

Fair Housing and Equal Opportunity and The Fair Housing Act



FAIR HOUSING ACT

History

- Passed in 1968 after the assassination of Dr. Martin Luther King, Jr.
- Originally prohibited discrimination based upon RACE, SEX, COLOR, RELIGION, and NATIONAL ORIGIN
- Prohibition against discrimination based on HANDICAP and FAMILIAL STATUS were added with the Fair Housing Amendments Act of 1988

FHEO'S Mission

- **Fair Housing:** To create equal housing opportunities for all persons in America by administering laws that prohibit discrimination in housing on the basis of race, sex, color, religion, disability, familial status. and national origin.

Prohibitions

In the sale or rental of housing, it is illegal to take any of the following actions on a prohibited basis:

- Refuse to rent, sell, or negotiate
- Falsely state that housing is unavailable
- Provide different services or facilities
- Impose different qualifications, fees, pricing, or conditions
- Advertise or make any statement expressing a limitation or preference.

Prohibitions

In mortgage lending, no one may take any of the following actions on a prohibited basis:

- Refuse to make or purchase a mortgage
- Refuse to provide loan information
- Impose different loan terms or conditions

Prohibitions

It is also illegal for anyone to:

- Threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others to exercise that right

Grounds for Filing Complaints

- Seven Grounds for filing a housing discrimination complaint.
 - » Sex
 - » Race
 - » Religion
 - » Color
 - » Handicap
 - » Familial status
 - » National origin

Eighth Ground for Filing Complaints

■ Retaliation

Retaliation would allow a third party to file a complaint, e.g., sales person fired for showing a house to a non-white; tenant evicted because he protested the landlord's policy regarding the disabled.

Who Can File a Complaint

- An aggrieved person or his agent

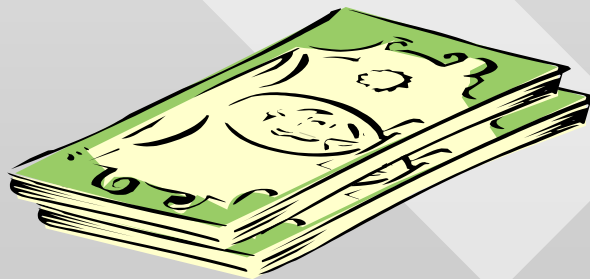
A person is aggrieved where he claims injury because of a discriminatory housing practice that will occur (frustration of purpose).



Who Can File a Complaint

Monetary Loss

Homeowner's efforts to sell his house are being impaired by the action of a real estate broker.



Time Frames

- One year
- 100 days
- 20 days
- Two Years
- Ten days

Time Frames

One Year

A complaint must be filed within one year from the date of the last occurrence of the alleged housing discriminatory act.

Time Frames

100 Days

Investigation of complaints must be completed within 100 days unless impracticable to do so.

Time Frames

20 Days

Once a charge is issued, a complainant has 20 days in which to make an election on whether the case will be heard in federal district court or before an administrative law judge (ALJ). If an election is not made, the case will be heard before an ALJ.

Time Frames

Two Years

The statute of limitations for filing a complaint in federal court from the date that the complaint is filed with HUD.

Time Frames

10 Days

HUD has 10 days from the filing date in which to notify the respondent of the complaint and the respondent has 10 days in which to file an answer. The filing of an answer within the 10-day period is not mandatory.

Damages

- Awarded by ALJ
 - » Compensatory Damages
 - » Injunctive Relief
 - » Civil Penalty

Damages

- Awarded by Federal Court
 - » Compensatory Damages
 - » Injunctive Relief
 - » Punitive Damages
 - » Attorney Fees
 - » Costs

Jurisdiction

- What is done after a complaint is received?

Jurisdiction must be verified.

An act, and not the effects of an act, creates jurisdiction.

Jurisdiction

- Elements Determining Jurisdiction
 - » Standing (The right to file.)
 - » Jurisdiction over the Respondent
 - » Timeliness
 - » Subject Matter (The issue)

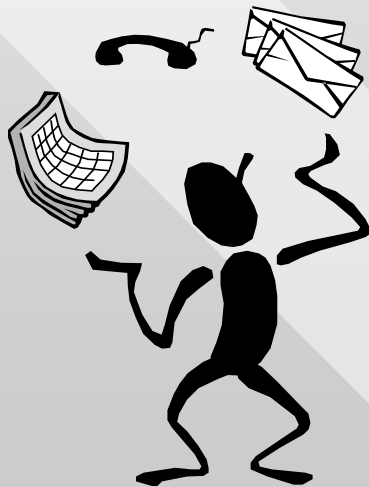
Standing

A complainant must allege that he or she has been or is about to be injured by a discriminatory housing practice, which is an act unlawful under the statute.

Standing

Testers and private civil rights organizations have standing.

A fair housing agency only needs to show “deflection of the agency’s time and money from counseling to legal efforts directed against discrimination.”



Standing

- Indirect injuries are sufficient to confer standing.

E.g., A fair housing group incurred costs with respect to testing. Such costs are a drain on resources, and is a frustration of the purpose of promoting open housing.



Jurisdiction Over Respondents

- The only persons included as respondents are those named as respondents in the complaint.
- The government cannot name respondents.

Jurisdiction Over Respondents

- The complainant should always name the person with whom he or she dealt as the respondent.



Subject Matter Jurisdiction

■ Two Issues:

- » Does it allege a prohibited discriminatory housing practice?
- » If so, and the allegation is true, would it be a violation of the statute?



Exemptions

- Single-family (803)(b)(1)

Any single-family dwelling sold or rented by an owner is exempt where the owner does not own more than three such houses at any one time.



Exemptions

- Single-family (803)(b)(1)

In the case of a sale, the property is exempt if the owner is not living in the house at the time of the sale and was not the most recent resident prior to the sale.

Exemptions

■ Multi-Family (803(B)(2))

Dwellings containing living quarters for four or less families are exempt if the owner resides in one of the living quarters.

Exemptions

- Religious organizations and private clubs

Such organizations can limit sale or rental of its dwellings to its members.

Exemptions

The exemptions are lost if there is discriminatory advertising or there is a discriminatory statement.



Advertisement

- To make, print, or publish, or cause to be made printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.



Ragin v. Harry Macklowe Real Estate Company

Numerous advertisements over a period of time featured white models only. The court held that the real estate company must comply with the FHA and not discriminate on the basis of race. Each individual plaintiff was awarded \$2,500 in compensatory damages and the open housing center received \$20,000.



Milwaukee Fair Housing Council v. Schnell

Respondent lived in an old house in need of repair. She placed an advertisement in the local newspaper with the intent of renting the second floor of her home to someone who could do repairs. She stated that she was looking for a “mature Christian handyman” and a second advertisement that she looking for a “mature handyman or couple.” An ALJ held that the words “Christian” and “handyman” were illegal preferences and awarded damages.

Guidelines in Advertising

Housing involving roommates or shared living areas may indicate a preference based on sex only

- Male roommate desired
- Female roommate desired

Guidelines in Advertising

Words descriptive of dwellings should be avoided:

- » White private home
- » Jewish home
- » Hispanic residence
- » Adult building

Guidelines in Advertising

Words indicative of race, color, religion, sex, disability, familial status or national origin should be avoided.

- » Race: Negro, black, Caucasian
- » Color: White, black
- » Religion: Protestant, Christian, Catholic, atheist
- » National origin: Mexican American, Puerto Rican, Filipino, Latino

Guidelines in Advertising

Acceptable examples involving the disabled:

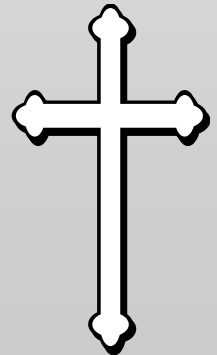
- Disabled persons given priority
- Unit with wheelchair ramp on first floor
- Special programs for the emotionally disturbed

Guidelines in Advertising

Symbols or logotypes

Any symbol or logotype which suggests or implies race, color, religion, sex, disability, familial status, or national origin should be avoided

- Star of David
- Crucifix



Guidelines in Advertising

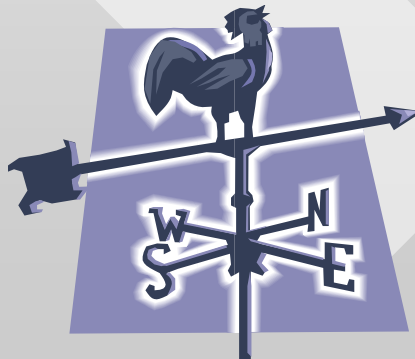
Colloquialisms:

Avoid any word or phrase used regionally or locally that implies or suggests race, color, religion, sex, disability, familial status or national origin.

Guidelines in Advertising

Directions:

Avoid terms that reference racial or national origin significant landmarks in maps or directions to real estate, e.g., turn left at the Mormon Temple; located near Ebenezer Baptist church; one block south of the MLK, Jr. memorial.



Guidelines in Advertising

Area (location) Description:

Avoid names of facilities that primarily serve a particular racial, national origin, or religious group, such as a country club or private school. Avoid names of facilities that are used exclusively by one sex.

Familial Status

- (a) Can a divorced father of two children having custody during school breaks be denied a two-bedroom unit because he is single and his children do not live with him 12 months of the year?



Occupancy Standards

The Department does not have a uniform occupancy standard. Occupancy standards are developed by the housing providers. In reviewing those standards the Department will:

- » Determine if the unit is too small or the family is too large
- » Determine if there is a policy, is it in writing, how was it developed and why
- » Number of BR's, size, and configuration of unit in question

Housing for Older Persons

Housing for older persons is exempt from the provisions of familial status and therefore not subject to the provisions of the Act.

There are three types:

- » State and Federal elderly housing
- » 62 or over housing
- » 55 or over housing

State and Federal

Housing programs specifically designed and operated to assist elderly persons.

62 or over housing

It is required that **all** persons must be 62 years of age or older. It is further required that:

- » Unoccupied units must be reserved for persons 62 or over
- » Substantial work directly related to management or maintenance must be performed by any employee (and family member) residing at the property

55 or over housing

80% percent of the units in the facility **must** be occupied by at least one person 55 years of age or older. Once this threshold is reached, the facility can be advertised as housing for older persons.

55 or over housing

- There is no government certification
- Should the property fall below the 80% threshold
 - » It can no longer be advertised as such
 - » Units cannot be held out for persons 55 years of age or over

Reasonable Accommodations

- **A change, exception, or adjustment** to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use areas. Usually, they do not involve any monetary cost.

Reasonable Accommodations

A person with a **disability** within the meaning of the Act includes:

- ☐ Individuals with a physical or mental impairment that substantially limits one or more major life activities
- ☐ Individuals who are regarded as having such an impairment
- ☐ Individuals with a record of such an impairment

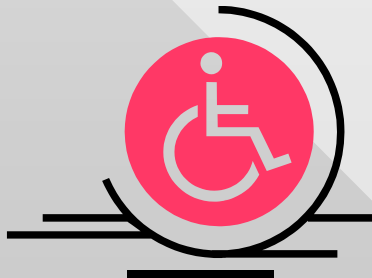
Reasonable Accommodations

To show that a requested accommodation may be necessary, there must be an **identifiable relationship** between the requested accommodation and the individual's disability

Reasonable Accommodations

Once an accommodation has been requested and a determination has been made that it is reasonable, it cannot be denied, even if costs are involved, e.g.

- » The posting of a disabled-parking sign
- » Painting the disabled logotype in the parking space

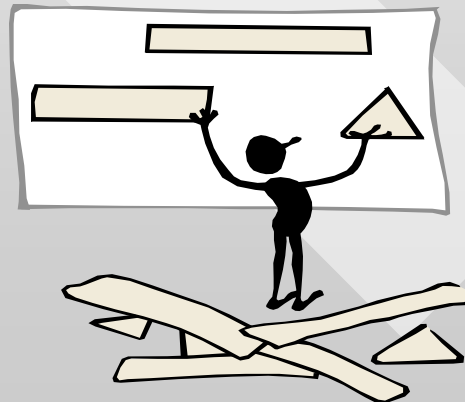


Reasonable Accommodations

- The accommodation must be requested by the tenant.
- After the request is made, the housing provider can inquire as to the nature and severity of the disability and can request documentation.
- The accommodation must be for the enjoyment of the disabled person and not for the convenience of one who is not disabled.

Reasonable Modifications

Reasonable modifications of existing premises are those that allow a disabled person full enjoyment and use of a dwelling and its premises. They usually cost money.



Reasonable Accommodations

- Owners must allow for the accommodation
- The accommodation is made at the expense of the tenant

Reasonable Accommodations

Must the dwelling unit be restore?

- » Tenant may have to restore some, e.g., tenant may have to remove grab bars but not the reinforcement in the wall behind the grab bar
- » Tenant may not have to restore modifications made to common areas if they do not interfere with use and enjoyment