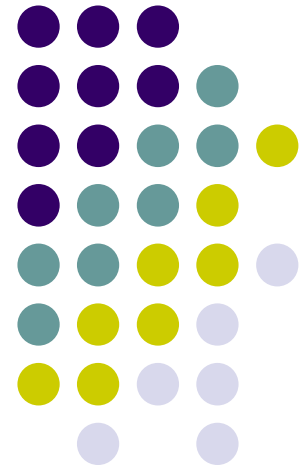
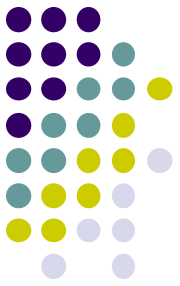


Fair Housing Considerations

National Community Development
Association Conference
October 17, 2019

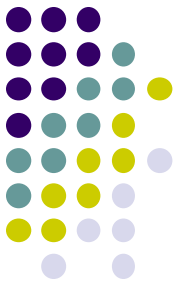


The Fair Housing Act – Title VIII of the Civil Rights Act of 1968



- Federally Protected Categories:
 - Race
 - Color
 - National Origin
 - Religion
 - Sex
 - Familial Status (families with children)
 - Handicap

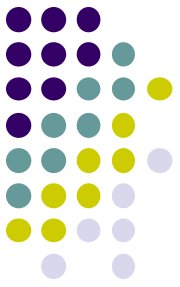
The Massachusetts Fair Housing Act, M.G.L. Chapter 151B, §1



- Additional Protected Categories in Massachusetts:
 - Marital status
 - Age
 - Sexual Orientation
 - Gender Identity and Expression
 - Military or Veteran Status
 - Ancestry
 - Public Assistance
 - Housing Subsidies or Rental Assistance
 - Genetic Information
 - Protections also for victims of DV, rape, stalking

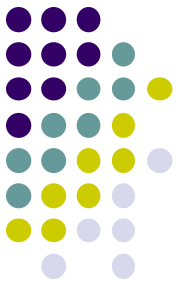
Connecticut Fair Housing Laws

Con.Gen.Stat. 46a-64c



- Additional Protected Categories in Connecticut
 - Marital Status (except an unmarried unrelated man and woman)
 - Age (except minors)
 - Lawful Source of Income
 - Sexual Orientation
 - Gender Identity and Expression
 - Ancestry

Rhode Island Fair Housing Laws.



Additional Protected categories in Rhode Island

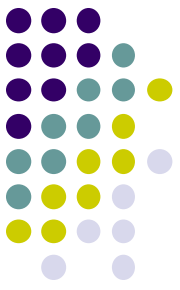
- Marital status
- Age
- Sexual orientation
- Gender identity or expression
- Military status
- Status as a victim of domestic violence

Vermont Fair Housing Laws: 9 V.S.A. § 4503



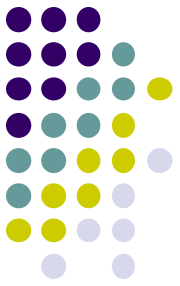
- Additional Protected categories in Vermont
 - Sexual Orientation
 - Gender Identity
 - Age
 - Marital Status
 - Recipient of Public Assistance
 - (Vermont explicitly protects against discrimination in land use decisions.)
 - Victim of abuse, sexual assault, or stalking

Putting Them Together: All Protected Categories Under Federal and (for example) MA State Fair Housing Laws



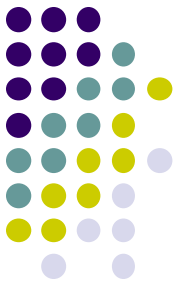
- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Marital Status
- Handicap
- Age
- Sexual Orientation
- Gender Identity and Expression
- Military/Veteran Status
- Ancestry
- Public Assistance
- Housing Subsidies
- Genetic Information

With a protected category you can't...



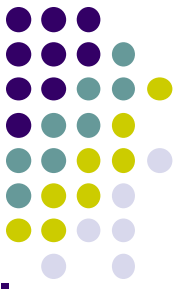
- Refuse to rent based on the fact someone falls into that category
- Place an ad that indicates intent to discriminate
- Make a discriminatory statements
- Create different terms or conditions
- Enquire about the category – “Are you of the Druid persuasion?”
 - Implications of unintentional violation.
- “Steer” the individual by only showing them apartments where others “of their kind” live

What Constitutes Discrimination?

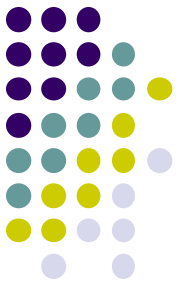


- To have a valid charge of discrimination there must be:
 - An act
 - An injury or harm suffered
 - Connection to a protected class

Exceptions



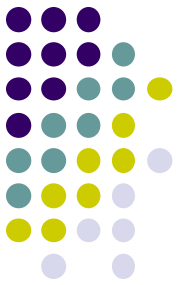
- All properties are covered under both federal and state fair housing laws
 - Federal exceptions – e.g. sometimes owner-occupied/NPO four family
- State may have more-limited exceptions (e.g. Massachusetts):
 - Owner-occupied/NPO two family (sometimes)
 - RE children: Property with three apartments or less, one of which is occupied by an elderly or infirm person for whom the presence of children would be a hardship



No exemptions

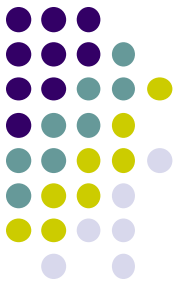
- No exemption for race or national origin
 - a separate federal civil rights statute applies
- No exemption for receipt of public assistance, rental assistance, or housing subsidy program (Massachusetts)
- There may also be no exemption for sex, age and disability (in Massachusetts under the Mass. Equal Rights Act)
- All advertisements and statements are subject to state and federal fair housing laws with no exemptions

Harassment & hate crimes:



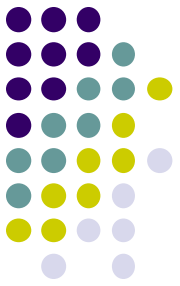
- Landlords may have a duty to affirmatively act to protect tenants against hate crimes.
 - Investigate...

Disability – Who is covered?



- Persons who have a physical or mental impairment that substantially limits one or more major life activities
 - Caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working...
- Persons who have a history of such an impairment; or
- Persons who are regarded as having such an impairment.
- Need for PCA

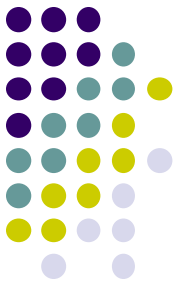
Disability – Who is not covered?



- Persons currently engaged in illegal drug use
- Sex offenders
- Persons whose tenancy would constitute a “direct threat” to the health and safety of other individuals, unless a reasonable accommodation would eliminate the threat

Documentation can be requested if the disability isn't obvious...

But the landlord can't require the use of any particular form or inquire as to the nature of the disability.



Reasonable Accommodation/Modification Disability Verification Form

Name: _____
Address: _____
Phone: _____

The person named above has a disability defined as a **physical or mental impairment that substantially limits one or more major life activities**. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, operation of muscular skeletal system, seeing, learning working, breathing, speaking and hearing.

The impairment is:

- Physical (specify): _____
 Mental (specify): _____
 Both (specify): _____

The major life activity substantially limited is: *(check all that apply)*

- Caring for oneself Seeing Breathing
 Performing manual tasks Learning Speaking
 Walking Working Hearing
 Operation of muscular skeletal system Other *(please specify)* _____

In my opinion, allowing _____ to _____
Name Accommodation/Modification to be granted
_____ is a reasonable accommodation/modification of her/his

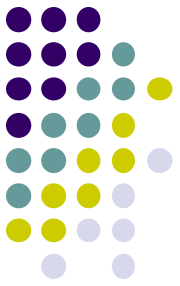
disability that provides her/him with an equal opportunity to use and enjoy her/his housing

because: _____

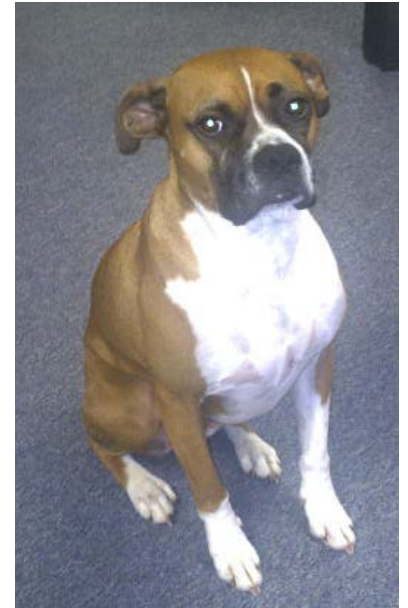
Signed: _____

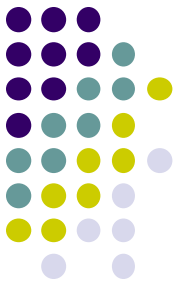
Printed Name: _____ Date: _____

Reasonable Accommodations



- A change in rules, policies, practices, or services to afford equal opportunity to use and enjoy dwelling
- Housing providers **must** make reasonable accommodations for persons with disabilities **when** requested at expense of landlord
 - i.e. designated parking spots, permission to have an assistance animal, or permission to transfer to a larger unit
- Not required to make changes that would fundamentally alter the nature of the program and/or create an undue financial or administrative burden
- ***Can be requested at any time – in any way or format***



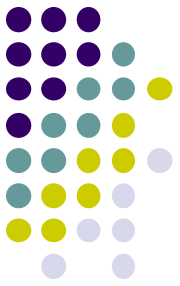


Physical Modifications



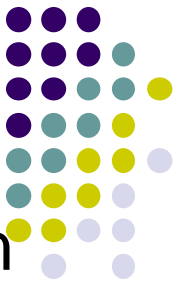
- Housing providers **must** allow persons with disabilities to make reasonable modifications
- Structural modifications are made to allow persons with disabilities the full enjoyment of the housing and related facilities
 - i.e. install a ramp into a building, lower entry threshold of a unit, install grab bars in bathroom
- Expense on tenant unless it is publicly funded housing or a building w/ 10 or more units, then landlord must pay

Program Modifications



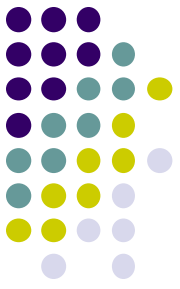
- Examples

The Interactive Process:

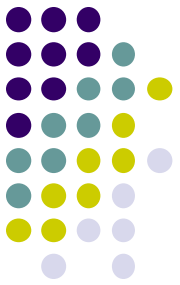


- Once the request for a reasonable accommodation has been made:
 - Would making that RA place “an undue financial or administrative burden” on the party from whom it is being requested?
 - If the party from whom the RA is being requested feels that it would, s/he should not simply deny it. Rather, s/he should initiate an **Interactive Process** to determine what, if any, accommodation might be more realistically provided.
 - **Clarify:** What are the **actual** difficulties with the RA that is being requested?
 - What **alternative accommodations** might **meet the needs** of the individual requesting the RA?
 - Commitment to **collaboration, good faith and creativity.**

Language Access Plan (LAP)



- Language can be a significant barrier to access!
- Each agency receiving federal funds must draft and implement a **Language Access Plan (LAP)** to assure access of **Limited English Proficiency (LEP) individuals** to its programs. Submit LAP to DHCD.
- The **LAP** applies to all agency programs.



LEP Defined

- Individuals with **Limited English Proficiency (LEP)** are defined as those “who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.” (*From: Federal Limited English Proficiency website.*)

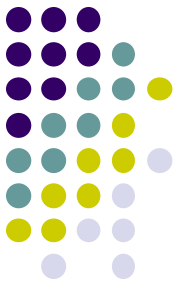


Basic LAP Components:

- **Agencies, municipalities, larger housing providers and individual landlords.**
- **Client notification of LEP rights.**
 - Signage in lobby.
 - Notification when “Vital Documents” are sent out.
 - Message line.
 - TTY/Video Remote Interpreting for hearing impaired.
 - **There is a duty to inform people of their LEP rights.**
- **Translation vs. interpretation as defined *for the purposes of the LAP*:**
- **Translation** is defined in the LAP as: *“rendering (a) document as faithfully as possible into the LEP language in written form.”*
- **Interpretation** is defined in the LAP as: *“the act of communicating and explaining the content of a document or conversation in an LEP language as clearly as possible, either verbally or in writing.”*

Determining who to serve

Agencies, Programs, Municipalities



- The “Four-Factor Analysis” is used to determine if there is a need for services (agency and program responsibility to determine) and who needs those services:
 - 1. Number or proportion of LEP individuals eligible to be served or likely to be served by the agency.
 - 2. Frequency within which LEP persons come into contact with the agency and its programs, activities or services.
 - 3. Determination of the importance of the service or benefit provided to the LEP individual.
 - 4. Resources available to the agency and the costs associated with those resources.
- Reviewed on a regular basis by the agency and **as needed by programs that serve an LEP-concentrated population.**

LAP Implementation

Typical Key points...



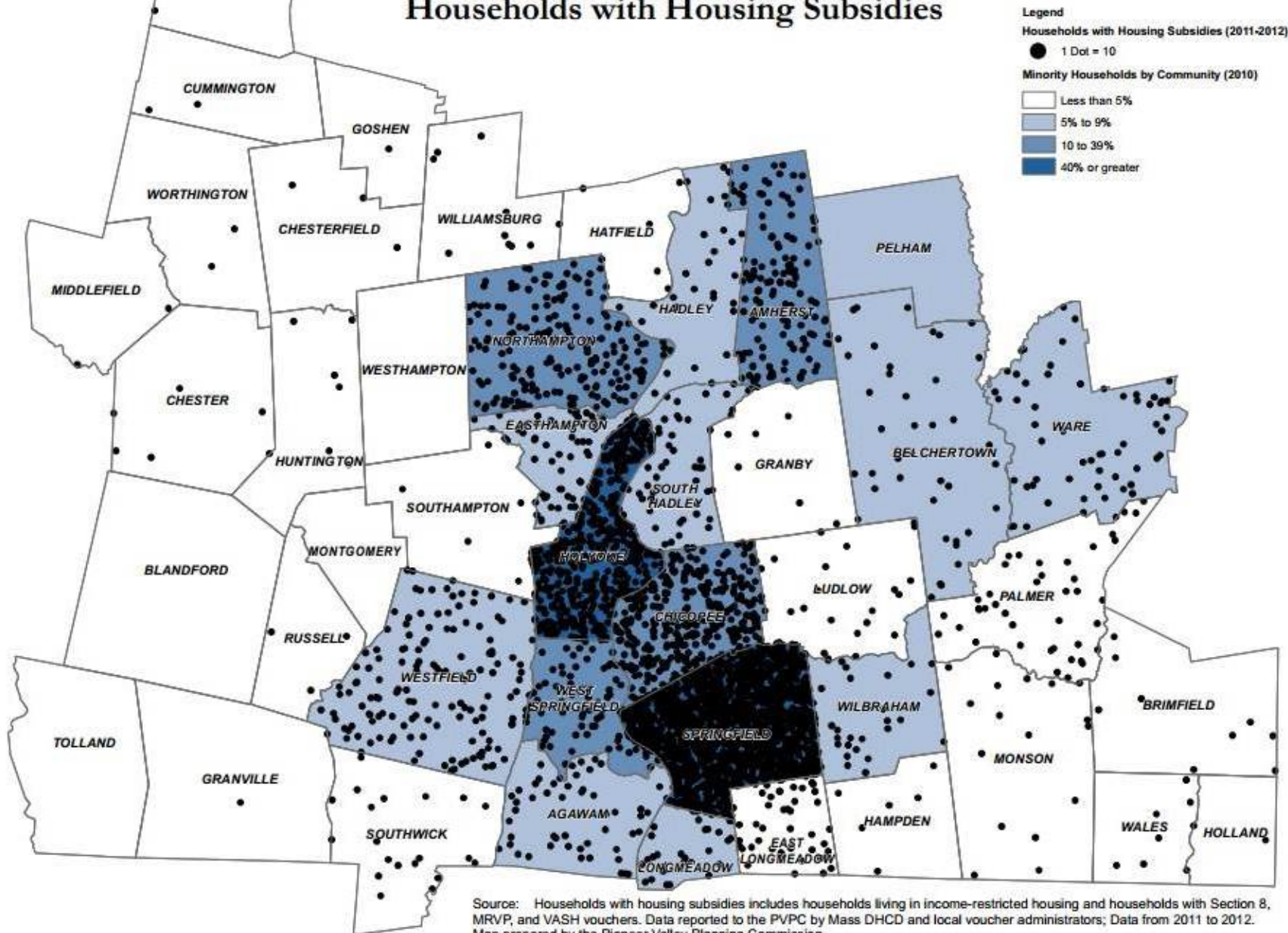
- “I-Speak” cards.
- Signage in lobbies.
- *“This is an important document”* notice with mailings of Vital Documents:
 - *“This is an important document. Please contact (name of agency) at (contact number) for free language assistance”*
- Translation of **Vital Documents (where required)**.
- Free interpretation service for clients.
 - N.b. Check with your attorney. There may still be “Four-Factor Analysis” considerations on what to offer and how to handle it.
 - **In particular, kids should not translate for parents – unless the parents insist.**
 - Hearings – legal implications. Document refusals.
- TTY/Video Relay – TTY (preferred term) number on email signatures & cards.

Recent Example of Disparate Impact



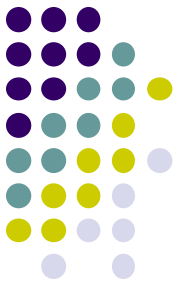
- April 4, 2016, HUD announced a policy change that would affect public and private housing providers
 - Will it change?
- Neutral policy of using criminal history to disqualify applicants can violate the Fair Housing Act if:
- There is a disparate impact on group of persons because of race or national origin
- Is policy necessary to achieve a substantial, legitimate, nondiscriminatory interest
- Is there a less discriminatory alternative?

Households by Minority Status plus Households with Housing Subsidies



Source: Households with housing subsidies includes households living in income-restricted housing and households with Section 8, MRVP, and VASH vouchers. Data reported to the PVPC by Mass DHCD and local voucher administrators; Data from 2011 to 2012. Map prepared by the Pioneer Valley Planning Commission

Thank you



Ashley Grant, Esq.
Massachusetts Fair Housing Center

H. JOHN FISHER
Way Finders