

Protecting Ohio's Families

An Overview of Ohio's Fair Housing Laws

Tips on how to advertise and rent your property



FAIR HOUSING

Fair Housing Guide for Landlords



MIKE DEWINE
OHIO ATTORNEY GENERAL



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Dear Ohio Landlord,

As a landlord, you want to find and keep good tenants. However, the process of screening tenants can be tricky and could easily run afoul of fair housing laws. And, once a tenant has moved in, other issues can come up that you must be prepared to handle.

This booklet provides an overview of Ohio's fair housing laws and offers tips on how to avoid problems that can potentially lead to lawsuits.

To help landlords stay apprised of fair housing laws, my office's Civil Rights Section conducts free presentations on housing-related topics. They can be contacted at **614-466-7900** or by going to **www.OhioAttorneyGeneral.gov**.

I encourage you to take advantage of their expertise on Ohio's fair housing laws.

Very respectfully yours,

Mike DeWine
Ohio Attorney General

Fair housing

Fair housing is a person's right to choose, without unlawful discrimination, where to live. Ohio's fair housing laws protect people who are denied housing based on myths, stereotypes or prejudices about groups of people.

Ohio's discrimination laws protect everyone. The law states that it is illegal to discriminate in the sale, rental or financing of housing, or otherwise interfere with someone's housing rights based on his or her membership in the following protected classes:¹

- Race
- Color
- Religion
- Sex
- Familial status (having at least one child who is younger than 18)
- Ancestry
- Disability
- National origin
- Military status

Q: Who is covered under Ohio's fair housing laws?

A: All housing providers — including owners, property managers, sales managers and condominium associations — are covered under Ohio's fair housing laws.

Q: I own a duplex and rent the other unit; do Ohio's fair housing laws apply to me?

A: Yes. Ohio's fair housing laws do not contain an exception for owner-occupied dwellings. Housing accommodations include any building, or portion of a building, intended as a place for people to live or sleep. Vacant land that is being sold or leased is also covered.²

Q: Do these same rules apply to senior housing?

A: Generally, yes. However, a landlord must apply for, and comply with, separate federal criteria in order to be designated as "senior housing."³ You should seek legal advice with this process.

Advertising

Ohio's fair housing laws apply to advertisements in the newspaper, online and even on yard signs. Under Ohio law, a landlord can't indicate a preference or limitation based on a person's race, military status or any of the other protected classes when advertising.⁴

As a general rule, advertisements should describe the property's amenities and features, rather than characteristics of the preferred tenant. This avoids giving prospective tenants the impression that you prefer, or will not permit, a certain type of person. For example, an advertisement that reads "Perfect for a mature couple" may give the impression that the landlord will not rent to families with children.

Here are more examples of best practices when advertising housing:

Do

- Describe the property:
 - Two bedrooms
 - Walk-in closets
 - Great view
- Describe the amenities:
 - On-site fitness facility
 - Community pool
 - Basement storage
- Include a disclaimer that you do not discriminate on the basis of race, color, religion, sex, familial status, ancestry, disability, national origin or military status.
- Use a fair housing logo and regularly attend fair housing training; it's a great way to let people know you don't discriminate.



- If you state a "no pets" policy, include an exception for animal assistants for individuals with disabilities.

Don't

- Describe what you are looking for in a tenant:
 - Great for a young couple
 - Single adults preferred
- Describe the people in the neighborhood:
 - Catholic neighborhood
 - Large Hispanic population
- Describe the neighborhood in terms of churches, synagogues or other landmarks that could suggest a preference for a protected class.
- Include an explicit preference or limitation on account of a protected class:
 - No children
 - Christian tenants only

Screening potential tenants

As a landlord, finding reliable tenants is critical. Understandably, when speaking with prospective tenants, you want to ask questions to make sure that your tenants will take care of the property. Many of the same do's and don'ts that apply to advertising also apply to screening rental applicants. For example, just as it is illegal to state a preference based on a protected class in an ad, it is also illegal in a conversation with someone who calls or comes by to look at the housing unit. Here are some best practices for finding great tenants, while following the law and avoiding a lawsuit:

- **Have written, objective policies:** This makes it easy for everyone to understand why you did or did not choose someone as a tenant. You may need to explain your decisions in court, and having documents showing that you treat every potential tenant the same way is helpful. Make sure that your criteria for selecting tenants are related to the qualities of a good tenant – for example, the ability to afford the rent or having no history of eviction. Avoiding the appearance of discrimination can go a long way toward preventing lawsuits. To avoid trouble:
 - Have written rental policies that detail the criteria necessary for approval.
 - Include the application process, availability policies and rental criteria – including any employment history, income requirements or credit-check requirements – in the documents.
 - Follow the policies for all applicants.
- **Train your assistants:** Anyone involved in renting or maintaining your properties should be trained on Ohio's fair housing laws and your rental policies. Remember, even if you aren't the one who makes the unlawful decision, you could be held legally responsible for the actions of someone helping you rent the property.
- **Use current applications:** Written applications are a great way to gather information about potential tenants. Unfortunately, they can also create problems for landlords who don't know what they are allowed to ask. Be wary of outdated, boilerplate rental applications with questions such as, "Do you have children?" This question is illegal because it is seeking information about familial status.⁵

Questions on your application should relate to your rental criteria and should not ask about any protected class. It is a good idea to have an attorney review your rental applications regularly to make sure you are keeping up with changes in the law.

- **Be careful with interview questions:** Often, a potential resident will want to see the property before renting it. This gives you an opportunity to ask questions of potential tenants, but you should be careful what you ask. "Do you have children?" and "You have an interesting last name, where are you from?" are questions that may be common in everyday conversation but are unlawful if asked by a landlord of a potential tenant. Asking such questions during the application process may give the impression that you are using the information to decide whether to rent to them. Save such "getting to know you" questions for after you've entered into a rental agreement and focus instead on the potential tenant's qualifications to rent the housing. If a question is unlawful to have on a lease application, it is also unlawful to ask in a tenant interview.

- **A note about potential occupants:** As discussed above, it is illegal to ask a potential tenant if they have any children. However, it is fine to ask them how many *occupants* will be living in the unit, without asking for the age of each occupant.
- **Keep records:** As with your written policies, if there is ever a question about whether you followed the law, good records can save you a lot of time and money defending your decisions. Landlords should consider keeping records on prospective residents as well as past and current residents.

Landlords should use a system that logs calls and visits by prospective residents. In addition, applications and information on vacancies should be maintained.

‘Steering’

You know your housing better than anyone, so it is only natural that you would want to guide people to the property that you think would work best for them. If a landlord decides to guide someone based on a protected class (race, familial status, etc.), the action is called “steering,” and it is illegal.⁶

For example, a landlord can’t steer families with children toward, or away from, certain units or locations based on the fact that they have children. One common form of steering is a rule or practice requiring families with children to rent apartments on the first floor. This is often motivated by a belief that children on the second floor will cause too much noise. However, directing individuals toward or away from available housing because they have children (for example, putting all families with kids in one building, or not telling a renter that a second floor unit is also available) is against the law.

A best practice is to tell every applicant about every property that is available and let them choose from which to view and apply. As stated earlier, fair housing is a person’s right to choose, free from discrimination, where to live. Potential tenants should be informed of all housing options, rather than be told where they can live. Consistent, well-kept records about each of your apartments, including when they were rented and when they became available, will allow you to defend against allegations of steering.

Tenants who meet your objective rental criteria and are allowed to choose where to live from all available units will be less likely to complain of steering.

Reasonable accommodations

A reasonable accommodation is a change to a rule, policy, practice or service that may be necessary to allow a person with a disability to use and enjoy housing.⁷ It may be requested by a tenant, prospective tenant or someone on their behalf.

Any request must:

- Be reasonable.
- Demonstrate a relationship between the requested accommodation and the disability.

Q: What does a reasonable accommodation request look like?

A: There are no magic words required to request an accommodation, and a request does not have to be in writing. Rarely will a tenant say “I need a reasonable accommodation.” Instead, it is more likely that he or she will mention a medical issue and ask for a change in how you typically do things. For example, “Ever since my stroke, I’ve had a hard time walking from my assigned parking space to my apartment. Can I have a closer space?” You, and everyone who works for you, should be trained to recognize a reasonable accommodation request and to act upon it.

You are required only to provide a change that is reasonable. For example, if an individual with a disability can’t do his own housekeeping, and you don’t provide housekeeping services for other tenants, you don’t have to provide that service simply because the tenant has a disability.

Whether a request is reasonable depends on the specific situation. In order to figure out what is reasonable, it is important that you speak with the tenant to understand what he or she needs and how you may be able to help.

Some examples of possible reasonable accommodations include:

- Providing an assigned parking space for someone with mobility impairments.
- Providing an extra set of keys so that an aide may enter the premises.
- Providing housing notices (i.e. tenant rules, policy changes, eviction notices, etc.) to someone who is assisting the tenant, such as a caseworker or family member.
- Making an exception to a “no pet” policy so that a person with a disability can have an animal assistant – sometimes called a “service animal” or “companion animal.”⁸ (See “Animal Assistants” section, below.)

Q: What should you do if someone asks for a reasonable accommodation?

A: You should:

- Document the request.
 - Keep track of all requests. If a request is verbal, make a note of it. You should also acknowledge receipt of the request and document your response. It is important to respond to accommodation requests as quickly as is practical.
- Talk to the resident.
 - You need to make sure that you understand what they are requesting and why.
 - You should never ask for a diagnosis, but if the disability isn't obvious you may ask for additional information about how the requested accommodation will assist them.
 - Consult with an attorney if you need help evaluating the request.
- Offer alternatives, if what they are asking for isn't possible.
 - Good communication is the key to finding an accommodation that allows your tenant to fully use and enjoy the housing and help you avoid lawsuits.

Q: What if the accommodation involves the application?

A: Prospective tenants may need a reasonable accommodation during your application process. For example, if you have a policy that all applications must be filled out in the rental office, it may be a reasonable accommodation to allow someone with a disability to fill out the application at home, by phone or online.

You should have a written accommodation-request policy. Your policy should identify the person to receive and respond to requests and establish a response time by which the tenant can expect an answer. Train everyone who works with you or assists you on the policy. Remember, you can be held responsible for the conduct of your assistants.

Reasonable modifications

A reasonable modification is a structural change made in order to allow a person with disabilities full enjoyment of the property. These changes can be to the interior or the exterior of the dwelling and include common areas. Unless you receive a federal housing subsidy, the tenant is responsible for the cost of the modification.

Some examples of possible reasonable modifications include:

- Allowing a tenant to install a metal ramp over steps to allow wheelchair access to the door of the dwelling.
- Allowing a tenant with a hearing impairment to install a doorbell with an interior, flashing light.

Q: What should I do if someone asks for a reasonable modification?

A: Just like with a reasonable accommodation request, you should document the request and talk to the tenant to make sure that you understand what he or she is requesting and how it will help. You are not permitted, however, to ask for a diagnosis or information about the tenant's condition, but you are entitled to know how the requested modification will help the person.

Q: What if I'm concerned about shoddy construction on my property?

A: As a landlord, you can require a reasonable description of the proposed modification and reasonable assurances that it will be constructed in an acceptable manner.⁹ The appearance of a ramp or other modifications may be taken into account but should not be the reason a modification request is granted or denied. For assurances of what the final product will look like, you may require the tenant to obtain any necessary building permits before starting the work.

Q: Does the tenant have to remove the modification when they move out?

A: Yes, if it is an interior modification and you request that they do so. Sometimes, however, the modification might be helpful to future tenants. For example, a tenant may have installed a grab bar in the bathroom. If the tenant wishes to leave it, you may allow the grab bar to remain.

Q: Do I have to pay to put the apartment back to the way it was when the tenant moves out?

No. You can require that the tenant restore the interior of the property at their expense to its pre-modification condition when he or she moves out.¹⁰

Q: How can I be sure that they will pay to remove the modifications when they leave?

A: You may require the tenant to pay a reasonable amount of money into an interest-bearing escrow account in your name, over a reasonable period of time. This is to ensure there is money available to restore the property to its pre-modification state. The amount you require can't be more than the projected cost to restore the property, and the interest that accrues must go to the tenant. You must allow for reasonable wear and tear to the apartment, as you would any other unit.¹¹ It may be beneficial to both you and your tenant to have such an agreement in writing.

Q: Can't I just charge a larger security deposit?

A: No. It is against the law to charge a larger security deposit (more than you charge other tenants) before granting a tenant's request for a reasonable modification.

Families with children

Ohio law makes it illegal for housing to be denied, or for different rental rules or terms to be applied, to a family with at least one child younger than 18 years old, a pregnant woman or a person who is in the process of obtaining legal custody of a minor.¹² Such action is called “familial status” discrimination. A landlord, for example, can’t tell a potential tenant that a property isn’t appropriate for children because of nearby railroad tracks or because they prefer quiet tenants.

Landlords should also be careful to apply rules and regulations evenly. When courts examine housing rules to see whether they unreasonably limit the use of privileges, services or facilities associated with the housing because of familial status, they look at:

- The reasons given for the rule.
- The broadness of the restrictions of the rule.
- Whether the rule is reasonably related to the health and safety of the residents.
- Whether the rule is required because of law.

Q: Can I restrict how many people live in an apartment?

A: Yes. Generally, occupancy standards based on local ordinances are reasonable. However, rules that limit the number of *children* per unit (as opposed to the number of *people* per unit) are unlawful. Also, make sure that if you have a rule regarding occupancy standards, you apply it to everyone — not just families with children.

Sample rule: Each one-bedroom apartment may have a maximum of two occupants, per local occupancy standard 123.45.

Q: Can I ask for an extra deposit to cover any damage that children might cause?

A: No. Requiring an additional deposit because children are living in the dwelling is unlawful. A landlord shouldn’t assume that children will damage the property any more than an adult would. If there is damage beyond what is covered by the security deposit, you can seek compensation for the repairs in the same way you would for damage done by a tenant without children.

Q: What if the children are loud?

A: If noise is a problem, make a rule barring all tenants, not just children, from making unnecessary loud noise. Importantly, enforce the rule against everyone, not just families with children.

Sample rule: No loud noise in the common areas after 10 p.m.

Q: Can I require adult supervision of children?

A: It depends. You must have legitimate, specific health or safety reasons for imposing a rule requiring adult supervision. The rule must be reasonable and the least restrictive way to accomplish your goal. You should be able to explain why you chose a particular age as the cutoff for requiring adult supervision.

Before implementing a rule, determine whether it targets families with children. For example, if you state a specific age requirement, “No one younger than 18 years old is allowed in the gym without adult supervision,” you should be prepared to explain why, for example, a 16- or 17-year-old needs supervision and an 18-year-old doesn’t. If your local municipality has the same rule for recreational centers, this might be a sufficient way to demonstrate that you didn’t randomly pick an age limit for your property. However, if you have a rule which states that “all children younger than 18 must be supervised at all times while outside,” the lack of distinction between a 17-year-old and a 5-year-old may seem designed to discourage families with children from renting the property.

If a rule targets families with children, be able to explain a specific, legitimate health or safety reason and make sure that it is the least restrictive method to address the concern. You should seek the assistance of an attorney when creating such rules.

Another option to consider is creating rules that focus on the conduct you are concerned about, rather than the age of the participants engaged in the conduct. A rule that applies to everyone may be more effective and will avoid the appearance of being discriminatory. For example, instead of: “Children younger than 18 must be supervised when using the fitness area,” you may want to consider: “Individuals using the fitness area must use the equipment safely and as intended, and may not disrupt other tenants using the facility.”

Animal assistants

Ohio law entitles tenants with disabilities to keep an “animal assistant.” (See endnote 8.) Understanding your legal obligations regarding such animals will go a long way toward providing equal housing opportunities, avoiding confusion and preventing lawsuits.

An *animal assistant* is a broad term that covers any animal that provides a service to a tenant with a disability. A classic example is a dog that guides someone who is visually impaired. Animal assistants can perform a wide range of services for an even wider range of individuals with disabilities, including providing emotional support. Because each situation is different, you may wish to consult an attorney for specific legal advice about animal assistants.

If you have a “no pets” policy, you must make an exception to allow a tenant to have an “animal assistant.” Remember, animal assistants are not pets.

Q: Can I charge an extra fee for an animal assistant?

A: No. Ohio law prohibits housing providers from charging any extra fees for an animal assistant. Animal assistants are typically highly trained and generally don’t engage in the destructive behaviors that pets do.

Q: What if the animal causes damage to the apartment?

A: The tenant is responsible for any damage done by the animal assistant. If there is damage beyond what the security deposit covers, you can seek compensation for the repairs the same way you would for damage done by any other tenant.

Q: What if I have a “no pets” policy and it’s not obvious why the tenant needs the animal assistant?

A: Talk to the individual who is requesting the accommodation of an animal assistant. Ask what the animal does to aid the person. You can ask for a letter from a medical professional — it does not need to be from a doctor — that states that the animal assistant is necessary. For example, a note from a nurse, physician’s assistant or similar medical professional would be acceptable.

Q: If I allow an animal assistant, won’t I then have to let everyone have an animal?

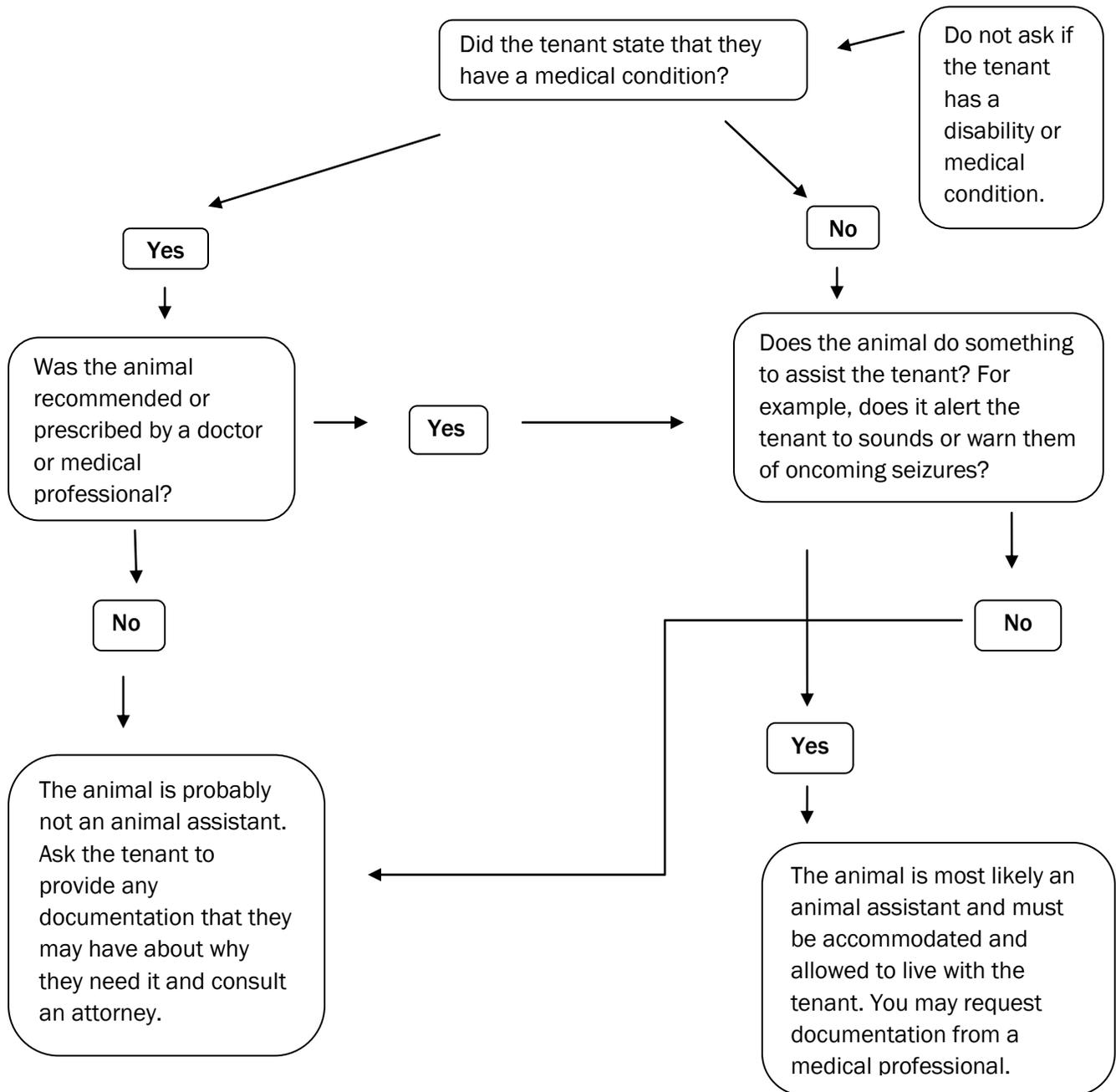
A: No. You can still have a “no pets” policy, or restrict the types of animals that you allow, as long as you make exceptions for animal assistants. Remember, it is not always obvious that someone has a disability or that an animal is an animal assistant; as a result, other tenants may be confused. If asked (and without disclosing another tenant’s medical information), you can explain that it is not a pet, but an animal assistant.

Q: Can I require that the animal assistant be “certified”?

A: No. Ohio law does not require that an animal assistant have a certification. You may, however, request documentation from a medical professional about why the animal assistant is necessary.

Recognizing an animal assistant

It is helpful to remember that an animal assistant is not a pet, but is an animal that lessens the effects of a resident's disability. Just as you wouldn't have a "no wheelchairs" policy, you wouldn't have a "no animal assistants" policy. Use this flowchart to help you determine when an animal is more than a pet.



This handbook is intended to provide general information on Ohio's fair housing laws. There are other laws and ordinances that may apply to your property. Federal fair housing laws, while generally similar to Ohio's, do contain some differences.¹³ Also, some cities and counties in Ohio have their own fair housing laws that may, for example, include additional protected classes. You should review all local laws and ordinances and consult an attorney to ensure that you are in compliance with any additional requirements.

¹ Ohio Revised Code (ORC) Section 4112.02(H)

² ORC 4112.01(A)(10)

³ 42 U.S. Code § 3607(b)(2)(C); 24 Code of Federal Regulations 100.304; Ohio Administrative Code (OAC) 4112-6-03

⁴ ORC 4112.02(H)(7)

⁵ ORC 4112.02(H)(8)

⁶ ORC 4112.02(H)

⁷ ORC 4112.02(H)(19)

⁸ ORC 4112.02(H)(18); OAC 4112-5-02(C) and 4112-5-07(C)

⁹ ORC 4112.02(H)(18)(a)(i)

¹⁰ ORC 4112.02(H)(18)(a)(ii)

¹¹ ORC 4112.02(H)(18)(a)(iii)

¹² ORC 4112.01(A)(15)

¹³ 42 USC 3604 *et seq.*



Ohio Attorney General's Office

Civil Rights Section

Fair Housing Guide

For more information on this guide, please contact:

Civil Rights Section
30 E. Broad St., 15th Floor
Columbus, OH 43215

614-466-7900

www.OhioAttorneyGeneral.gov



MIKE DEWINE

OHIO ATTORNEY GENERAL

www.OhioAttorneyGeneral.gov