
Participant Screening and Selection Methodology

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Agenda

- Introduction
 - Overview of changes in fair housing laws
 - Participant Selection Plans
 - Participant Screening Policies
 - Exercise
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FAIR HOUSING UPDATE AND OVERVIEW

Begin by Asking Three Questions

- Is the person covered?
- Is the property covered?
- Is the behavior covered?

If the answer to all three questions is yes, then the fair housing laws apply.

CIVIL RIGHTS ACT OF 1866

Is the Person Covered?

- Outlaws discrimination against anyone who is not Caucasian—African-Americans, Latinos, Native Americans, people from Central and South America, Asians
 - States that it is illegal to refuse to enter into a contract with someone if the person would contract with someone who is Caucasian
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Is the Property Covered?

- All properties covered, no exemptions



Is the Behavior Covered?

- Cannot refuse to contract with someone if you would contract with someone of the Caucasian race
 - Real estate transactions are contracts
 - Cannot refuse to contract because the person is not Caucasian
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STATE AND FEDERAL FAIR HOUSING LAWS

Is the Person Covered?

- Federal Fair Housing Act

- Passed in 1968 (amended in 1974)
- Prohibits discrimination based on race, color, national origin, sex, religion

- State Fair Housing Laws

- Race, creed, color, national origin, ancestry, sex
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Is the Property Covered?

- Federal Fair Housing Act
 - Protected classes—race, national origin, gender, religion:
 - Not covered—single family housing sold or rented without the use of a broker if the private individual owner does not own more than three such single family homes at one time AND the owner does not advertise in a discriminatory way
 - Not covered—owner-occupied four families
 - Not covered—private clubs and religious organizations
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Is the Property Covered?

- Connecticut Fair Housing Laws
 - Protected classes—race, national origin, gender, religion
 - Not covered—owner-occupied two families
 - Not covered--owner-occupied rooming houses
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Is the Behavior Covered?

- Differential treatment—treating people differently because of membership in a protected class
 - Refusing to rent or sell
 - Different terms and conditions
 - Steering
 - Discriminatory statements
 - Discriminatory advertising
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Is the Behavior Covered

- Disparate impact
 - Neutral rule that has a disparate impact (greater effect) on members of a protected class
 - Does the policy have a disproportionate impact on a group of people because of their protected class?
 - Look at statistics
 - Is the policy or practice justified?
 - Can the housing provider show that it is necessary to achieve a substantial, legitimate, non-discriminatory interest of the provider?
 - Is there a less discriminatory alternative?
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Is the Person Covered—Fair Housing Amendments Act of 1988

- Two new protected classes added—familial status and disability
 - Definition of familial status
 - Household that includes parents or guardians and children under 18 or someone standing in the place of a parent or guardian
 - Household that includes a pregnant woman
 - Household in the process of obtaining custody of a child under the age of 18
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Is the Property Covered—Familial Status?

- **Not covered**—single family housing sold or rented without the use of a broker if the private individual owner does not own more than three such single family homes at one time AND the owner does not advertise in a discriminatory way (federal)
 - **Not covered**—Owner-occupied four family (both state and federal)
 - **Not covered**—Owner-occupied rooming house (state)
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Is the Property Covered—Familial Status?

- Not covered—Elderly housing
 - Housing built and solely occupied by persons 62 or older
 - Housing where at least 80% of units are occupied by at least 1 person 55 or older
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Is the Behavior Covered—Familial Status

- Examples of illegal behavior
 - ❑ Refuse to rent or sell to someone because there are children in their household
 - ❑ Have different terms and conditions for families with children
 - ❑ Steer families with children
 - ❑ Require boys and girls to have separate bedrooms
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Is the Behavior Covered—Familial Status

- Examples of illegal behavior
 - Requiring a higher security deposit because there are children in the households
 - Steering a family with children away from a town because the schools are failing/low performing
 - Refusing to rent/sell to families with children units that are above the first floor
 - Refusing to allow children to be outside/ride bikes outside
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Is the Behavior Covered—Lead Paint

- Examples of illegal behavior
 - ❑ Cannot refuse to rent to families with children under six because there is or may be lead paint in a unit
 - ❑ Cannot steer families with children under six because there is or may be lead paint in a unit
 - ❑ Cannot ask a family with children under six if there are children under six
 - ❑ **MUST** delead if a family with children under six wants to move into the unit
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Is the Behavior Covered—Familial Status

- Disparate impact
 - Neutral rule that has a disparate impact (greater effect) on members of a protected class
 - Occupancy standards
 - Example—two people per bedroom has a disparate impact on families with children
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Is the Behavior Covered—Familial Status

- Occupancy standards—better to use square footage of the unit
 - For example, State Building Code Occupancy Standards
 - 150 for one person
 - 100 for each additional person
 - Rooms used for sleeping purposes—70 square feet for one person; 50 square feet if more than one person
 - Measure habitable space
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Is the Person Covered—Disability

Three definitions:

- Physical or mental impairment that substantially limits one or more life functions
 - A record of having such an impairment
 - Someone who is considered by others to have such an impairment
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Is the Person Covered--Disability, cont'd

- Physical or mental “impairment”
 - a condition or disease that affects the mind or the body
 - That “substantially” limits
 - for a long period of time or to a great degree
 - One or more “major life functions”
 - walking, talking, breathing, seeing, hearing, self-care, paying bills, etc.
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Is the Person Covered--Disability, cont'd

- Record of having a substantial impairment.
 - E.g. receipt of SSI, SSDI, etc.
 - Considered by others to be disabled.
 - Person in recovery from drug or alcohol abuse is considered disabled.
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Is the Property Covered?

- Disability discrimination
 - Owner-occupied 4-family exempt (federal)
 - Owner-occupied 2-family exempt (state)
 - Property with federal operating subsidies (Section 202, Section 811) have additional obligations
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Is the Behavior Covered—Disability

- Cannot refuse to rent or sell to a person because she is disabled or because a member of her household is disabled.
 - Cannot have different rules for people who are disabled than for everyone else.
 - Cannot steer people who are disabled.
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Differential Treatment--Disability

- For purposes of the fair housing laws, differential treatment is a failure to make a reasonable accommodation.
 - Reasonable accommodation is a change in a rule, policy, or practice.
 - Does not cost money.
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Is the Person Covered—Disability

- Person is a threat to the health or safety of others.
 - Do not have to make a reasonable accommodation.
 - Must have evidence this person is a threat to the health of safety of others
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Is the Behavior Covered—Disability

- Everyone involved in a real estate transaction must make “reasonable accommodations”
 - Changes in rules, policies or practices.
 - Reasonable—unless it creates a fundamental alteration in the business of the housing owner/manager.
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Is the Behavior Covered—Disability

- How to request a reasonable accommodation
 - Does not have to be in writing.
 - If in writing, can get a description of the limitation (e.g. cannot walk more than 75 feet) and a description of the change in rule, policy or practice.
 - Change must be necessary for the person to live in the housing unit.
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Is the Behavior Covered—Disability

- For purposes of the fair housing laws, differential treatment is a failure to make a reasonable modification.
 - Reasonable modifications mean money—building a ramp, widening a doorway, etc.
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Is the Behavior Covered—Disability

- Who has to make modifications?
 - Owners of housing with federal operating subsidies must make modifications.
 - Owners who do not have federal operating subsidies must permit tenants to make modifications at their own expense.
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Is the Behavior Covered—Disability

- “Reasonable” Modifications

- Look at cost to the owner v. usability to the tenant.
- Bottom line, profit/loss, is not the only consideration.



Disparate Treatment--Disability

- For purposes of the fair housing laws, failure to construct covered multi-family housing built for first occupancy after March of 1991 in accordance with the accessibility requirements of the fair housing laws shall be considered discrimination.
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Accessibility Requirements

- Covered multi-family units—
 - All dwelling units in buildings containing four or more dwelling units if the buildings have one or more elevators AND
 - All ground floor units in other buildings containing four or more units, without an elevator.
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Is the Person Covered—Conn. Fair Housing Act

- Marital Status
 - Does not protect an unmarried unrelated man and woman
 - Sexual Orientation
 - Age
 - Lawful Source of Income
 - Gender identity or expression
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Is the Property Covered?

- Marital status
 - Not covered--Owner-occupied 2 family
 - Sexual orientation
 - Not covered--Owner-occupied 4 family
 - Age
 - Not covered--Owner-occupied 2 family
 - Lawful source of income
 - Not covered--Owner-occupied 2 family
 - Gender identity or expression
 - Not covered--Owner-occupied 2 family
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FAIR HOUSING UPDATES

Fair housing and criminal records

- HUD guidance—In 2016, HUD’s Office of General Counsel issued guidance on fair housing and criminal records
 - https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf
 - People of color are arrested, convicted, and incarcerated at rates at much higher at rates disproportionate to their share of the general population
 - Having a rule which automatically disqualifies people based on criminal records has a disparate impact on people of color
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The fair housing laws and criminal records

- Using disparate impact analysis—does criminal record policy survive scrutiny
 - No, if criminal record policy is based on arrests because arrests do not show proof of anything
 - Possibly, if policy is based on a conviction
 - Even if policy is based on convictions cannot have a blanket prohibition based on criminal record, must have a more individualized assessment
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The fair housing laws and criminal records

- Policy must distinguish between criminal conduct that indicates a demonstrable risk to resident safety and conduct that does not
 - To determine if criminal record is relevant
 - Delay consideration of the criminal record until after other screening criteria are used
 - Analyze nature of the criminal conduct, length of time since the conviction/age of person when convicted, and conduct since conviction
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The fair housing laws and refugee or immigration status

- Civil Rights Act of 1866
 - Prohibits race discrimination in contracting
 - Race is interpreted broadly to include national origin
 - Applies to both citizens and non-citizens
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The fair housing laws and refugee or immigration status

- State and federal fair housing laws
 - Includes national origin
 - Connecticut includes ancestry
 - Refugees and non-citizens covered by national origin and ancestry protections
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The fair housing laws and refugee or immigration status

- Behavior covered—
 - Cannot refuse to rent because person is a refugee or immigrant
 - Cannot refuse to rent because person is not a U.S. citizen
 - Mixed households in federal public housing
 - Cannot ask about legal status unless is federally subsidized
 - Cannot request proof of legal status unless everyone is asked for proof of legal status
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The fair housing laws and refugee or immigration status

- Behavior covered
 - Cannot have different terms and conditions
 - Cannot steer based on refugee or immigration status
 - Different rules or regulations
 - No discriminatory statements
 - Provide protection to people from harassment
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The fair housing laws and religion

- Person covered—people of all religious faiths are covered
 - Is the property covered—all state and federally subsidized properties are covered
 - Exemption for religious organizations from state and federal fair housing laws
 - Must be owned or operated for a non-commercial purpose, i.e. not charging rent or making money
 - Must only rent to people of the same religion
 - Not applicable to religions that restrict participation based in race, color, or national origin
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The fair housing laws and religion

■ Covered behavior

- Cannot treat people differently because of religion
 - Cannot refuse to rent because of person's religion
 - Cannot ask person to identify their religion
 - Cannot ask someone to remove their hijab, burka, keffiyeh, kippah, etc.
 - Cannot threaten or harass someone because of their religion
 - Must protect someone from religious harassment or threats
 - Must accommodate religious rules, e.g. women not allowed to be alone with a man
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Gender Identity or Expression

- Definition:

- A person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth
 - Does not require that a person undergo gender reassignment surgery
 - Gender identity can be shown by providing evidence:
 - medical history, care, or treatment of the gender-related identity, or
 - consistent and uniform assertion of the gender-related identity, or
 - any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose
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Gender Identity or Expression

- Covered property—all state and federally subsidized housing is covered including shelters
 - Covered behavior
 - Cannot refuse to rent because gender identity does not match gender on birth certificate or other official documents
 - Cannot force someone to use gender on birth certificate
 - Cannot force someone to use name on birth certificate
 - Shelters—must permit person choose shelter based on gender identity, not gender assigned at birth
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BREAK 15 MINUTES

PARTICIPANT SELECTION METHODOLOGY

Covered State Housing Programs

- State subsidized housing programs
 - CDBG Small Cities Program
 - FLEX
 - HOME (state administered federal funds)
 - Housing Trust Fund
 - Rental Housing for the Elderly
 - Congregate Housing for the Elderly
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Covered State Housing Programs

- State subsidized housing programs (cont'd)
 - Moderate Rental Housing (including Section 8 moderate rehab and MRD)
 - Affordable (Low Income) Housing
 - Limited Equity Cooperatives
 - Mutual Housing
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Covered State Housing Programs

- State subsidized housing programs (cont'd)
 - CHAMP
 - IDASH
 - Homeless Prevention and Response Fund
 - State-sponsored Housing Portfolio
 - Housing Innovations-Homeless Youth
 - Just in Time Funding
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Covered Housing Programs

- Federally subsidized housing
 - 811
 - 202
 - Section 8 moderate rehab properties
 - USDA subsidized projects
 - Housing choice vouchers
 - Not covered—LIHTC
 - But, LIHTC operators must comply with the fair housing laws
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Participant selection v. participant screening

- Participant selection—who qualifies to get into housing or on waiting list
 - Controlled by regulation
 - Participant screening—how to decide if someone meets selection criteria
 - Should be in administrative plan or ACOP
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Selection Policy Components

- Should be in writing
 - Procedure for accepting applicants
 - Procedure for screening applicants
 - Fair housing requirements
 - When applicants may be rejected
 - Procedures for selecting applicants from the waiting list
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State Selection Methodology

- Con. Agencies Regs. §8-37ee-305
 - State law requires the use of a point system or random lottery
 - Cannot use first come, first served
 - Must give reasonable accommodations in a meaningful way
 - Must have grievance procedures for those denied
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State Point System

- Substandard housing (25 point maximum)
 - Condemned or verified serious housing code violations—25 points
 - Inadequate heating, plumbing or cooking facilities (20 points)
 - Living situation (25 point maximum)
 - Living in documented physically or emotionally abusive situation (25 points)
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State Point System, cont'd

- Living situation, cont'd
 - Living in temporary housing with others because of conditions beyond applicant's control (20 points)
 - Living in overcrowded conditions in own housing unit (15 points)
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State Point System, cont'd

- Income/rent ratio (15 point maximum)
 - Currently paying more than 50% of income for rent/housing (15 points)
 - Currently paying between 31-50% of income for rent/housing (10 points)
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State Point System, cont'd

- Optional points
 - Resident (10 points)
 - If give points for residency, must give an equal number of points for those least likely to apply (10 points)
 - HUD has asked DOH to review the Optional Points
 - Can alter point system with approval from CHFA if it complies with fair housing goals.
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State Point System, cont'd

- Tie score and a limited number of units:
 - Use random selection method; or
 - First come, first served (chronological order);
 - Order waiting list first by points, then within each point, by date application was submitted;
 - If one of the people in a tie needs an accessible unit and an accessible unit is available, person who needs the accessible units should get unit.
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State Selection Methodology

■ Lottery

- ❑ Must determine income eligibility of all applicants;
 - ❑ May pre-screen for credit worthiness, etc.;
 - ❑ Put all applicants who have no grounds for disqualification in the pool and choose by lottery.
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State Selection Methodology

- Waiting list is open all the time
 - Order people using point system or lottery
 - Choose order of people on waiting list at a set period of time, e.g. monthly, quarterly, etc.
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Why not use first come, first served?

- Disadvantages members of the protected classes
 - People with disabilities
 - Families with children
 - People who are elderly
 - People who may not be able to get out on a particular day for religious reasons
 - Weather may play a role in who gets and submits an application
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Federal Selection Methodology

- Must have tenant plan and selection policy in writing in administrative plan or Admission and Continued Occupancy Policy (ACOP)
 - Application site must be accessible to people who are disabled and elderly
 - Must make reasonable accommodations
 - Can use first come, first served if this accommodates people who are elderly, disabled, families with children, and other members of protected classes
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Illegal participant selection policies

- Must have legal status
 - Mixed households
 - Capable of living independently
 - No criminal record
 - Residency requirement
 - Residency preference—possibly
 - Preference for working families
 - Preference for veterans-possibly
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PARTICIPANT SCREENING POLICIES

Participant selection v. participant screening

- Participant selection—who qualifies to get into housing or on waiting list
 - Controlled by regulation
 - Participant screening—how to decide if someone meets selection criteria
 - Should be in administrative plan or ACOP
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Screening policy components

- Must be in writing
 - Demonstrated ability to pay rent on time
 - Housing keeping habits based on visits to the applicant's current residence (problematic)
 - Comments from former landlords
 - Credit checks
 - Occupant selection list subdivided by the number of units available and bedroom size (problematic)
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Participant Screening

- Have it in writing, make it available to applicants, be consistent
 - Specify when screening will take place
 - At time of application or when name comes up on waiting list
 - What will happen during screening
 - Income eligibility—what verification is necessary
 - Categorical eligibility—elderly, disabled, families, etc.
 - Credit history—what is considered bad credit
 - Landlord references
-

Participant Screening

- Other criteria that housing providers have used
 - ❑ Inspection of current residence
 - ❑ Drug testing
 - ❑ In-person interview
 - ❑ All applicants over 18 must be screened
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Denial of admission

■ Due process

- ❑ Must be notified of reasons in writing and give the right to a hearing
 - ❑ If denied because of credit must give notice of which company did the credit screening, must state problems with credit
 - ❑ At hearing must give person a chance to address reasons for denial
 - ❑ Must allow participant to ask for a reasonable accommodation at the hearing even if reasonable accommodation not previously requested
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Waiting Lists—Opening State and Federal Lists

- Use AFHMP to market opening
 - Keep records of how opening was marketed
 - Keep records of requests for RA and how RA was granted
 - Best if application requests information about how applicant learned of waiting list opening
 - First come, first served may violate the fair housing laws
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Waiting Lists—Opening State and Federal Lists

- Problematic practices

- ❑ All applications must be submitted on-line
 - ❑ Must come into HA or rental office to apply
 - ❑ Must appear in person to get an application or drop off an application
 - ❑ Must show green card or proof of citizenship to get an application
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Purging a Waiting List

- Once a year notify all people on waiting list of request to verify information and consequences of not replying;
 - After expiration of response period, can purge people who did not respond from waiting list;
 - Must have grievance policy included in the notice;
 - Reasonable accommodations.
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Common Mistakes

■ No Tenant Selection Policies

- ❑ 67% of more than 4,000 units in Hartford MSA have no screening policies
 - ❑ Tenant screening policies created before 1990 when the laws changed
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EXERCISES

Instructions

- Review participant selection and screening policies.
 - Determine if any violate the fair housing laws.
 - Determine if they are complete.
 - Rewrite and correct as necessary.
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Selection Policy Components

- Should be in writing
 - Procedure for accepting applicants
 - Procedure for screening applicants
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 - When applicants may be rejected
 - Procedures for selecting applicants from the waiting list
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