



The Fair Housing Act: Rights and Remedies

**West Penn Rural Fair Housing Initiative
Southwestern Pennsylvania Legal Services**

10 West Cherry Avenue

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The Fair Housing Act

Introduction and Purpose



Fair Housing Act of 1968

"It is the policy of the United States to provide, within Constitutional limitations, for fair housing throughout the United States."

- 42 U.S.C. §3601



Fair Housing Act of 1968

The First 5 Protected Classes:

- Race
- Color
- Religion
- National Origin
- Sex (Act amended, 1974)



Fair Housing Act of 1968

- ◆ Act amended in 1988 (effective March 13, 1989) to include:
 - Familial Status
 - Handicap Status



Familial Status

- ◆ A family in which one or more children under age 18 live with:
 - A parent
 - A person who has legal custody of the child or children or
 - The designee of the parent or legal custodian with the parent or custodian's permission
 - Also applies to pregnant women and anyone securing legal custody of child under 18



Handicap Status

- ◆ A Person is considered disabled/handicapped under the act if:
 - He or she has a physical or mental disability (including hearing, mobility and vision impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that **substantially** limits one or more major life activities;
 - He or she has a record of such a disability OR
 - He or she is regarded as having such a disability



Markets Covered

- ◆ Rental
- ◆ Sales
- ◆ Lending
- ◆ Insurance
- ◆ (All Areas Connected With Residential Housing)



Covered Individuals/Entities

- ◆ Owners
- ◆ Managers
- ◆ Homeowner's Associations
- ◆ Lenders
- ◆ Real Estate Agents
- ◆ Brokers
- ◆ Governments
- ◆ Insurers
- ◆ Developers/Builders
- ◆ Architects
- ◆ Contractors
- ◆ Engineers
- ◆ Landscape Architects
- ◆ All Persons/Entities Involved with Residential Housing



Covered Dwellings

- ◆ Private and Subsidized Property/ies
- ◆ Examples:
- ◆ Single Family Dwellings
- ◆ Duplexes
- ◆ Multi-Family Buildings
- ◆ Migrant Housing
- ◆ Temporary Shelters
- ◆ Group Homes
- ◆ Assisted Living Housing
- ◆ Other Residential Housing: “Where I Live”



Prohibited Practices

- ◆ Refusal to sell/rent after making a bona fide offer based to one or more of the protected classes, otherwise make unavailable or deny (42 U.S.C. §3604(a))
- ◆ Discrimination in the terms, conditions or privileges of sale or rental of a dwelling (42 U.S.C. §3604(b))
- ◆ Make, print or publish a notice or statement that indicates a discriminatory preference (42 U.S.C. §3604(c))
- ◆ Falsely tell someone a dwelling is not for sale or rent based upon membership in one of the protected classes (42 U.S.C. §3604(d))
- ◆ Steering people toward or away from particular neighborhoods based upon a protected class, Redlining, Reverse Redlining
- ◆ Blockbusting (42 U.S.C. §3604 (e))
- ◆ Discrimination in residential real estate transactions
- ◆ Discrimination in provision of brokerage services
- ◆ NIMBYism (in certain circumstances)
- ◆ Coercion, Intimidation, Threats or Interference with anyone asserting a Fair Housing right or assisting others who are exercising that right.



Coverage Specific to Persons with Disabilities

- ◆ If a person has a disability under the Act, a Landlord may not:
 - Refuse to let the person make reasonable modifications to the dwelling or common areas, at tenant expense, if necessary for the disabled person to use the housing. 42 U.S.C. §3604(f)(3)(A)
 - Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing. 42 U.S.C. §3604(f)(3)(B)



- ◆ Applicable State Statutes (*in addition to Federal Act*)
 - Pennsylvania adds age as a protected class (40 or over)
 - Complaint must be made to the Pennsylvania Human Relations Commission within 6 months
- ◆ Statute of Limitations:
 - Federal Act:
 - 1 year for date of last act to file a HUD complaint
 - 2 years from date of last act to file a lawsuit



◆ Exceptions to Coverage

- Any single-family house sold or rented by an owner, provided:
 - Such owner does not own more than three such single family houses at one time;
 - Such exception applies only to one such sale in a 24-month period when the house is sold by private individual owner not residing in the house at the time of sale;
 - Such house is sold or rented without the use of a broker, agent, salesperson and
 - Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of the Act



Additional Exceptions to Coverage

- ◆ Owner occupied dwellings of four units or less (Mrs. Murphy exception)
- ◆ Sale or rental of buildings owned/operated NOT for profit by religious organizations, associations, societies or any non-profit operated by the religious organization
- ◆ Private clubs not open to the public
- ◆ Certain elderly housing if it is
 - Specially designed and operated to assist the elderly;
 - Is intended for and solely occupied by persons 62 and over
 - Intended and operated for occupancy by at least one person age 55 and older in each dwelling



Enforcement of the Fair Housing Act

◆ Proving a Violation

- The standards do not differ by the complainant's class membership, but may vary by the section of the Act alleged to have been violated
 - May be Intentional Discrimination (Disparate Treatment) or
 - Discriminatory Effect (Disparate Impact)



Intentional Discrimination: Disparate Treatment

- ◆ May be established by direct or indirect evidence. Where direct evidence exists, no need to establish *prima facie* case concept.
- ◆ *Prima Facie* case concept: a means to evaluate cases based upon circumstantial evidence
 - First, Plaintiff has the burden of proving that a “prima facie” case of disparate treatment exists
 - Once established, a presumption of illegal discrimination is established.
 - The burden then shifts to the Defendant to show some legitimate, nondiscriminatory reason for the conduct. *See McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 802 (1973)
 - If the Defendant fails to meet its burden, the Plaintiff is entitled to relief, but if the Defendant meets the burden, then Plaintiff must show that the reasons offered by Defendant were a pretext. *See St. Mary’s Honor Center v. Hicks*, 113 S.Ct. 2742, 2747 (1993)



Establishing *prima facie* case in Refusal to Deal Cases

◆ 42 U.S.C. §3604(a)

- Plaintiff/Complainant must establish the following four elements:
 - He is a member of a protected class;
 - He applied for and was qualified to rent or purchase the unit involved
 - He was rejected by the Defendant; and
 - The housing opportunity remained available thereafter
 - See *Seldon Apartments v. HUD*, 785 F.2d 152, 159 (6th Cir. 1986)



Establishing a *prima facie* case in Blockbusting cases

◆ 42 U.S.C. §3604(e)

- Plaintiff/Complainant must establish the following three elements:
 - That the representations were made for profit
 - That the representations were intended to induce the sale or rental of a dwelling; and
 - That under the circumstances, the representations would convey to a reasonable person the idea that persons represented by Title VIII are, or may be entering the neighborhood
 - See *Zuch v. Hussey*, 394 F. Supp. 1028, 1049(E.D. Mich. 1975, *aff'd without opinion*, 547 F.2d 1168 (6th Cir. 1977))



Establishing a *prima facie* case in the sale or rental to the disabled

◆ 42 U.S.C. §3604 (f)(1)

– The Plaintiff/Complainant must show:

- That he is a member of a protected class and the defendants knew or suspected that he was;
- That he applied for and was qualified to rent the property in question;
- That defendants rejected the application;
- That the applicant was rejected because of his or her disability and
- That the property remained available thereafter
 - *Neithamer v. Brenneman Property Services, Inc.*, 81 F. Supp. 2d 1, 4 (D.D.C. 1999), citing *On Behalf of Herron v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990)



Establishing a *prima facie* case in a Reasonable Modification case

◆ 42 U.S.C. §3604(f)(3)(A)

– The Plaintiff/Complainant must show:

- That the tenant is a person with a handicap as that term is defined in section 3602(h) of the FHA;
- That the defendants knew or should have known of the tenant's disability;
- That reasonable modifications may be necessary to afford the tenant full use and enjoyment of the premises; and
- The defendant refused to permit such reasonable modifications.
 - *U.S. v. California Mobile Home Park Management Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997); *United States v. Freer*, 864 F. Supp. 324, 326 (W.D.N.Y. 1994)



Establishing a *prima facie* case for Reasonable Accommodation

◆ 42 U.S.C. §3604(f)(3)(B)

- An accommodation is not reasonable if it would
 - Require a fundamental alteration to the nature of a program or
 - If it would impose “undue financial or administrative burdens” on the Defendant
 - *Liddy v. Cisneros*, 823 F. Supp. 164, 176 (S.D.N.Y. 1993) and *School Board of Nassau County v. Arline*, 480 U.S. 273, 287 n. 17(1987)



Reasonable Accommodation

- ◆ In addition to the reasonableness requirement, the Plaintiff must show that
 - The plaintiff suffers from a handicap as defined in the Act;
 - The defendant knew or reasonably should have known of Plaintiff's handicap;
 - The accommodation of the handicap “may be necessary” in order for the Plaintiff to be afforded the equal opportunity to use and enjoyment of the dwelling; and
 - The defendant refused to make such an accommodation



Disparate Impact Claims

- ◆ Cannot be based upon a single act
- ◆ Policy or practice must not be discriminatory on its face
- ◆ Policy or Practice must not be applied in a discriminatory manner
 - If so, it would be intentional discrimination



Establishing a *prima facie* Disparate Impact case

- ◆ The following elements are required:
 - The occurrence of outwardly neutral practices;
and
 - A significantly adverse or disproportionate impact on persons of a particular type produced by the Defendant's facially neutral acts or practices.
 - *Gamble v. City of Escondido*, 104 F.3d 300, 306 (9th Cir. 1997), citing *Pfaff v. HUD*, 88 F.3d 739, 745-46 n. 2 (9th Cir. 1996)



After establishing a *prima facie* disparate impact case

- ◆ The burden shifts to the respondent to justify the challenged practice/policy. This may involve the business necessity test or with a public defendant, a multi-factor approach to determining liability.
- ◆ This approach focuses on the balancing of four factors:
 - The strength of the Plaintiff's showing of discriminatory effect;
 - Evidence of the defendant's discriminatory intent (though insufficient to make out an intentional violation);
 - The defendant's interest in taking the challenged action; and
 - Whether the Plaintiff seeks to compel the Defendants to affirmatively provide housing.
 - *Metropolitan Housing Development Corporation v. Village of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977), *cert. denied*, 434 U.S. 1025 (1978), *Arthur v. City of Toledo, Ohio*, 782 F.2d 565, 574-75 (6th Cir. 1986), *Larkin v. State of Michigan*, 89 F.3d 285, 286 (6th Cir. 1996)



Perpetuation of Segregation Claims

- ◆ Involves a housing practice that has a discriminatory effect on the community involved by preventing interracial association
 - Usually involves exclusionary zoning or other municipal regulation
 - Usually brought against municipal defendants
 - May be precipitated by a single act or decision or by a broad policy or practice
 - Statistical evidence is necessary
 - Defendant's reasons for opposing development are evaluated



Necessary elements of proof under additional sections of the Act

- ◆ Discriminatory Advertising: 42 U.S.C. §3604(c)
 - No examination of reason; therefore, appears like a strict liability standard



Accessibility Features

◆ 42 U.S.C. §3604(f)(3)(C)

– The Complainant must show:

- That the housing covered by the complaint is a covered property under the Act; and
- That one or more of the accessibility features specified in the act was omitted from the design and construction of the housing.



Allegations regarding Coercion, Intimidation, Threats or Interference

◆ 42 U.S.C. §3617

- Four elements are necessary to establish a *prima facie* case:
 - The injured person was a member of a protected group;
 - The defendant knew the person was a member of such group;
 - The defendant committed an act toward the plaintiff that was coercive, threatening and/or intimidating; and
 - The defendant's action interfered with the plaintiff's right to obtain and maintain a home.
- *Byrd v. Brandenburg*, 922 F. Supp. 60 (N.D. Ohio 1996),
Waheed v. Kalafut, 1988 W.L. 9092 (N.D. Ill. 1988)



Sexual Harassment: Quid Pro Quo and Hostile Environment

◆ Quid Pro Quo

– Must show the following

- Complainant was subject to unwelcome demand or request for sexual favors by the housing provider/agent for the housing provider
- Complainant's reaction to the first element affected tangible aspects of terms, conditions, privileges, facilities of housing, and
- The unwelcome demand was based upon sex
- For hostile environment, there need be no offer to alter housing benefits



Additional Causes of Action

- ◆ Civil Rights Act of 1866
- ◆ 42 U.S.C. §§1981 and 1982
- ◆ Civil Rights Act of 1871
- ◆ 42 U.S.C. §§1983, 1985, 1986
- ◆ Civil Rights Act of 1964
- ◆ The Home Mortgage Disclosure Act
- ◆ Housing and Community Development Act
- ◆ Section 504 of the Rehabilitation Act of 1973
- ◆ Equal Credit Opportunity Act
- ◆ Community Reinvestment Act



Methodology of Complaint Referral

◆ Filing a Complaint with HUD

- Name as respondents all persons and legal entities that have a connection to the discriminatory act and/or the property involved
- State if the property is the recipient of Federal funds
- List all acts of discriminatory conduct with documentation of the same (i.e. affidavits, testing reports, documents of ownership, etc.)



Deadlines and Statute of Limitations

- ◆ HUD must complete an investigation and make a determination of reasonable cause within 100 days.
- ◆ If this deadline is not met, HUD or the State agency must notify the complainant in writing stating the reasons for the delay.
- ◆ While HUD is conducting the investigation, the SOL for filing a lawsuit is tolled.



Alternative Dispute Resolution

- ◆ HUD will attempt to conciliate from the time of the filing of the Complaint through a charge or dismissal
 - An agreement between the Complainant and Respondent is subject to the approval of the Secretary
 - May award appropriate relief, including monetary relief
 - Shall be made public unless agreed by the parties and the Secretary agrees disclosure is not necessary to further the purposes of the Fair Housing Act
 - Agreement may provide for binding arbitration
 - Cost may not be passed on to the aggrieved party
 - If so, must provide procedures by which HUD will monitor the Respondent's compliance with the arbitration award



HUD finding of Reasonable Cause

◆ The Election

- If there is a finding of reasonable cause, the Secretary will issue a charge on behalf of the aggrieved party
- Either party or the aggrieved party may elect to file in federal district court rather than proceed through the administrative process
- Election must be made no later than 20 days after receipt of the charge
 - Accomplished by providing notice to the Secretary and other complainants and respondents
 - If election is made, the Attorney General shall maintain a civil action on behalf of the aggrieved person no more than 30 days after
 - The aggrieved person may intervene



Hearing Before the ALJ

- ◆ Must be conducted within 120 days of the issuance of the charge
- ◆ Federal Rules of Evidence apply
- ◆ Full discovery allowed
- ◆ Requests for discovery must be answered within 15 days of service
- ◆ ALJ must issue an initial decision within 60 days after the end of the hearing
 - Must make findings of fact and conclusions of law with supporting reasons
 - Must issue an Order for appropriate relief if there was discriminatory conduct



Secretary's Review of the Initial Decision

- ◆ Discretionary; Must occur within 30 days of the ALJ decision
 - May affirm, modify, set aside or remand
 - Petition for Review based only on the following grounds and must be filed within 15 days of the initial decision
 - A finding of material fact not supported by substantial evidence
 - A necessary legal conclusion is erroneous;
 - The decision is contrary to law, duly promulgated rules of HUD, or legal precedent; or
 - A prejudicial error of procedure was committed



Damages Available Under the Act

- ◆ Actual Damages
 - Economic or Tangible
 - Intangible
- ◆ Costs
- ◆ Attorney Fees
- ◆ Injunctive or Other Relief
- ◆ Civil Fine for Repetitive Acts
- ◆ An ALJ may NOT award punitive damages



The Lawsuit

- ◆ May be filed in federal or state court at any point during the investigative process, as long as hearing has not commenced
- ◆ Statute of Limitations is 2 years
- ◆ Punitive Damages are possible



Exercises

***The Fair Housing Act:
Rights and Remedies***



Exercises

1. An Hispanic couple sees a home with a “For Sale” sign in the yard. When they meet the seller/agent, they are told that the home has just been sold and is no longer in the market. Two weeks later, the couple finds that the home is still for sale. Is this discrimination?
2. A young couple with two children is interested in renting an apartment. The manager tells the couple that they can move into the complex, but that they would be located in unit “C”, because that’s where all families with children live. Could this be considered discriminatory?



Exercises

3. ACME Mortgage Company is offering home loans with a low 7.5% interest rate. Black clients are offered loans with a minimum 8% interest rate. Could this be construed as discriminatory?
4. A disabled man moves into an apartment. He advises the landlord that he needs to have grab bars installed in the shower. The landlord says that there is “no way” he is paying for this, and tells the tenant that he can have the grab bars put in, but at his own expense. Is this discriminatory practice?



Exercises

5. A black couple is interested in a home that they saw for sale. When they meet the seller/agent to view the home, the seller/agent tells them that they may be more interested in homes in another part of town. Once they view this “other part of town,” they realize that he is showing them property in an area with a majority black population. Is this discriminatory practice?
6. A realty company offers to pay closing costs on homes to black purchasers, but does not offer the same to white purchasers. Is this discriminatory practice?



Exercises

7. A person diagnosed as having the HIV virus applies to rent an apartment and discloses this information to the manager. The manager replies that he is wary of renting him an apartment because he doesn't always want ambulances and stuff on the property. The manager decides not to rent to the person. Has the manager engaged in discriminatory activities?
8. An apartment complex has strict rules that no pets are allowed. However, a blind tenant has a seeing-eye dog in her unit. A single tenant sees this, and states that he would also like to have a dog. The manager tells him that if he gets a dog, he will be served with an eviction notice. Has he been discriminated against?



Exercises

9. A potential buyer who is black is told by the seller's agent that the sales price of the house in which he is interested is \$75,000 and that the buyer will not come down off that price or negotiate another price. A potential buyer who is white is also told that the sales price of the house is \$75,000, but is told that the seller may be willing to take less money or take back a second mortgage. Could this be discriminatory practice by the agent or seller?
10. An advertisement in the newspaper reads "Two bedroom apartment, utilities paid, no smokers, no children." Does this ad contain discriminatory language? If so, what does it state that makes it discriminatory?



Who to Contact for Additional Information

West Penn Rural Fair Housing Initiative Fair Housing Hotline: 877-725-4472

Southwestern Pennsylvania Legal Services: 10 West Cherry Avenue, Washington, PA 15301, Telephone 724-225-6170 or Toll Free 1-888-855-3873 (for those living in Washington, Fayette Greene or Somerset Counties)

Neighborhood Legal Services Association: 928 Penn Avenue, Pittsburgh, PA 15222-3799
Telephone: (412) 255-6700 or Toll Free 1-866-761-6572 (for those living in Beaver, Butler or Lawrence Counties)

Northwestern Legal Services: Renaissance Centre, 1001 State St., Suite 1200, Erie, Pennsylvania 16501, Telephone: (814) 452-6949 or Toll Free (800) 753-5704 (for those living in Mercer, Venango, Elk, Forest or Cameron Counties)

MidPenn Legal Services: 213-A North Front Street, Harrisburg, PA 17101, 717-234-0492 (for those living in Bedford, Blair, Centre, Clearfield, Fulton, or Huntingdon Counties)