



Housing and Development Law Institute

***VAHCDO 2014 Legal Conference
Richmond, VA***

***"Recent HUD Agreements Concerning
Treatment of the Hearing Impaired and
How Not to Have to Sign One"***

**Prepared by Lisa L. Walker, Esquire
Executive Director & General Counsel
Housing and Development Law Institute**




*"Recent **HUD** Agreements Concerning Treatment of the Hearing Impaired and How Not to Have to Sign One."*

Slamming the Door . . .

"Many homeseekers gather initial information about available rental options over the telephone. For a deaf person who communicates primarily through sign language, the ability to obtain information over the telephone is especially important. The decision by rental housing providers not to accept TTY calls essentially "slams the door" on deaf homeseekers, making it impossible for them to conduct their housing search independently."

<http://www.hud.gov/offices/theo/library/dss-download.pdf>



Deaf History Month

- National Deaf History Month is **March 13 to April 15**
- Celebrates deaf history and promotes awareness and appreciation of deaf culture, heritage, and American Sign Language to the general public
- Consider hosting an event at your agency
- **evidence of AFFH**

5 WAYS TO COMMIT
DISABILITY-
RELATED
DISCRIMINATION

**5 Ways to Commit
Disability Discrimination**

Discrimination against a qualified person with disabilities:

(1) In the **sale or rental**, or to **otherwise make unavailable or deny**, a dwelling because of a disability.

Denying Access

42 U.S.C. § 3604(f)(1)

**5 Ways to Commit
Disability Discrimination**

(2) In the **terms, conditions, or privileges** of sale or rental of a dwelling, or in the **provision of services or facilities** in connection with such dwelling.

Denying Access

42 U.S.C. § 3604(f)(2)

5 Ways to Commit Disability Discrimination

(3) In refusing to make reasonable accommodations to rules, policies, and services, when such accommodations may be necessary to afford equal opportunity to use and enjoy a dwelling.

Denying Access

42 U.S.C. § 3604(f)(3)(B)

5 Ways to Commit Disability Discrimination

(4) In refusing to allow at the expense of the handicapped person, reasonable modifications of existing premises if such modifications may be necessary to afford full enjoyment of the premises.

Architectural Barriers

42 U.S.C. § 3604(f)(3)(A)

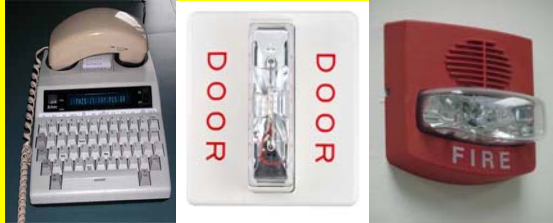
5 Ways to Commit Disability Discrimination

(5) In failing in design and construction according to UFAS standards certain multifamily dwellings first occupied thirty months after September 13, 1988 (March 13, 1991).

Architectural Barriers

42 U.S.C. § 3604(f)(3)(C).

ACCESSIBILITY OF UNITS



Accessibility of Units

How Many Units?

24 CFR §8.22

Number of accessible units:

- For hearing or vision impairments – **Minimum of 2%** of the total dwelling units or one unit.

(For mobility impairments: **5%** of the total dwelling units or at least one unit)

ACCESSIBILITY IN YOUR PROGRAMS



24 CFR §8.6

“(a) The recipient shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public.

(1) The recipient shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.

(i) In determining what auxiliary aids are necessary, the recipient shall give primary consideration to the requests of the individual with handicaps.”

See also 28 CFR §35.104 (ADA)

24 CFR §8.6

“. . . (ii) The recipient is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a recipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be used. . . .”

- Are readers *equally effective*?
- Is note exchanging *equally effective*?
- Are non-certified interpreters *equally effective*?

24 CFR §8.6

“. . . (b) The recipient shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities.”

- Does your agency have good procedures to ensure *agency-wide consistency*?
- Is all appropriate staff *trained* on the use of the TTY system and other aids?

24 CFR §8.6

“ . . . (c) This section does not require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity receiving HUD assistance.”

See also 28 CFR §35.135(c) (ADA)

SOME ACCESSIBILITY FEATURES



Auxiliary Aids

The ADA regulations provide that the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with:

- The method of communication used by the individual;
- The nature, length, and complexity of the communication involved; and
- The context in which the communication is taking place.

28 CFR §35.160(b)(2)

Auxiliary Aids

In order to be effective, auxiliary aids and services must be provided in **accessible formats**, in a **timely manner**, and in such a way as to **protect the privacy and independence** of the individual with a disability.

28 CFR §35.160(b)(2)

TTY SYSTEMS

- TTY Systems provide a verbatim report on each telephone call, providing an independent narrative of what occurred.



TTY SYSTEMS

- Is your TTY number listed on all correspondence, flyers, etc.?

"If you have any questions, please contact the 504 Coordinator, by phone at (720) 932-3091, TDD (720) 932-3111, or Colorado Relay TDD (800) 659 2656, by fax at (720) 932-3009, or by mail at 777 Grant St., 6th Floor, Denver, Colorado, 80203."

FLASHING LIGHTS

Installation of flashing lights for the phone, doorbell, and alarm bells



CERTIFIED ASL INTERPRETERS

Use of American Sign Language interpreters is key.



CERTIFIED ASL INTERPRETERS

Use ASL
Certified
Interpreters

- Internal Staff
- Future hiring



CERTIFIED ASL INTERPRETERS

Don't rely on the client's interpreter for important business.



PHA Meetings

Document file so staff can prepare in advance:

- Consider need for interpreters
- Consider need for assistive devices
- Provide allowance for additional travel time
- Consider alternative venues, if necessary

BARRIERS TO ACCESSIBILITY

Barriers to Accessibility

- Buildings requiring use of **intercom and buzzer systems**
- Refusal to accept TTY calls
 - Frequent hang-ups
- Requiring communications be by **fax or emails** only
- Lack of knowledge of TTY systems
- Requirement of **note-writing** as primary means of communication
 - Illegible handwriting

Barriers to Accessibility

- Providing **less information** about units than they provide to hearing customers
- Less follow-up communication by LL
- Not given as much **information and encouragement** about the application process
- In one test, in 25% of calls, LLs refused to communicate with hearing impaired testers – hung up, etc.**

HUD STUDY & VIDEOS

HUD Study

- June 2005 Urban Institute Study titled *Discrimination Against Persons With Disabilities - Barriers at Every Step*
- Analysis of testing including people with mobility, hearing, and vision impairments in Chicago metro area

<http://www.hud.gov/offices/theo/library/dss-download.pdf>

HUD Study

- Was the first rigorous estimates of discrimination against deaf people who use TTY systems to inquire about the availability of advertised rental housing
- 101 paired tests were completed during the winter of 2004
- Testers who were deaf used the TTY system with relay operators to inquire about available rental housing in the Chicago metropolitan areas, while nondisabled testers made comparable telephone inquiries

HUD ASL VIDEO SERIES



- HUD and the National Fair Housing Alliance have released a [12 video series](#) for the deaf and hard of hearing in ASL with English captioning
- Educates tenants on their rights as well as common problems faced by hearing-impaired persons in the buying, renting, and use of a home

<http://www.nationalfairhousing.org/FairHousingResources/FairHousingVideosfortheDeafHardofHearing/tabid/4244/Default.aspx>

HUD ASL VIDEO SERIES TITLES

- Obtaining a Fair Mortgage Loan
- What is Lending Discrimination?
- Homeowners Insurance Rights
- Your Right to Effective Communication in Lending
- HUD Housing Discrimination Complaint Form 903
- Fair Housing and Equal Opportunity for All
- How to Complain about Housing Discrimination
- Your right to effective communication in buying or renting a home
- Fair Housing and Equal Opportunity for the Deaf
- The Federal Fair Housing Act and Reasonable Accommodations
- The Federal Fair Housing Act and Reasonable Modifications
- Local Fair Housing Organizations

HUD SOCIAL MEDIA VIDEOS

In addition to the videos, HUD also has videos on YouTube and Facebook educating deaf and hard-of-hearing consumers about [housing counseling services](#), and [FHA loan programs](#)

<http://www.nationalfairhousing.org/FairHousingResources/FairHousingVideosfortheDeafHardofHearing/tabid/4244/Default.aspx>

ETIQUETTE

Etiquette

- Gain person's attention before beginning a conversation - tap gently on shoulder or arm
- If interpreter present, speak directly to the person, not the interpreter
- Look directly at the person when speaking
- Speak clearly in a normal tone of voice
- Don't obstruct your face/mouth with your hands, etc.



2014 Greensboro Conciliation Agreement

- May 2014 Bell Partners of Greensboro, NC
- National LL owns and operates more than 64,000 homes in 15 states
- Refused to rent to applicants who relied on the Internet Protocol (IP) Relay system, which allows deaf or hard of hearing individuals to communicate with hearing persons via phone using computer text
- Testing by advocacy groups at properties in Savannah, GA and Austin, TX.

<http://www.american-apartment-owners-association.org/property-management/latest-news/landlords-discriminated-hearing-impaired-renters/#sthash.WYFn5A0W.dpuf>

**2014 Greensboro
Conciliation Agreement**

- Testing revealed that when applicants called to inquire about apartments using the IP Relay system, agents hung up on them, or sent their calls directly to voice mail; in contrast, agents accepted calls from testers not using the IP Relay system
- When agents spoke with testers using the IP Relay system, they allegedly quoted higher rental prices and failed to offer the same specials and amenities they offered to testers who did not use the IP Relay system.
- Agents also allegedly failed to follow up with testers who used the IP Relay system

**2014 Greensboro
Conciliation Agreement**

SETTLEMENT:

- Will pay **\$175,000** to a housing advocacy group, including \$25,000 in attorneys' fees
- Will pay the National Association of the Deaf **\$15,000** for consulting services in the development of policies
- Will provide **fair housing training** to both newly-hired and current employees covering the use of technology for the hearing impaired

**2014 Greensboro
Conciliation Agreement**

SETTLEMENT cont'd:

- Must **adopt a written policy** addressing equal access to housing opportunities for applicants with disabilities, including deaf and hard of hearing individuals, which **outlines the correct handling of telecommunications relay calls and other types of communications** with deaf and hard of hearing individuals

2014 Santa Ana, CA Settlement

- February 2014 [Mercy House Living Centers](#) of Santa Ana, CA
- Employees discriminated against two hearing impaired Section 8 applicants when they refused a request for an ASL interpreter

<http://www.american-apartment-owners-association.org/property-management/latest-news/landlords-discriminated-hearing-impaired-renters/#sthash.WYFn5A0W.dpuf>

2014 Santa Ana, CA Settlement

SETTLEMENT

- Will pay the applicants **\$17,500** to cover the amount of rent they paid during the seven months that they were unable to participate in the Shelter+Care program
- Will **provide ASL interpreters and other accommodations** when necessary
- Will provide **fair housing training** for its employees

2012 HHA Conciliation Agreement

- October 2012 [Houston Housing Authority](#)
- Deaf Section 8 participant made 2 requests that HHA provide her with a certified ASL sign language interpreter at her Section 8 informal hearing to discuss her termination

- It is HHA's responsibility to provide certified sign language interpreters, as reasonably needed (RA)

2012 HHA Conciliation Agreement

- RA policy only required that the request be made to any HHA staff member
 - Better to require all requests be made to the RA Coordinator
- HHA informed the complainant that she was required to pay the cost of an interpreter
 - It is HHA's responsibility to pay for interpreters

2012 HHA Conciliation Agreement

- Complainant's minor daughter was used as the translator at her first informal hearing
- Complainant alleged that it was inappropriate and led to ineffective communication to use her daughter during this important communication
- Daughter found it difficult to translate for her mother because she did not have the requisite level of training to deal with the complex matter of an informal hearing regarding the termination of a voucher

2012 HHA Conciliation Agreement

- Complainant had difficulties with her daughter translating for her and prefers the use of an interpreter or video relay to communicate
- HHA hearing officer upheld HHA's decision, and HHA terminated her assistance and stopped HAP payments to her landlord
- Complainant filed complaint with HUD due to HHA's failure to provide the certified interpreter

2012 HHA Conciliation Agreement

- After complainant filed her complaint, HHA agreed to a second hearing in which a certified interpreter was present
- Second hearing officer HHA agreed to reinstate with the stipulation of a repayment agreement
- Nonetheless, the complainant still pursued her complaint with HUD, alleging that based on HHA's initial decision not to provide a qualified hearing interpreter and to terminate the complainant's assistance, she incurred a large debt to her landlord (delinquent subsidy and late charges for nonpayment)

2012 HHA Conciliation Agreement

Conciliation Agreement Terms:

- Reinstated the voucher
- Pay her landlord \$4,251.00/\$2,580? for HHA's portion of back rental assistance payments
- Respond to Complainant regarding her request for an American Sign Language Interpreter with respect to participation in HHA's programs or activities - Approve
- No retaliation

2012 HHA Conciliation Agreement

Conciliation Agreement Terms:

- Provide written notice to all employees reminding them of HHA's policy to provide services for hearing impaired applicants or tenants regarding the provision of an interpreter upon a request by them or their designated agent
 - The designated agent could include family members or friends

2012 HHA Conciliation Agreement

Conciliation Agreement Terms:

- Include RA request form and Legal Compliance Officer's contact phone number, name and email in Section 8 briefing packets. Also include a section informing the voucher-holder that a sign language interpreter may be provided by HHA, if needed
- Report to HUD on hearing-related RA requests
- Provide certified interpreters

Thank you!



NEW ONLINE HDLI TRAINING OFFERINGS

****SPECIAL VAHCDO DISCOUNT****

HDLI's Online Fair Housing Training

Give Your Staff the Training They Need:

- Full Course – Approx. 7 hours
- Individual Modules – From 20 minutes to 1 hour
- Also Staff and Resident Development Courses

Sign Up Before February 15, 2015 for Online Fair Housing Training and Receive a 20% "VAHCDO" Discount!

For more details go to:

www.hdlitraining.org

ON-SITE HDLI TRAINING OFFERINGS

1. ON-SITE Administrative Review Process Training

➤Public Housing Grievances and Section 8 Reviews (approx. 7 hours)

2. ON-SITE Customized Fair Housing Trainings

- Basic Fair Housing Training (approx. 4 hours)
- Advanced Fair Housing Training (approx. 7 hours)
- Advanced 504 Reasonable Accommodations Training (approx. 4 hours)

3. ON-SITE "One Strike" Public Housing Evictions & Section 8 Terminations Training (approx. 6 hours)

HDLI CONTACT INFORMATION

Lisa L. Walker, Esq.
CEO & General Counsel

Housing and Development Law Institute
630 Eye St., N.W.
Washington, DC 20001-3736

Email: hdli@hdli.org
Phone: 202-289-3400
Website: www.hdli.org
WebStore: www.hdlistore.org
