

Preserving Dignity - Real Estate Issues in Fair Housing

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Protected Classes

Race – Color – Religion – Sex – Handicap - Familial status - National origin

Disparate Treatment

Intentional acts of discrimination directed at those protected by the law.

Disparate Impact

Requires no evidence of discriminatory intent. Involves policies or laws that cause disproportionate harm to members of a protected class. May be an unconscious act. But when the conduct at issue has a significant statistical effect of disfavoring those protected by law, the result is illegal discrimination. Defendant must present evidence of a business necessity to justify the challenged conduct.

Exemptions from Federal Fair Housing Laws

Religious Organizations: May discriminate with respect to its noncommercial property provided that the religion itself doesn't discriminate on the basis of race, color or national origin.

Private Clubs: The Act does not prohibit a private club, not in fact open to the public, from limiting the rental or occupancy of noncommercial lodgings to members.

Occupancy Standards: The Act does not limit the applicability of any reasonable local, state or federal restrictions regarding the maximum number of persons permitted to occupy a dwelling.

Drug Conviction: The Act does not prohibit conduct against a person because such person has been convicted in a court of law for the illegal manufacture or distribution of a controlled substance.

Housing For Older Persons: Discrimination based on familial status will not apply to housing:

- a. provided under any state or federal program that is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or
- b. intended for, and solely occupied by, persons 62 years of age or older; or
- c. intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the secretary of the department of housing and urban development shall develop regulations which require at

least the following factors:

- (i) that at least 80% of the units are occupied by at least one person 55 years of age or older per unit; and
- (ii) the publication of and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Single Family Housing: The sale or rental of a single family house by the owner will be exempt from coverage provided that the following conditions are met:

- ◆ The owner does not own or have any interest in more than 3 single family houses at any one time.

- ◆ The house is sold or rented without the services of a real estate agent or the facilities of any person in the business of selling or renting dwellings. The exemption will apply to one sale within a two year period, unless the owner was the most recent occupant.

Mrs. Murphy's Exemption: The Act does not cover owner-occupied dwellings designed for occupancy by no more than four families living independently of each other.

Discriminatory Housing Practices

1. Refusing to sell or rent housing or to provide information when requested.
2. Refusing to negotiate or deal with a prospect for the sale or rental of housing.
3. Denying that housing is available for inspection, sale or rental when the practitioner knows it is actually available.
4. Evicting tenants or providing different levels of maintenance service.
5. Setting different terms, conditions or privileges in the sale or rental of housing.
6. Limiting housing services or the use of facilities by buyers or renters.
7. Stating that "protected classes" are moving into the neighborhood in order to convince property owners to rent or sell, resulting in profit to the practitioner (blockbusting).
8. Denying anyone access to membership in a facility, service or organization related to the sale or rental of housing (for example, a multiple listing service or realty board).
9. Making decisions for buyers or renters about where they should live (steering).
10. Threatening, coercing, intimidating or interfering with anyone who is exercising or assisting others in exercising a fair housing right.

11. Discriminating in providing financial, insurance, or brokerage services (redlining).
12. Sexually harassing a person in the sale or rental of housing.
13. Discouraging a person from inspecting, renting or buying a dwelling.
14. Asking discriminatory questions on applications.
15. Using delay tactics to frustrate a person from pursuing housing.
16. Discouraging a person from inspecting, renting or buying a dwelling by communicating that the person may not be “compatible” with other residents of a neighborhood.
17. Using building codes or restrictive covenants to limit housing choices.
18. Discriminating in advertising or making any statement that indicates a limitation or preference. Making selective use of the media for discriminatory purposes is illegal. Practitioners should know that the law against discriminatory advertising applies even to single family, owner-occupied housing which otherwise may not be required to comply with the Federal Fair Housing Act. Real estate licensees are not exempt.
19. Discriminating in the sale or rental of a dwelling because of a person’s handicap and refusing to allow a person with a disability, as specified in the Act, to make reasonable modifications to a dwelling and common use areas at the disabled person’s expense.
20. Resisting to make reasonable modifications in rules, policies, practices or services if necessary to allow the disabled person to better use the housing.
21. Disclosing information about a property or neighborhood’s population which is part of any “protected class” referenced above.
22. Disclosing a buyer’s, seller’s or renter’s inclusion in a “protected class.”
23. Stating a preference in the recommendation of schools and school districts.
24. Building new rental buildings without accommodating persons with disabilities, especially regarding wheel chair accessibility. All dwellings in buildings having four or more units and an elevator must be in compliance. In buildings of four or more units and no elevator, only the ground floor units must be in compliance. New buildings with fewer than four units are not required to comply. The topography of the land may sometimes provide for a “reasonable” exemption to the wheel chair accessibility rule.

25. Discriminating against families in which one or more children under 18 live with a parent or person with legal custody or the designee of the parent or legal guardian. Familial status protection applies to pregnant women and anyone attempting to secure legal custody of a child under 18 years of age. Some housing for older persons is exempt from compliance with federal fair housing familial status provisions.

Blockbusting: For profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of members of a particular protected group.

Penalties & Enforcement Procedures

The penalties and enforcement procedures for the violation of federal fair housing laws were strengthened considerably in the 1988 Fair Housing Amendment Act. They include:

Actual Damages - These include the cost of finding alternative housing, legal fees and non-economic injuries such as embarrassment, inconvenience and mental anguish.

Punitive Damages - These financial awards are intended to punish the respondent for the violation and to deter others from similar conduct. There is no dollar limit on punitive damages.

Injunctive Relief - Injunctive relief can require the violator to take various “affirmative actions” to remedy the violation and prevent them in the future, such as: taking out advertisements in the media, attendance or sponsorship of educational programs or seminars, performance of community service activities, use of the Fair Housing logo, displaying the HUD Fair Housing poster, and maintenance of statistical records about the types of people served in future real estate activities,

Equitable Relief - Equitable relief is intended to eliminate any of the remaining effects of the discriminatory actions such as actually giving the “aggrieved party” access to the dwelling they may have been denied.

Civil Penalties - Intended to promote the public interest and are quite costly: up to \$10,000 for the first violation, up to \$50,000 for another violation occurring within seven years. Violators can be fined \$50,000 for the first violation and up to \$100,000 for subsequent violations if they engaged in multiple discriminatory practices if a pattern of discrimination is deemed to exist.