

FREQUENTLY ASKED FAIR HOUSING QUESTIONS

FACT SHEET NO. 4

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- 1. How selective may I be of my tenants?** You can be very selective so long as you use the same set of standards or requirements for all prospective tenants. These standards cannot be based upon race, color, gender, national origin, religion, disability, familial status; North Dakota state protections of age or status with respect to marriage and public assistance; and South Dakota state protections of creed and ancestry.
- 2. What should I look for in selecting a tenant?** The most important thing for you to determine is whether the tenant will be able to pay the rent in a regular, timely manner. You will also want to know that the tenant will not disturb other tenants and will keep the unit in a reasonable condition. These questions can often be answered by references from previous landlords, income verification and/or a credit bureau.
- 3. Does the law limit my advertising?** Yes. The law does not allow you to advertise a preference for a particular type of renter or against a protected class. The law prohibits advertising which would be illegal in practice. Exemptions under state and federal law for private sales and owner occupied four units or less housing do not apply to advertising.
- 4. I want a racially balanced building. Can I maintain a quota?** No. Quotas of any kind may be illegal, because in order to maintain a quota it might be necessary to discriminate against some people.
- 5. I'm afraid that a woman won't be able to do gardening or repairs. Can I rent to men only?** No. If she is an otherwise qualified tenant, you cannot refuse to rent to her because of her gender. Many women are fully capable of maintaining a property, or they may choose to hire someone to do it for them. You can always check references, as long as you check for both women and men.
- 6. Can I set a dollar amount on the income I require of my tenants?** Yes. You may establish a reasonable minimum income criteria necessary for the applicant to afford the unit. This standard should be applied uniformly to all applicants. Keep in mind that the income need not come only from employment. Some persons have sufficient verifiable income from other sources that would enable them to qualify.
- 7. Do I have to accept people on welfare or Social Security Insurance?** Yes, in North Dakota, if their income is sufficient to meet your income requirements. North Dakota state law includes receipt of public assistance as an illegal form of arbitrary discrimination. In South Dakota, no such similar protection exists but the denial of recipients of public assistance could have a disparate impact upon people with disabilities, minorities and single parents and, therefore, be discriminatory.
- 8. Under state or federal law, can an owner of an apartment complex refuse to rent any of its apartments to a family solely because the family includes a minor child?** No. The Supreme Court has ruled that refusing to rent to children is a class based exclusionary practice which violates federal Fair Housing Laws.
- 9. Are there any exceptions to this ruling in Question 8?** Yes. Complexes designed for the elderly are exempt but must meet certain guidelines. Advertising of vacancies require specific language such as "housing for older persons."
- 10. Can I make rules which govern the conduct of children?** You have the right to adopt reasonable rules regulating the conduct of ALL tenants. Rules which address children ONLY may be viewed as discriminatory.
- 11. I would like to limit the number of people in my apartments to two adults and two children. Is there a problem with this?** HUD's current, general *guideline* is two persons per average-sized bedroom. This is not a rule or law and other factors such as the size of the unit and bedrooms, configuration of the unit and physical limitations may also have an impact on what is considered a reasonable occupancy standard. Any occupancy standard must apply to all tenants and cannot be specific to adults and/or children. For instance, one could not limit the number of *children* in a unit, but can limit the number of *individuals* in a unit.
- 12. I have always had older persons renting my apartments. Why can't I keep it that way? It would be very upsetting to my current tenants to have children in the building.** You cannot rent just to older persons unless you meet the qualifications for being designated as housing for older persons. You cannot choose particular tenants based on the preferences of your current tenants if those preferences are discriminatory or based on any of the protected class statuses.
- 13. I recently painted my apartments. Must I rent to**

people in wheelchairs who may bump into and mark the walls? Yes. You cannot deny housing to qualified persons with disabilities. If there is damage that would be considered more than normal wear and tear, you may recover the repair costs through the security deposit like with any tenant.

14. **Can I refuse to rent to couples living together who are not married?** North Dakota state law includes marital status as a protected class. However, North Dakota state law does allow a housing provider the right to deny housing to an unmarried, unrelated opposite sex couple if the provider chooses to do so. There are no similar laws in South Dakota. Keep in mind that a legal marriage does not assure a stable relationship or desirable tenancy. It's best to check references of each adult applicant and rent to the applicants who are most qualified.
15. **A young man came to look at an apartment, and he did not appear to be well. I'm afraid he has AIDS. Do I have to rent to him?** Yes. If he is otherwise qualified, you cannot refuse to rent to him because you believe he might have AIDS. A person with AIDS, or who is believed to have AIDS, is protected under the law from discrimination on the basis of physical disability. Current medical information is that AIDS is not contagious through casual contact so there is no danger to you or your tenants by renting to someone with AIDS.
16. **A family with several children came to look at one of our apartments. The children were noisy and unruly, yelling and running in the hallways, and the parents made no attempt to control the children's behavior. Do I have to rent to this family?** Not if you have reason to believe the family would not take care of the property or would not abide by the rules. Checking references may give you some additional information about the past and present behavior of this family and provide you with documentation for your denial. You cannot refuse to rent to a person just because they have children, but you may refuse to rent to a person that you believe will not fulfill tenancy requirements that you apply to all tenants.
17. **Can I refuse to rent to people whose sexual orientation offends me?** Currently, North and South Dakota state law and federal laws do not include sexual orientation as a protected class.
18. **My landlord refuses to make necessary repairs. Can I stop paying rent to force him to make repairs?** This is not a fair housing issue, unless the landlord is targeting you in some way because of a protected class status. This is a situation covered by North Dakota/South Dakota Landlord Tenant Law, which specifies procedures to follow to require the landlord to make necessary repairs to the property or to terminate the lease.
19. **If an applicant or tenant requests an accommodation due to a disability, can a housing provider require documentation that he or she needs the accommodation?** A housing provider may ask an applicant or tenant to verify that they have a disability and need an accommodation. The type of verification needed will depend on the specifics of the situation and may be provided by a doctor or other medical professional, a peer support group, or a service agency. However, the applicant or tenant is not required to tell the housing provider the specifics of their disability or to give the housing provider a full copy of their medical history. They only need to provide proof that they have a covered disability, that an accommodation is needed, why the accommodation is needed, and why the accommodation they are proposing will be helpful. FHD Fact Sheet #2 addresses how to write a request for a reasonable accommodation or modification.
20. **Can a housing provider evict a tenant who has filed a fair housing complaint and is now delinquent on rent?** Yes. A housing provider may follow previously established policies regarding non-payment of rent so long as the policy is being enforced consistently and in all situations regardless of whether a tenant is involved in a fair housing complaint or not. Housing providers may take appropriate action that would be applied to all tenants. However, it is unlawful to retaliate solely against persons who file complaints even where the discrimination complained of is not found.
21. **The apartments on the upper floors of my building have balconies. I don't think they're safe for children to play. Can I refuse to rent these apartments to families with young children?** No. It is up to the parents or guardians who will be renting the apartment to decide if it is a suitable place for their family.
22. **Do I have to rent to sexual offenders or people with criminal histories?** Currently, North/South Dakota state and federal laws do not include protection from discrimination for individuals convicted of sexual offenses or who have criminal records.

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Parts of this document were adapted from publications by the Fair Housing Council of Orange County and the Iowa Human Rights Commission. The Fair Housing of the Dakotas (formerly the North Dakota Fair Housing Council) is a private, non-profit organization that serves North and South Dakota and works to eliminate housing discrimination and to ensure equal housing opportunities for all. The Fair Housing of the Dakotas is located at 909 Basin Avenue, Suite 2, Bismarck, ND 58504. Phone: 701-221-2530 or 1-888-265-0907. ND TDD: 1-800-927-9275 or ND Relay: 1-800-366-6889 (voice). SD TDD: 1-866-273-3323 or SD Relay: 1-800-877-1113. Email: ndfhc3@btinet.net Web: www.ndfhc.org The work that provided the basis for this publication was supported by funding under a grant/cooperative agreement with the U.S. Department of Housing & Urban Development. The substance and findings of this work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in the publication. This information is not itself legal advice; for legal advice about a particular situation, contact an attorney. Alternative formats will be made available upon request.

