

**Let Me Tell You About the Man Cave...Fair Housing for the Modern Real Estate Agent
Trista Curzydlo**

Statutes of Interest

Equal Credit Opportunity Act

The ECOA prohibits discrimination in the lending process based on race, color, religion, national origin, sex, marital status, age, or the receipt of public assistance.

Americans with Disabilities Act

While not a housing or credit law, the ADA still has an impact on the real estate industry. The ADA requires reasonable accommodations in employment and access to goods, services, and public buildings. REALTORS® are frequently employers and their offices are public spaces.

Housings for Older Persons Act

HOPA exempts property designated as housing for older persons from the familial status provisions of the Fair Housing Act. HOPA requires that at least 80 percent of occupied units have one person age 55 or older living there.

Title VIII of the Civil Rights Act of 1968

Title VIII of the Civil Rights Act of 1968, which is most commonly referred to as the Fair Housing Act was adopted in 1968. The Fair Housing Act was not implemented without controversy and was amended in 1974, 1988 and 1995. Numerous rules and regulations have been adopted to clarify the implementation of the act.

Who does the Fair Housing Act strive to protect?

The Fair Housing Act prohibits discrimination based on:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

_____ in the sale, rental, and financing of dwellings and in other housing related transactions. These seven categories create the basis (or bases) for alleging a violation of the Fair Housing Act. These are also frequently referred to as “protected classes.”

Basis	% of Total
	53%
	28%
	14%
National Origin	12%
National Origin- hispanic or latino	8%
Sex	12%
Retaliation	11%
Religion	3%
Color	2%

What does the Fair Housing Act do?

The Fair Housing makes certain actions illegal when they are perpetuated against a person falling into one of the seven basis, the Department of Housing and Urban Development refers to these as “issues”.

Under the Fair Housing Act, it is against the law to:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable or deny that housing is available
- Set different terms, conditions or privileges for the sale or rental of housing
- Advertise in a discriminatory way
- Blockbust — persuade owners to sell or rent by telling them that minority groups are moving into the neighborhood
- Deny or make different terms or conditions for a mortgage, home loan, home insurance, or other real estate related transaction
- Threaten, coerce or intimidate anyone exercising a fair housing right or assisting others in exercising those rights

What housing is covered?

All single family homes are covered by the act when they are owned by private persons and a real estate broker is used, and all single family homes owned by corporations or partnerships

regardless of whether a broker is used. All multifamily dwellings are covered by the Act, including townhouse and condominium communities.

Exemptions

“**Mrs. Murphy Exemption**” If the dwelling has four or less units and the owner lives in one of the units, the transaction is exempt from the Fair Housing Act. If a real estate agent is sued, the exemption does not exist. The Civil Rights Act of 1866 makes it illegal to discriminate based on race and would apply to the transaction.

The second exemption is for **qualified senior housing** which is exempt only from the Familial Status provision of the act. To be a qualified senior community, the community must meet the following standards: Either 100% of the community is 62 or older, or 80% of the households have at least one resident 55 or older.

Religious organizations and private clubs also have an exemption.

None of this housing is exempt from section 804(c) of the Fair Housing Act which states that you cannot make, print or publish a discriminatory statement. Any exempt housing that violates 804(c) has lost that exemption and can be held liable under the act.

Class Exercise

Schmidt v. Ashbriar

The Schmidt’s, long-time residents of three units in the Ashbriar condominium building, are Jewish. As Ashbriar residents, the Schmidt’s are subject to the rules and regulations enacted by the Condominium Association's Board of Managers. For approximately three decades, the Schmidt’s displayed mezuzot on the doorposts outside of their condo units without objection.

In 2001, the Association's rules and regulations committee enacted a set of rules to govern certain activities taking place outside the units in the common hallways. The rules were properly adopted the Association and all residents were aware of the rules. The " Hallway Rules," as they have come to be called, stated:

1. Mats, boots, shoes, carts or objects of any sort are prohibited outside Unit entrance doors.
2. Signs or name plates must not be placed on Unit doors.
3. Pets must not be left unattended in the hall. Hallways should not be used as dog/pet runs.
4. No alterations to the common area hallways are allowed.
5. No playing with or riding of bicycles, tricycles, roller blades, etc. is allowed.

In 2004 the hallways of the Ashbriar Condominium building were painted and the mezuzot that Mrs. Schmidt had affixed to her door was removed. A mezuzah is a sacred parchment inscribed by hand with two portions of Torah. It is stored in a protective case and hung on the doorposts of Jewish homes. In the Torah, God commands the Jewish people to hang mezuzot on their doorposts. Two Torah portions, *Shema* and *Vehaya*, include the verse: "And you shall inscribe these words upon the doorposts of your house and upon your gates." Mrs. Schmidt affixed another mezuzot to her door following the painting and the Association had it removed pursuant to the rules. Mrs. Schmidt provided the Association with information explaining the religious significance of the mezuzah and the need for it to be placed in a certain place in the doorway to her unit. Between May 2004 and September of 2005 the building maintenance staff would remove any mezuzot that Mrs. Schmidt placed on her door.

During this time Mrs. Schmidt's husband, Dr. Schmidt, passed away. Mrs. Schmidt retained an attorney to write a letter to the Association requesting that Mrs. Schmidt be allowed to place the mezuzah on her doorway in preparation for Shiva, the seven-day mourning period specified by Jewish law. The Association maintenance staff removed the mezuzot while the family attended the funeral of Dr. Schmidt. Mrs. Schmidt returned home with funeral guests, including her Rabbi, to find the mezuzot had been removed.

Mrs. Schmidt files a complaint contending that as an observant Jew she must have a mezuzah at every entrance, and that by forbidding all mezuzot, the Association is forbidding occupancy to all adherents to Judaism, thus violating the Fair Housing Act.

Does Mrs. Schmidt have a potential claim?

What protected basis? _____

What issue? _____

What additional information do you feel the court should look at? _____
