

## Fair Housing Sexual Harassment

*Presented by  
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## Tangible Costs

- Liability Insurance Premiums
- Settlement Costs
- Average Jury Award: \$1,000,000
- Winning plaintiffs entitled to: back pay, front pay, damages for injury including emotional distress, punitive damages, attorneys fees/costs
- Average cost of defense against lawsuit is \$200,000 to \$300,000
- Individual liability (assault, rape, etc.)



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## What is Sexual Harassment?

- Title VII of the Civil Rights Act of 1964, as amended, made it illegal to discriminate against individuals based upon race, color, religion, sex, or national origin
- Sexual Harassment is considered to be sexual discrimination

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## Sexual Harassment in Housing

- Courts have held that the Fair Housing Act's prohibition on sex discrimination parallels prohibitions under Title VII.
- Courts follow the established Title VII analysis and recognize both "Quid Pro Quo" and "Hostile Environment" forms of discrimination.
- HUD regulations specifically prohibit sexual harassment and bullying.



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## EEOC & Fair Housing Act Definition

- **Unwelcome** sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

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## Two Kinds of Sexual Harassment

1. Quid Pro Quo
2. Hostile Environment

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### Quid Pro Quo – Employment

#### “This for That”

Unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexual nature which explicitly or implicitly is made a term or condition of an individual’s employment, or making submission to or rejection of such conduct, explicitly or implicitly, the basis for employment decisions.

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### Quid Pro Quo – Housing

#### “This for That”

When a housing provider or employee, agent, or contractor of a housing provider conditions access to or retention of housing or services on a victim’s submission to sexual conduct of any nature.

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### Standard of Liability

- Two major factors determine liability regarding Hostile Environment
  - The PHA “knew or should have known” about the harassment
  - The PHA failed to take appropriate corrective action
- Claims can be filed even if the alleged victim did not experience the loss of housing or tangible economic loss

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### Hostile Environment Behavior

- Repeated sexual innuendo, obscene/off-color jokes, slurs, lewd remarks and language/offensive comments
- Sexual content in faxes, letters, notes, text, e-mail, graffiti
- Sexual propositions, insults, and threats
- Sexually-oriented demeaning names



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### Hostile Environment Behavior

- Persistent unwanted sexual/romantic overtures/attention
- Leering, whistling, sexually suggestive sounds/gestures
- Display of pornographic pictures/calendars/ cartoons/etc.



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### Hostile Environment Behavior

- Coerced or unwelcome touching
  - patting, brushing against, pinching, stroking, massaging, squeezing, fondling, or tickling
- Subtle or overt pressure for sexual favors



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## Liability

- If a PHA has knowledge of harassment and fails to correct it, the PHA can be held liable for the creation of a hostile environment by:
  - Supervisors
  - Non-Supervisory Personnel
  - Vendors/Contractors
  - Applicants
  - Tenants
  - Landlords



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## Liability - Housing

- The PHA or Property Owner may be held directly liable if an Owner or Manager:
  - Engages in sexual harassment;
  - Directs employees, agents or contractors to engage in sexual harassment; or
  - Knows or should have known about sexual harassment but fails to take action to stop it.

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## Liability - Housing

- The PHA or Property Owner may be held vicariously liable:
  - For the acts of employees or agents regardless of whether they knew of or intended wrongful conduct, or if they were negligent in failing to prevent it from occurring.
  - For tenant-on-tenant harassment when they did not take remedial action.

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### Sexual Harassment in Housing

- Examples in recent PH Consent Decrees:
  - Entering homes without permission or notice
  - Conditioning tangible housing benefits in exchange for sexual acts
  - Coercing female tenants to engage in unwelcome sexual acts
  - Exposing one's body in a sexual manner

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### Sexual Harassment in Housing

- Making unwelcome sexual comments, unwelcome sexual gestures, and unwelcome sexual advances to female tenants
- Sending unwelcome sexual text messages to female tenants
- Taking or threatening to take adverse actions against those who objected to and/or would not continue to grant sexual favors

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### Sexual Harassment in Housing

- Sending police to homes of those objecting to sexual advances
- Receiving complaints and failing to take appropriate steps to remedy or stop it
- Failing to maintain or repair units based on sexual harassment complaints
- Providing negative tenant references because the tenant filed a complaint with HUD

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### Sexual Harassment in Housing

- Examples in HCVP Consent Decrees:
  - Making unwelcome sexual comments and advances to applicants and participants, including subjecting them to sexual touching
  - Touching themselves in a sexual manner and exposing their genitals in the presence of female applicants and participants

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### Sexual Harassment in Housing

- Conditioning or offering tangible housing benefits in exchange for sexual acts;
  - Advancing them on the HCVP Waiting List
  - Increasing HCVP benefits
- Taking or threatening adverse housing action against those who did not grant or would not continue to grant sexual favors

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### FAQs

- Must sexual harassment be motivated by sexual desire in order to violate the FHA?
  - No, sexual harassment could be motivated by hostility
- Is it a violation of the FHA when a woman harasses a man or another woman?
  - Yes, it is a violation for a female property manager, agent, employee or contractor to sexually harass a male or same sex applicant, tenant, resident or co-worker.

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**FAQs**

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• Can a property manager be held liable for the actions of individuals who work for him or her?

- Yes
- Directly – when he or she can be held directly or vicariously liable if he/she knew about the action or should have known about the action and did nothing to stop it.
- Vicariously – for acts committed by employees or agents within the scope of the agency relationship.
  - For example: a manager authorized a maintenance worker to enter a tenant's home to make a repair, and the worker harasses the tenant.

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**FAQs**

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• Can a property manager be held liable if a tenant sexually harasses another tenant?

- Yes, if he/she knew of tenant-on-tenant harassment and did not take remedial action.

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**FAQs**

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• What can a manager do if an applicant, resident or tenant accuses him or one of his employees or contractors or another tenant or resident of sexual harassment or bullying?

- Take steps to stop any harassment that may be occurring, including disciplining or discharging the employee or contractor, or evicting the harasser.
- Must avoid retaliation against the person making the complaint.

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## **You Receive a Complaint**



**What do you do now?**

**How do you do it?**



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## **First Things First - Housing**

- Consult with an attorney.
- Take appropriate steps to stop any harassment that *may be* occurring.
  - Discipline or discharge the employee or contractor
  - Evict the harassing tenant
- Do not retaliate in any way under any circumstances
- Keep records separate from tenant file.

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## **Planning the Investigation**

- Determine who should conduct the investigation
- Set up interview of accused and third-party witnesses
- Set up secure, confidential investigation file
- Review Policies and Procedures

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### Step 1. Use Your Head

- Remain neutral
  - Make no judgement
  - Control your facial expression and tone of voice
- Clearly identify each issue and concept presented
- Accurately gather all relevant facts
- Confirm that the Complainant believes the Agency will investigate objectively and fairly
- Do **NOT** guarantee absolute confidentiality

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### Step 2. Take Immediate Action

- Ignoring the complaint now will only result in trouble and loss of money later on.
- When do you become responsible for taking action?
  - When you receive a complaint; or
  - When you know about *or* should have known about the harassment.

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### Step 3. Due Process

- The PHA investigation is not subject to the same legal policies as required of a Court of Law.
- There are still practical rights.
  - Everyone should be given an opportunity to have their say.
  - If it goes to litigation, you must show that your investigation and handling of the matter was fair and evenhanded for all concerned.

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### Step 3. Conduct the Investigation

#### Interviewing

- The Complainant
- The Alleged Harasser
- All Witnesses



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### Interview the Complainant and Any Witnesses

- Interview one person at a time.
- Speak first with the person claiming harassment.
- Conduct interviews in private
  - It is always best to use 2 investigators
  - Take detailed notes – One investigator should ask the questions while the other records the interview.

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### Interview the Complainant and Any Witnesses

- Be specific in your questions
  - Dates and times
  - Locations
  - What was said or done
  - Who else was present
- Collect
  - Related emails
  - Voicemails
  - Other evidence that's documented

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### Step 5. Interviewed the Accused

- Do not prejudge.
- Allow him/her to explain his/her version of events.
- Depending on the allegation, you may or may not have to divulge who made the complaint.
- Collect any documentation he/she has to support his/her statements.

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### Step 6. Decision Making Time

- The person(s) who conducted the investigation should meet with Human Resources or confer with legal counsel at this point.
- Limit involvement of all others to a minimum.

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### The Investigation Report

- Draft a thorough, even-handed report
  - Chronological
  - Describe how/when you first learned of issue
  - Provide exact details of the complaint
  - List the documents reviewed
  - Describe the interviews
  - Distinguish between firsthand and knowledge and rumor
  - State conclusions and provide justification

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### The Investigation Report *cont.*

- If sexual harassment occurred, recommend corrective action, which should:
  - Be reasonably calculated to prevent further harassment;
  - Not punish the victim; and
  - Be consist with past discipline in similar situations.
- Ensure no more incidents through follow-up with employee
  - Document!

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### Step 7. Investigation is Inconclusive

- You may want to issue a private written memorandum to the accused stating that:
  - The PHA was unable to determine whether there was a violation of policy,
  - he or she nevertheless placed himself/herself in a position where an appearance of impropriety was created (although not proven),
  - reiterating the PHA's policy against harassment and against the types of activities described by the complaining party, and
  - making clear that such activities, if proven in the future, will not be tolerated.
- Couch everything in terms of enforcement of the PHA's policies, not in terms of violating a law.

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### Step 7. Investigation is Inconclusive

- Meet with the complainant,
  - explain what was done in the investigation,
  - the results of the investigation, and
  - advise that a memorandum was issued.
- Place all copies of memos, investigation notes, etc, in a separate file and keep it under lock and key.

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### Step 8. Taking Action Against the Violator

- Two suggestions if an **employee** is the violator:
  1. Terminate the accused.
    - Keep in mind that termination may subject you to a suit by the accused for intentional infliction of emotional distress , or for defamation (if you let word leak out as to the nature of the investigation or why the employee was terminated.
    - The penalty should fit the crime. Be careful.
  2. Provide a strongly written warning to the accused, indicating that the actions were inappropriate and that a proven reoccurrence will lead to further disciplinary action, including termination.

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### Step 8: Taking Action Against the Violator

- If a **resident, applicant or program participant** is the violator:
  1. Terminate their assistance
    - First check to be sure that harassment is listed in the lease as grounds for termination.
    - Otherwise, rely on the lease clause prohibiting interfering with the peaceful enjoyment of the premises by others.
  2. Provide a strongly written warning to the accused, indicating that the actions were inappropriate and that a proven reoccurrence will lead to termination of assistance.

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### Step 8: Taking Action Against the Violator

- If a **HCVP Landlord** is the violator:
  1. Terminate their HAP contract for the unit occupied by the victim and any other HAP contracts they may have with your PHA as they are in violation of the Fair Housing Act provisions of the contract.
    - Issue the victim a voucher to move.
  2. Provide a strongly written warning to the accused, indicating that the actions were inappropriate and that a proven reoccurrence will lead to termination of all HAP contracts.

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### Step 9. Transfer, Easy Fix

- If the complainant and the violator both live in public housing, you may consider transferring the violator.
  - If you transfer the complaining party, such may be viewed as having the effect of a form of retaliation.
  - You should first ask the complainant if he/she would like a transfer to help remedy the situation and carefully consider his/her response.

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### Step 10. Loose Lips Sink Ships

- After the investigation and the discipline, if any, you should remind all individuals with knowledge of the allegations:
  - that this information is confidential,
  - that it is not to be disclosed, and
  - that disclosure of it may lead to their discipline up to and including termination.

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### 11. Preventive Actions

- Educate supervisors, employees, landlords, and program participants on the various forms of harassment - sexual harassment, hostile environment harassment, and bullying.
- Staff should be advised of the "do's and don'ts" of sexual harassment and hostile environment harassment.
- They should be informed that they can be held personally liable for allowing or tolerating harassment that they knew about or should have known about.

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### 12. Adopt and Enforce Harassment Policies

- The failure to develop, communicate and enforce policies against harassment deprives the PHA of an important defense.

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### Adopt and Enforce Harassment Policies

- Establish written sexual harassment policies in ACOP and Admin Plan that set up a confidential complaint procedure
- Include clause in Dwelling Lease that harassment (both sexual and racial) is a material violation of the lease and subject to termination of assistance and eviction
- Emphasize Fair Housing obligations to Landlords through notices or briefings

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### Adopt and Enforce Harassment Policies

- If complaint is made, conduct prompt, thorough, impartial investigation.
- Respond to all complaints.
- If policy violations found, take swift corrective action to prevent further harassment
- Communicate investigation results confidentially.
- Follow-up with Complainant and Offender and document follow-up.

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