A) If the assistance animal being requested is not a typical pet (i.e., dog, cat, reptiles, bird), providers may request clarification on why a typical pet would not meet the person's disability-related needs.
- B) If the note looks altered, housing providers may contact the note writer and ask if they provided the note as written.
- C) If the housing provider is providing housing for specific diagnoses, then they may inquire if the applicant/tenant meets their requirements.

# Checklist: Assistance Animals

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## Checklist for Assistance Animals

**Approving a reasonable accommodation for an assistance animal** = waiving all related animal fees not connected to damaged caused by the animal, waiving pet restrictions (weight, size, age, breed), and not targeting the tenant/guest for extra scrutiny, harassment or other forms of retaliation due to their request for an assistance animal.

**No third-party verification may be requested if either of the following is true:**

- ◇ The person states the dog is their ADA service dog and can answer the question, “What work or task has this animal been trained to perform”, OR
- ◇ The person’s disability and their disability-related need for the animal are both readily apparent.

**For all other assistance animals, approve if the answer to the following questions is “true”:**

- ◇ The person has submitted third party verification stating the animal is necessary, required or prescribed for their disability.
  - ◇ *If the person states they need multiple assistance animals, the verification must state how many animals are needed for their disability.*
  - ◇ *Any professional who knows of and/or has treated the person’s disability may verify.*
  - ◇ *Training certificates or “ESA/ADA” certificates are rarely considered to be valid third party verifications.*
- ◇ The animal has not displayed aggressive behaviors towards people or animals.
- ◇ The animal has not damaged the property.
- ◇ The animal is not an excessive nuisance to neighbors.

**If the answer is “no” for any of the above and the problematic behavior has not resulted in significant damage to property or harm to others, consider conditional approvals such:**

- ◇ Granting the person enough time to contact their medical provider or other third party verifier for the necessary verification paperwork before assessing additional fees or notices.
- ◇ Approving animals with behavior problems if the owner pays for damages/harm caused by their animal AND can demonstrate an ability to reduce or prevent those behaviors in the future using management tools (muzzles, crates, barriers, etc..), completing training plans and allowing one or two “progress inspections” over a couple months.