

Shelters, Transitional Housing, and The Fair Housing Act

The federal Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, familial status, or national origin. The state fair housing law also prohibits discrimination on the basis of sexual orientation, gender identity or expression, marital status, age, or HIV. The prohibition applies in the refusal to rent a dwelling to a member of a protected class, in the terms or conditions in the sale or rental of a dwelling, and advertisements in the sale or rental of a dwelling.

In the context of homeless shelters and transitional housing, an important question is whether a facility qualifies as a “dwelling” under fair housing law. Under the Fair Housing Act, a dwelling is “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families . . .” 42 U.S.C. § 3602(b).

For shelter providers, the best practice would be to comply with state and federal fair housing laws to mitigate claims of fair housing discrimination. As a general rule, the Fair Housing Act does apply to homeless shelters and transitional housing. However, certain types of facilities may not qualify as a “dwelling” under the Fair Housing Act. The analysis as to whether the facility is a “dwelling” under the Fair Housing Act is a case-by-case determination. Some of the factors to consider are:

- Duration of stay;
- Intent or right to return each night;
- Inclusion of amenities;
- Whether there is a program fee or rent due;
- The program’s purpose (whether housing is secondary to the program’s purpose); and
- Execution of a rental or occupancy agreement.

A common issue for shelter facilities is dealing with occupants with disabilities. A disabled person may make a reasonable accommodation request to a program’s rules or policies. One example would be the acceptance of an assistance animal in a facility with a no pets policy. It is acceptable to require occupants to provide proof of disability through verification from their treating medical professional. Typically, reasonable accommodation requests should be granted unless the request either poses an undue financial and administrative burden, or causes a fundamental alteration to the nature of the program.

It is important to note that even if fair housing laws do not apply to particular facilities, the facilities may be considered public accommodations due to their availability to the public. In these instances, state and federal public accommodations laws such as the Americans with Disabilities Act, may apply. This prohibits discrimination with respect to the use and enjoyment of goods and services to those with disabilities.