

# An Overview Filled With Updates About the Virginia Fair Housing Law

PAAO Grant Management Workshop  
August 12, 2015

# Pre-session video

- ▶ <https://www.youtube.com/watch?v=WkYfa5lX-nU>

# The Virginia Fair Housing Law



# Who is protected under the Virginia Fair Housing Law?

If you did not say

**EVERYONE,**

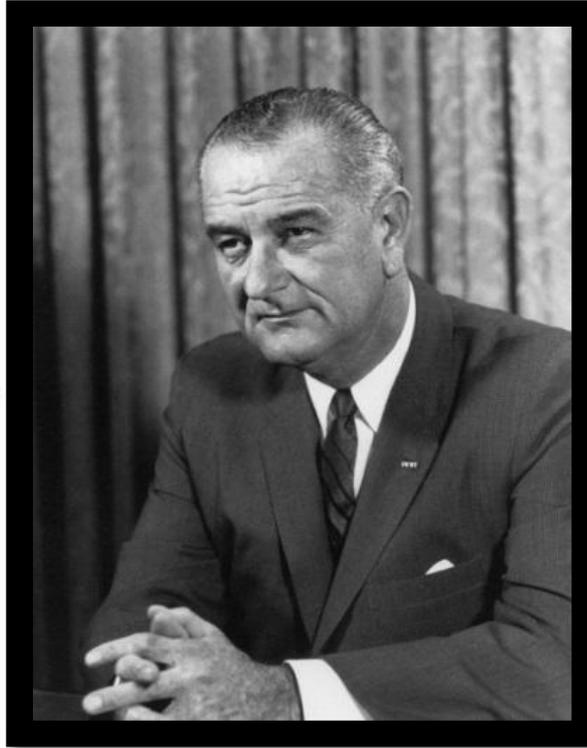
I am very happy that you could join us!



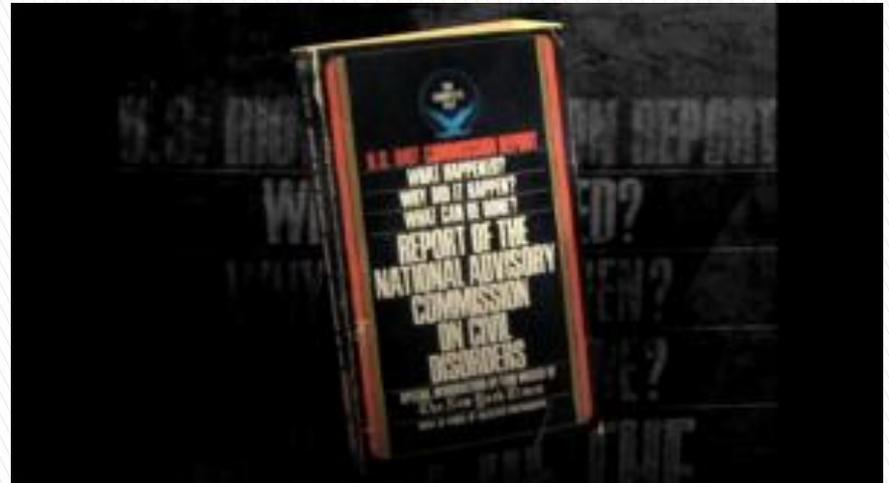
# The history...



# Key players and their roles...



# The Kerner Commission (1967)



**OTTO KERNER**

**THE KERNER REPORT**

# Words that shook the nation...

- ▶ “Segregation and poverty have created in the racial ghetto a destructive environment totally unknown to most white Americans. What white Americans have never fully understood but what the Negro can never forget — is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.”
- 

# The Conclusion of the Members of the Commission

THE KERNER REPORT 1968

"Our nation is moving towards two societies – one white, one black – separate and unequal."



Fred Harris was in the middle of the work of the President's National Advisory Commission on Civil Disorders (Kerner Commission) which Lyndon Johnson appointed after Harris urged it. (1967)

# Martin Luther King Jr.



# NFHA & Nationwide presents...

- ▶ SEVEN DAYS - One Week In 1968 Changes Everything

<https://www.youtube.com/watch?v=0EKo5rBBzpl>

# The Commonwealth of Virginia

The Virginia Fair Housing Law was enacted on April 7, 1972.

Over  
**40** YEARS  
of FAIR HOUSING  
IN VIRGINIA



# The Virginia Fair Housing Law (§ 36.96.1)

It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of

- ▶ race,
- ▶ color,
- ▶ religion,
- ▶ national origin,
- ▶ sex,
- ▶ elderliness,
- ▶ familial status,
- ▶ or handicap,

and to that end to prohibit discriminatory practices with respect to residential housing by **any person or group of persons**, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

# What is a “Protected Class”

The term “**protected class**” is an anti-discrimination term that is used in state and federal law. It refers to a group of people who share a common characteristic and need protection from discrimination and harassment.

# ABOUT THE PROTECTED CLASSES

»» UNDER THE VIRGINIA  
PROTECTED CLASSES

# Protected Classes in Virginia

- ▶ Race
- ▶ Color
- ▶ Sex
- ▶ Religion
- ▶ National Origin
- ▶ Familial Status
- ▶ Handicap, &
- ▶ Elderliness (added to broaden the law)



# RACE

- ▶ A group, tribe, clan sharing common characteristics. In the beginning RACE referred to speakers of a common language. In the new world (the Americas), it was used to refer to physical characteristics.



# COLOR

- ▶ Color refers mainly to the pigmentation or the amounts of melanin in each person, from the darkest brown to the pinkish white shades.



# SEX

- ▶ Sex refers to the range characteristics that pertain to, or differentiates between masculinity and femininity. Gender is another term used to describe this protected class.



# FAMILIAL STATUS

- ▶ Refers to families with children under the age of 18. Those families include:
  - Single parents
  - Adoptive parents
  - Foster parents
  - Grandparents
  - Pregnant women, or
  - Anyone seeking legal custody of a minor



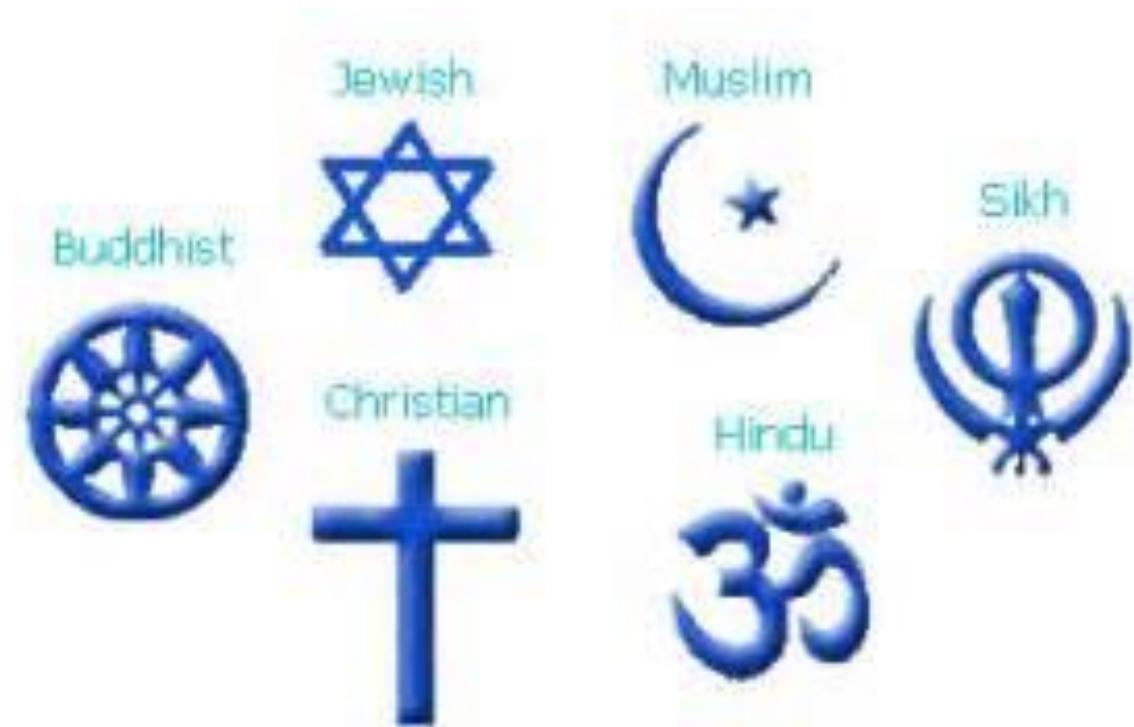
# NATIONAL ORIGIN

- ▶ Refers to an individual or individuals country of birth or in broader terms where his or her ancestors originated from.



# RELIGION

- ▶ Refers to using religion as a basis for qualifying for housing.



# ELDERLINESS

- ▶ Refers to the protection of individuals who have reached the age of 55 or older.



# Exemption

- ▶ A senior community is exempt from renting to families with children in their “Senior” or “Elderly” Communities:
  - 62 and Older Housing
  - 55 and Older Housing



# DISABILITY OR HANDICAP

- ▶ Refers to individuals with mental or physical disabilities to have a choice of housing regardless of their disabilities.



# The Fair Housing Act

“The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability.”

Joint Statement on Reasonable  
Accommodations

# The definition of disability

- ▶ (i) a physical or mental impairment that substantially limits one or more of such person's major life activities;
- ▶ (ii) a record of having such an impairment;
- ▶ Or, (iii) being regarded as having such an impairment.



# Fair Housing for People with Disabilities

- ▶ Federal and state disability laws prohibit intentional housing discrimination for people with disabilities.
- ▶ They also demand that housing and shelter providers avoid policies and practices that might unintentionally discriminate against individuals with disabilities.
- ▶ The laws also demand that housing and shelter providers make individual exceptions to rules or policies if those rules or policies would otherwise have a discriminatory effect on an individual with a disability.
- ▶ The changes are known under the law as **Reasonable Accommodations** and **Reasonable Modifications**.

# REASONABLE ACCOMMODATIONS



THE VIRGINIA FAIR  
HOUSING LAW

# Reasonable Accommodations

Disability laws state the following in reference to reasonable accommodations:

- ▶ **The Virginia Fair Housing Law**: Changes in rules, policies, practices, or services that are necessary for a person with a disability to have an equal opportunity to “use and enjoy” housing
- ▶ **Section 504**: *(applies to federally funded property)* Changes to rules or policies AND structural changes that are necessary for a person with a disability to “use and enjoy” housing.

# Unreasonable accommodations

A request for a reasonable accommodation may be rejected if it is unreasonable:

- The test under both the VFH law and Section 504 is whether the accommodation would pose an undue financial and administrative hardship *OR*;
- The accommodation would fundamentally alter the nature of the program.
  - “Fundamentally Alter the Nature of the Program” means the resident requests something outside the scope of the program’s mission or undermines the reason for the program’s existence.

# Assistance Animals



# Assistance, Emotional Support and Companion Animals

- ▶ No specialized training, certificate is required. (Only verification that animal provides a “necessary” service related to the resident’s disability.)
- ▶ NO DEPOSIT OR RENT IS REQUIRED.
- ▶ They can be any size, breed or weight.
- ▶ Must not be a threat to other residents or property.
- ▶ Requires residents to follow “pet rules” that may include: noise control, leash, license, shot records, clean up after.
- ▶ Resident must have control of and take care of the animal.
- ▶ Residents are responsible for damages to property.



# NEWLY ADDED DSM-5 DISABILITIES

- ▶ Autism Spectrum Disorder
- ▶ Binge Eating
- ▶ Post-Traumatic Stress Disorder (PTSD)
- ▶ Dysregulation
- ▶ Gender Dysphoria

A new topic of concern under disability is...

# HOARDING



# The Researched Facts about Hoarding

## HOARDERS

- ▶ Up to 6% of the world's population displays clinical hoarding
- ▶ Anyone can be a hoarder... men, women or children
- ▶ Elderly women are more likely to hoard
- ▶ They are not nasty lazy, nasty or defiant
- ▶ They have a disability and **MUST** be granted a reasonable accommodation even if they did not request one
- ▶ The accommodation may be in the form of more time to bring the dwelling up to code
- ▶ Early intervention is the best offense
- ▶ It takes a community...

# REASONABLE MODIFICATIONS

»» UNDER THE VIRGINIA FAIR  
HOUSING LAW

# Reasonable Modifications

- ▶ A modification is a physical change to the structure of a building, including a dwelling unit and common areas.
- ▶ Residents are financially responsible for reasonable accommodation requests on privately funded properties, unless part of the required accessibility features.
- ▶ Restorations on the inside of the dwelling may be required.
- ▶ An escrow account to offset the cost may be required.

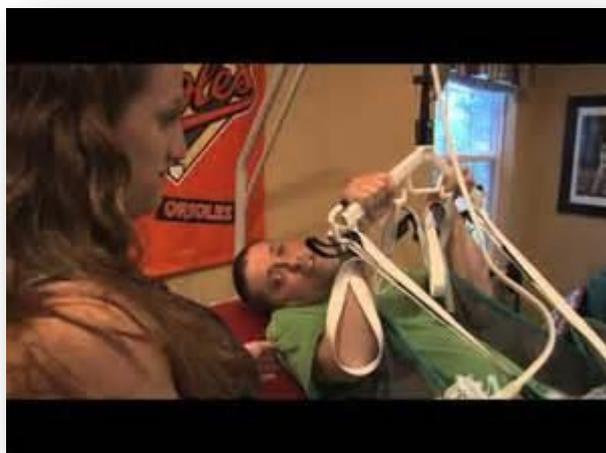


# OTHER AREAS OF PROTECTION FOR PEOPLE WITH DISABILITIES

»» THE VIRGINIA FAIR HOUSING  
LAW



# GROUP HOMES



Certain restrictive covenants void;  
instruments containing such covenants  
§ 36-96.6.

- D. *A family care home, foster home, or group home in which physically handicapped, mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons,* shall be considered for all purposes residential occupancy by a single family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single family or to residential use or structure.

# OTHER REGULATED INDUSTRIES



UNDER THE VIRGINIA FAIR  
HOUSING LAW

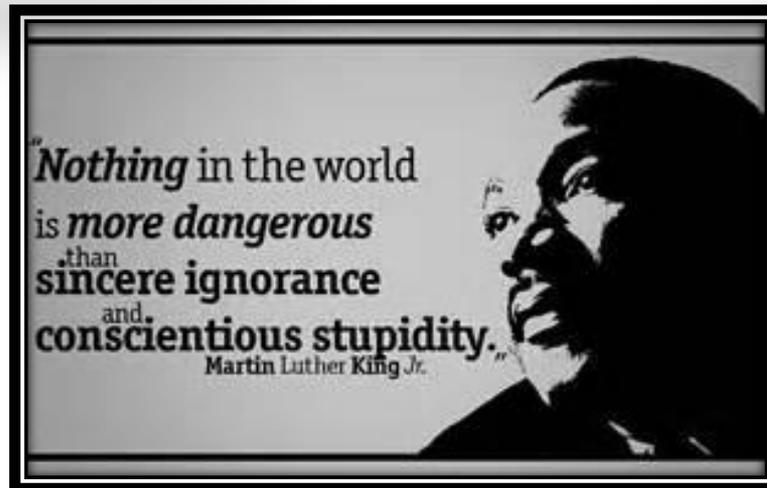
# Other Regulated Related Industries

- ▶ Advertising
- ▶ Accessible Housing (Construction)
- ▶ Mortgage Banking
- ▶ Homeowners and Rental Insurance



# Ignorance of the law...

- ▶ ...is not allowed as a defense!!!



# ADDITIONAL INFORMATION



ABOUT THE VIRGINIA FAIR  
HOUSING LAW

# Virginia Fair Housing Law Exemptions (§ 36-96.2)

- ▶ An owner with three (3) or less single family homes.
- ▶ An owner residing in an “owner occupied” building consisting of 4 units or less (Mrs. Murphy).
- ▶ An owner of a single family home rented or sold without the use of a real estate agent or broker.
- ▶ Religious organizations (non-public) housing, without discriminating based on race, color, national origin, sex, familial status, handicap & elderliness.
- ▶ Educational institutions (housing) exempt from sex/gender discrimination.
- ▶ Elderly communities are exempt from “familial status” discrimination.

# Virginia Fair Housing Law Exemptions (§ 36-96.2)

Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law.

# Virginia Fair Housing Law Exemptions (§ 36-96.2)

It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

# Additionally the law addresses...

- ▶ **Restrictive Covenants § 36–96.1:1**
- ▶ **Interference with enjoyment of rights of others (§ 36–96.5)**

# Breaking News

- ▶ On June 25, 2015, the US Supreme Court (SCOTUS) upheld the Disparate Impact Standard is cognizable in a 5–4 decision.



# Applying the Disparate Impact Standard

- ▶ (a) *Discriminatory effect.* A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

# Conclusion + TIPS



TO HELP TO MANAGE  
HOUSING UNDER THE VIRGINIA  
FAIR HOUSING LAW

# HOUSING PROVIDERS NEED TO

- ▶ Review their housing policies, rules, practices and services.
  - ▶ Have all staff (including owners and upper management) informed and trained about the Virginia Fair Housing Law.
  - ▶ Establish uniformed housing procedures according to company policy.
  - ▶ Share information with residents and clients about the fair housing law.
- 

# Document! Document! Document!

Not only does thorough documentation help protect housing and shelter providers from allegations of misconduct, it also helps provide residents and guests with a sense of fairness and equity.

- Under the Virginia Fair Housing Law, a person has one(1) year or **365** days to file a complaint, and two (2) years or **730** days to file a lawsuit.

# Reminder...

- ▶ FAIR HOUSING IS NOT AN OPTION... IT IS THE LAW!



Are there any questions?



# Presenter



**Mahalia I. Dryden-Mason aka MALLY**

Fair Housing Training Specialist

[Mally.Mason@dpor.virginia.gov](mailto:Mally.Mason@dpor.virginia.gov)

(804) 367-4873

# Agency



Department of Professional and Occupational Regulation

**The Virginia Fair Housing Law  
protects you – but you must report  
illegal**



**1-888-551-FAIR  
(3247)**

# Please Note!

This presentation is a personal interpretation regarding the provisions of and protections in the Virginia Fair Housing Law and Federal Fair Housing Act. It is a working and ever-evolving product tailored for personal use by the presenter. The information contained in and presented during the presentation is not to be construed as legal advice or instruction issued by the Virginia Fair Housing Office, the Department of Professional and Occupational Regulation or the Commonwealth of Virginia. Therefore, use by other persons, groups or agencies is not advised.

(MIDM - Created 8-2015)