



Housing Discrimination

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Background

Title VIII of the **CIVIL RIGHTS** Act of 1968, as amended in 1988, also known as the Fair Housing Act, and the Civil Rights Act of 1866 prohibit **DISCRIMINATION** in a wide array of real estate practices, including housing sale and rental, provision of homeowner's insurance, and **MORTGAGE** lending.

The Fair Housing Act

The Fair Housing Act identifies seven classes protected by the law: race, color, national origin, religion, sex, familial status, and **DISABILITY**. State and local laws often extend these protected classes to include such characteristics as sexual preference, age, and even student status. The Fair Housing Act is a federal law, which covers most housing in the United States. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit **OCCUPANCY** to members. For purposes of the Fair Housing Act, sexual discrimination includes **SEXUAL HARASSMENT** which is defined as deliberate or repeated unsolicited verbal comments, gestures, or physical contact that creates an offensive environment and sexual favors sought in return for housing. With regard to familial status, families are defined as at least one child under the age of eighteen living with at least one parent or appointed **GUARDIAN**. It also includes pregnant women and those in the **ADOPTION** process.

The Civil Rights Act

The provisions of the Civil Rights Act of 1866 are extremely broad. Section 1981 protects the right of all persons to make and enforce contracts free from racial discrimination. Section 1982 protects the rights of citizens to **INHERIT**, purchase, **LEASE**, sell, hold and convey real and **PERSONAL PROPERTY**. The act only covers racial discrimination, however, and section 1982 only protects United States citizens.

Anti-Discrimination Provisions for Sales and Rentals

No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or disability:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting)
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing

Anti-Discrimination Provisions for Mortgage Lending

No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or disability

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan
- Set different terms or conditions for purchasing a loan

Other Provisions

Additionally, it is illegal for anyone to threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right. It is also unlawful to advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or disability. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Disability Issues

Because persons with disabilities face negative stereotypes and prejudice that limit them from housing options along with physical barriers, federal and local governments have amended fair housing laws to include persons with disabilities as a protected class. The broadest protections originate from the Federal Fair Housing Act Amendments of 1988 and Section 504 of the Rehabilitation Act of 1973.

Disability can encompass either a physical or mental disability. Disability can include hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation, or it can be any other condition that substantially limits one or more major life activities.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs. If a person either has a disability or is regarded as having a disability, a [LANDLORD](#) may not refuse to allow the tenant to make reasonable modifications to the dwelling

Encyclopedia of Everyday Law: Housing Discrimination

or common use areas at the tenant's expense. The landlord also must make reasonable accommodations in rules, policies, practices, or services if necessary for the disabled person to use the housing. These actions includes the permitting of assistive animals and the designation of disabled parking spaces.

Newly constructed, multi-family housing of four or more units require at least one building entrance to have an accessible route, public and common areas readily accessible to and usable by people with disabilities, and doors sufficiently wide for use by persons in wheelchairs. Accessibility guidelines are issued by HUD to provide technical assistance in meeting the design requirements.

A reasonable modification is a structural or other physical change to the unit or housing structure to provide a person with a disability physical access. A common example is a ramp to a building's entrance. It is the responsibility of the consumer to make an accommodation or modification request. A landlord should not be expected to predict or anticipate a person's needs. Accommodation or modification letters should be in written form to document the request.

According to Fair Housing laws, "reasonable" means that the action requested by the individual with the disability does not cause an undue financial or administrative burden to the housing provider, does not cause a basic change in the nature of the housing programs available, will not cause harm or damage to others, and is technologically possible. An accommodation or modification request will be denied if it is not reasonable according to the above standards.

Under fair housing and civil rights laws, landlords can request verification from a medical professional or professional service provider (such as a social worker) that indicates a tenant requires a reasonable accommodation or modification. For a modification, a landlord may ask to inspect or review site plans and demand that they are completed in a workmanlike or professional manner. Aesthetics is not a defense in denying a modification request. While a modification or accommodation request only requires a minimal disclosure of disability (to identify oneself as protected under the law), disclosure may hasten the request process. However, it is not required.

Unlawful Questions

It is an illegal inquiry for a landlord, leasing or sales agent to ask a tenant the following questions:

- What is your disability?
- What is the nature of your disability?
- How severe is your disability?
- How was your disability acquired?
- What medications do you take?
- Can you live independently?
- Do you have AIDS?
- Why do you need this reasonable accommodation or modification?
- Are you a fire hazard?

Accessibility Requirements

In buildings that have an elevator and four or more units, public and common areas must be accessible to persons with disabilities. This means that doors and hallways must be wide enough for wheelchairs. Additionally, all units must have an accessible route into and through the unit, accessible light switches, electrical outlets, thermostats and other environmental controls, reinforced bathroom walls to allow later installation of grab bars, and kitchens and bathrooms that can be used by people in wheelchairs. These requirements are federal minimum standards only and do not replace any more stringent standards in State or

local law.

Families

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 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 written permission. Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Housing for older persons is exempt from the prohibition against familial status discrimination if the Housing and Urban Development (HUD) Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program, or it is occupied solely by persons who are 62 or older, or it houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

Discrimination Complaints

Individuals with complaints of discrimination can have HUD investigate to determine whether there is reasonable cause to believe the Fair Housing Act has been violated. A one-year [STATUTE OF LIMITATIONS](#) exists after an alleged violation for filing a complaint with HUD. HUD will notify the alleged violator of the complaint and permit that person or entity to submit an answer. HUD will try to reach an agreement through [CONCILIATION](#), but if HUD has reasonable cause to believe that a conciliation agreement is breached, HUD will recommend that the Attorney General file suit.

State and local agencies also exist to enforce fair housing laws. HUD may refer complaints to those agencies for investigation. HUD may also authorize the attorney general to go to court to seek temporary or preliminary relief, pending the outcome of a complaint, if irreparable harm is likely to occur without HUD's intervention. If HUD finds reasonable cause to believe that discrimination occurred, the matter will go to an administrative hearing at which HUD attorneys litigate the case on behalf of the complainant. Alternately, complainants can hire an attorney. An Administrative Law Judge (ALA) will consider the [EVIDENCE](#) and if ALA decides that discrimination occurred, the respondent can be ordered to pay damages, including actual damages, and damages for humiliation, pain and suffering. The respondent may also be order to make the housing available, pay attorney's fees, and pay fines to the Federal Government.

The matter can also proceed to Federal District Court with private [COUNSEL](#) where the court may order relief, which could include [PUNITIVE DAMAGES](#). The [STATUTE](#) of limitations in federal court is two years from the date of an alleged violation. The Attorney General may file a suit in a Federal District Court if there is reasonable cause to believe a pattern or practice of housing discrimination is occurring.

Lawful Discrimination

Only certain kinds of discrimination are covered by fair housing laws. Landlords are not required by law to rent to any tenant who applies for a property. Landlords can select tenants based on objective business criteria, such as the applicant's ability to pay the rent and take care of the property. Landlords can lawfully discriminate against tenants with bad credit histories or low incomes. Landlords must be consistent in the screening, treat all tenants in the same manner, and should document any legitimate business reason for not

renting to a prospective tenant.

State and Local Laws

Along with the federal laws against housing discrimination, a few states and cities jurisdictions provide additional protection under local laws.

CALIFORNIA: Fair Employment and Housing Act, which includes the California Fair Housing Law often called the Rumford Fair Housing Act, is the primary state law banning discrimination in housing accommodations because of race, color, religion, sex, marital status, national origin, ancestry, disability, and familial status. The Civil Rights Act of 1959 provides for the right to be free from discrimination in public accommodations. This Act has been interpreted by the courts to prohibit arbitrary discrimination by business establishments on any basis other than economic status such as level of income.

BERKELEY: Berkeley Municipal Code prohibits discrimination against families with children, discrimination based on sexual orientation, and discrimination based on the fact potential applicants have of having AIDS or associated conditions.

OAKLAND: Oakland **ORDINANCE** prohibits discrimination against families with children and against persons who have the medical condition known as AIDS or ARC or AIDS related conditions (ARC).

RICHMOND: Richmond Ordinance prohibits discrimination in housing against people with AIDS and related conditions.

SAN FRANCISCO: San Francisco prohibits discrimination on the basis of race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, familial status, source of income, weight and height.

NEW YORK: New York State law adds marital status and age to the list of protected categories. New York City law adds sexual orientation, lawful occupation, and citizenship status.

Additional Resources

Fair Housing Compliance Guide. Daniels, Rhonda, Home Builder Press, 1995.

Fair Housing Litigation Handbook. Zuckerman, Howard, Wiley, John & Sons, Inc., April 1993.

Organizations

Arizona Center for Disability Law

3839 N. Third Street, Suite 209

Phoenix, AZ 85012

Phone: (602) 274-6287

Fax: (602) 274-6779

URL: <http://www.acdl.com>

Cleveland Tenants Organization

2530 Superior Avenue

Cleveland, OH 44115

Phone: (216) 621-0540

URL: <http://little.nhlink.net/nhlink/housing/cto/cto.htm>

Primary Contact: Mike Foley

Metropolitan St. Louis Equal Housing Opportunity Council

1027 South Vandeventer Ave.nue, Fourth Floor

St. Louis, MO 63110

Phone: (314) 534-5800

Fax: (314) 534-2551

South Bay Fair Housing Project

2 W. Santa Clara Street, 8th Floor

San Jose, CA 95109

Phone: (408) 283-3700

URL: www.clscal.org

U. S. Department of Housing and Urban Development

451 7th Street S.W.

Washington, DC 20410

Phone: (202) 708-1112

URL: <http://www.hud.gov/offices/fheo/index.cfm>

Primary Contact: Mykl Asanti

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