

WE MUST ALL JOIN IN THE FIGHT AGAINST HOUSING DISCRIMINATION

Civil rights and fair housing laws have made housing discrimination illegal for at least 100 years, yet housing discrimination still exists throughout this community, this state, and this country. How is the problem of housing discrimination going to be remedied? It is going to take a full-court press by private fair housing groups, politicians, individual citizens, and government officials joining together to ensure that housing is available on an equal opportunity basis and that acts of housing discrimination are dealt with swiftly and effectively.

You as a leader in your community can play a vital role in eradicating housing discrimination by:

1. Having knowledge of local, state, and federal fair housing laws.
2. Having knowledge of what activities may violate local, state, and federal fair housing laws.
3. Addressing housing discrimination from a community perspective by ensuring that planning and zoning commission board are made up of members consisting of a diverse racial, gender, and social-economic backgrounds.
4. Addressing housing discrimination from a community perspective by ensuring that planning and zoning commission boards are made up of members who are knowledgeable of local, state, and national fair housing laws.

FAIR HOUSING: WHAT IS DISCRIMINATION

DISCRIMINATION

The definition of discrimination is different than what it was years ago, when it was simply defined as denying someone on the basis of a protected class. Today it is defined as:

ANY DIFFERENCE IN TREATMENT, EXCLUSION OF, OR FAILURE TO OFFER A PERSON AN EQUAL OPPORTUNITY IN HOUSING BECAUSE OF THEIR RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, HANDICAP, OR FAMILIAL STATUS.

TYPES OF DISCRIMINATION

There are three major types of discrimination, OVERT, DISPARATE TREATMENT, AND DISPARATE IMPACT.

Overt discrimination is defined as any housing discrimination which is intentionally inflicted.

Disparate Treatment is discrimination which occurs when members of a protected class are treated in a different and less favorable manner than members of a majority group. The intention to discriminate is not communicated or expressed, but can be seen from the differences in treatment.

Disparate Impact is discrimination which occurs when treatment, although applied equally, has an adverse effect on members of a protected class in comparison to members of a majority group. Basically, the activity is fair in form, but discriminatory in practice.

FAIR HOUSING LAWS

Initially, discrimination laws outlawed discrimination on the basis of race. The Civil Rights Act of 1866 was the first law to acknowledge the civil rights of blacks. Specifically, two sections of the law, 1981 and 1982, assisted blacks in securing equal opportunities in housing.

Section 1981 gave blacks the same rights “to full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.”

Section 1982 gave blacks property rights in stating that “all citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.”

Initially federal courts ruled that Section 1982 only applied to public acts of housing discrimination, but in the case of *Jones v. Mayer Co.* 392 U.S. 409 (1968), the Supreme Court ruled that it applied to both public and private acts of housing discrimination. Thus, a private homeowner could not legally discriminate against a person on the basis of race. Another important aspect of Section 1982 is that it has no exemptions for single family and multiple unit dwellings whether or not advertised or brokered.

FAIR HOUSING: THE FAIR HOUSING ACT OF 1968

On April 11, 1968, one week after the assassination of Dr. Martin Luther King, Jr., the United States of America enacted the Fair Housing Act of 1968 or Title VIII. The Act was passed to prohibit discrimination in housing and to direct the Secretary of Housing & Urban Development (HUD) to affirmatively further fair housing in federal housing and urban development programs. Even though the law was the strongest housing discrimination law at that time, it did very little to punish those who committed acts of housing discrimination, as victims could only receive remedies of injunctive relief, actual damages, and a maximum of \$1,000 in punitive damages. Overall, the Act prohibited discrimination on the basis of race, color, religion, and national origin. In 1974, the protected class of sex or gender was added.

The Act declared that for the first time that it was this Country's national policy to provide fair housing throughout the United States and it prohibited eight specific acts of discriminatory activity:

1. Refusing to sell or rent or otherwise deal with a person on the basis of a protected class.
 - Failing to accept a bona fide offer;
 - Imposing different prices or rental charges.
2. Discriminating in the conditions or terms of sale, rental, or occupancy.
 - Using different leases or contracts;
 - Failing or delaying maintenance or repairs;
 - Limiting the use of privileges, services, or facilities;
 - Denying or limiting privileges, services, or facilities.
3. Falsely denying that housing is available.
 - Indicating through words or conduct that a dwelling is not available;
 - Limiting information by word or conduct regarding price, availability, inspection, etc.

4. Discriminatory advertising.

* Using words, phrases, photographs, illustrations or symbols which convey that dwellings are not available to a particular protected class.
5. Blockbusting or causing persons to sell or rent by telling them that members of a protected class or minority group are moving into the area.
6. Discriminating in the financing of housing by a bank, savings and loan association, or other business.
7. Denying membership or participation in brokerage, multiple listing, or other real estate services.
8. Interfering, coercing, threatening, or intimidating to keep a person from obtaining the full benefit of the Federal Fair Housing Act and/or filing a complaint.

Under the Act the first three acts listed above do not apply to:

1. Any single family housing where the owner in certain circumstances does not seek to rent or sell it through the use of a broker or through discriminatory advertising.
2. Units in houses for two-to-four families if the owner lives in one of the units.

FAIR HOUSING ACT OF 1988

Sensing a need for a fair housing law with greater enforcement powers, beginning in 1980, Representatives Hamilton Fish, Jr. and Don Edwards and Senators Edward Kennedy and Arlen Specter took action which led to the enactment of the strongest fair housing law in the world. The new law, which was signed into law on September 12, 1988, by President Ronald Reagan, became the Fair Housing Amendments Act of 1988.

The Fair Housing Act of 1988 had an impact in three major areas. First, it increased the federal government's role in enforcing the law and in assisting victims of housing discrimination. The new enforcement mechanism consisted of an administrative enforcement procedure and an improved system which authorized civil actions by private parties and the attorney general. Victims of housing discrimination could file an action within two years of a discriminatory act, would not have to exhaust all administrative remedies prior to filing in court, and could be awarded attorneys fees, costs, actual damages, and punitive damages up to \$100,000. Second, it granted families with children protected class status, while still allowing some special types of housing to be maintained for only older persons. Third, it granted protected class status to persons with disabilities, so they would have an equal opportunity to use and enjoy the housing of their choice.

FAIR HOUSING: PROTECTED CLASSES

The seven protected classes under the Fair Housing Amendments Act of 1988 are described as follows:

1. Race
 - A. White – All persons having origins in any of the original people of Europe, Northern African of the Middle East.
 - B. Black – All persons having origins in any of the Black racial groups of Africa.
2. Color – Can occur between light and dark skinned persons of the same race.
3. Religion – Preference for or against the members of a particular religious group. It can involve a housing provider who practices evangelism among unwilling tenant, or who provides superior services to tenants who participate in prayer meetings and Bible studies.
4. Sex – Includes any treatment of home seekers, tenants, or loan applicants because of gender. It may occur when a landlord rents to single women and not single men, when there are different requirements regarding children of the opposite sexes, or when sexual favors are related to housing opportunities.
5. National Origin
 - A. Hispanic – All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
 - B. Asian or Pacific Islander – All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands, including China, Japan, Korea, the Philippines, and Samoa.
 - C. American Indian or Alaskan Native – All persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.
6. Familial Status – Refers to the presence of children under the age of 18 years living in a household, including pregnant women, foster parents, or a written designee of a minor child's parent.
7. Handicap – Anyone who:
 - A. Has a physical or mental impairment which substantially limits one or more of such person's major life activities; or
 - B. Has a record of having such an impairment; or
 - C. Is regarded as having such an impairment. Covered illnesses include AIDS, HIV and Multiple Chemical Sensitivity. Alcoholism is a covered handicap whether the person is in a recovery or not.

States and local communities who have fair housing laws which are equivalent to the Fair Housing Amendments Act of 1988, must have fair housing laws which contain, at a minimum, the aforementioned protected classes. Thus, communities or states could have fair housing laws that prohibit discrimination on the basis of the seven federal protected classes plus others that might include marriage, income, political affiliation, appearance, or health.

FAIR HOUSING: HANDICAP & ACCESSIBILITY

The Fair Housing Amendments Act of 1988 requires that all buildings with four or more units and ready for first occupancy after March 13, 1991, be accessible to persons with disabilities. This includes buildings with elevators, which must be accessible on all floors and buildings without elevators, which must be accessible via the ground floor. Person required to comply with the accessibility guidelines would include builders, architects, contractors, etc.

The Act also requires housing providers to:

1. Allow disabled person to make reasonable modifications to their units and common areas, when such accommodations would be necessary to allow a disabled person equal opportunity to use and enjoy housing.

Example: A housing provider would have to permit a person in a wheelchair to widen a doorway or install a ramp.

2. Make reasonable accommodations in rules, policies, procedures, and services, when such accommodations would be necessary to allow a disabled person equal opportunity to use and enjoy housing.

Example: A housing provider would have to waive a no pet policy if a person with a mental or emotional disability provided documentation from a doctor verifying that a support animal was vital to the disabled person's wellbeing.

Housing providers may not have to allow modifications or grant accommodations in cases where the modifications or accommodations would be impractical, require a major change in the their operations, or cause an extreme financial hardship.

Housing providers must know that when dealing with persons with disabilities or persons associated with persons with disabilities, it is illegal to ask certain questions. Some of the prohibited questions or inquiries are:

1. Whether a person is disabled.
2. What is the nature or severity of the disability?

The Act does permit however, certain inquiries, as long as the inquiries are asked of all home seekers. Some of the inquiries are:

1. Is the person able to meet the criteria for renting or buying?
2. Is the home seeker qualified for dwellings only available to disabled persons?
3. Is the home seeker a current drug abuser?
4. Is the home seeker qualified for housing which is qualified for a priority available to persons with disabilities?
5. Has the home seeker been convicted of drug abuse, trafficking, distributing, etc.?

FAIR HOUSING: FAMILIAL STATUS ISSUES

Except in cases of housing for older persons, it is illegal to discriminate against families with children. Discriminatory activity would include:

1. Refusing to rent or sell because of the presence of a child or children.
2. Steering or restricting families with children to certain floors, buildings, or parts of a community.
3. Discouraging the rental or purchase of housing by families with children by exaggerating the drawbacks of a dwelling.
4. Imposing higher deposits and/or rents based upon the presence of children.
5. Stating or otherwise indicating that certain property would not be appropriate because of the presence of children.
6. Implementing unduly restrictive occupancy policies such as only allowing one child per bedroom.

Discriminatory occupancy policies are those that unreasonably limit or exclude families with children. In United States v. Radcliff, et al. (D. Md 1993), a single mother and her son were not permitted to rent a one bedroom apartment in Maryland. However, the owner of the apartment complex permitted two adults to rent a single bedroom apartment. The federal court found that the apartment's occupancy violated the familial status provisions of the Fair Housing Act.

A reasonable occupancy policy is one that allows "at least two persons per bedroom."

Housing for older person is defined as:

1. Housing in which at least 80% of the occupied units are occupied by at least one person 55 years or older and which publishes rules, policies, and procedures showing an intent to rent to persons at least 55 years of age or older; or
2. Housing which is determined by HUD to be such; or
3. Housing which is occupied solely by persons 62 years of age or older.

FAIR HOUSING: ADVERTISING

The Fair Housing Amendments Act of 1988 covers the advertising of housing. It makes it illegal to make, print, or publish, or caused to be made, printed, or published, any statement, notice, or advertisement which indicates any preference, limitation, etc. on the basis of a protected class. In addition, advertising which denies certain segments of the housing market information may be deemed illegal.

Examples of discriminatory ads would include the following:

1. NO CHILDREN
2. IDEAL FOR SINGLE PERSONS
3. ADULTS ONLY
4. MATURE PERSONS
5. ADULT LIVING
6. IDEAL FOR RETIREES
7. 1 CHILD ONLY
8. WHITE ONLY
9. NO BLACKS

In addition, fair housing laws prohibit:

1. Using words, phrases, photographs, illustration, or symbols which convey that dwellings are not available to a particular protected class.
2. Refusing to publish advertising for sale or rental of housing or requiring different charges or terms for such advertising because of protected class.

In the case of *Ragin v. The New York Times Co.*, 923 F.2d 995 (2nd Cir. 1991), a U.S. District Federal Court ruled that “newspaper advertisements depicting human models of a particular race and not others will be read by the “ordinary reader” as an indication of racial preference, in violation of the Fair Housing Act.”

FAIR HOUSING: LENDING ACTIVITIES

The Fair Housing Amendments Act of 1988 makes it illegal for a bank or other financial institution to:

1. Refuse to make a mortgage loan on the basis of a protected class.
2. Refuse to provide information on loans on the basis of a protected class.
3. Impose different terms and conditions on the basis of a protected class.
4. Discriminate in the appraising of a property on the basis of a protected class.
5. Set different terms and conditions for purchasing a loan on the basis of a protected class.
6. Refuse to purchase a loan on the basis of a protected class.

FAIR HOUSING: INSURANCE

The relationship between insurance redlining and the Fair Housing Amendments Act of 1988 has been strengthened by recent court decisions. Despite the best efforts of some insurance providers, courts have continued to rule that insurance practices, including redlining are covered by the Act. In *NAACP v. American Mutual Insurance Company*, 978 F.2d 287, 290 (7th Cir. 1992), the court ruled the Act applies to discriminatory denials or insurance and discriminatory pricing that effectively preclude ownership of housing based on the race of the applicant.

Insurance redlining, as practiced by some insurance companies, has been defined as “charging higher rates or declining to write insurance for people who live in particular areas.” Other means of potentially discriminatory actions by insurance companies includes:

1. Basing coverage on the age of the home.
2. Basing coverage on the value of the home.

Local and national studies show that many insurance companies have policies that restrict access to coverage or to the most desirable coverage, based on the value or age of the dwelling. Age restrictions (which can start at 30 years) and housing value limitations that restrict access to the most desirable policies have a significant and disproportionate adverse effect on minorities who are most likely to live in the neighborhoods with the older homes. For example, a newly built \$250,000 home in Fairlawn, Ohio would cost more to rebuild than a \$40,000 forty year old home in West Akron. However, the homeowner in Fairlawn would have the greatest opportunity to purchase guaranteed replacement coverage, while the homeowner in West Akron would not because of the age and value of the home.

FAIR HOUSING: ZONING ISSUES

Communities must ensure that zoning and planning decisions do not discriminate and violate fair housing laws. Many courts have ruled against cities that have attempted to use zoning codes to regulate group home housing for disabled persons. First, courts have found that it is illegal for communities to:

1. Require that group homes be dispersed throughout a community. Communities cannot require that such be a certain distance apart.

In the cases of *Horizon House v. Township Upper Southampton*, 804 F.Supp 683, 694, *United States v. Village of Marshall, Wis.*, 787 F.Supp. 872 (W.D. Wis. 1991) and *Michigan Protection and Advocacy, et al. v. State of Michigan*, *Electronic Citation: 11996 FED App. 0211P (6th Cir) (1996)*, the federal courts struck down spacing requirements ranging from 1,000 to 1,500 feet ruling that such requirements were discriminatory against the disabled. Further, the courts ruled that distance requirements create an explicit classification based on handicap that had no rationale basis or legitimate government interest and that a failure to allow these facilities to locate near other facilities constituted a failure to make a reasonable accommodation.

2. In a restrictive manner prohibit the number of unrelated persons that can reside in a home. In *Oxford House v. City of St. Louis*, 843 F. Supp. 1556, 1571 (1994), a federal court found that the city's zoning ordinance prohibiting more than eight unrelated persons from living in a single family dwelling district violated the Fair Housing Act. The court prohibited the city from enforcing the code and permitted the organization, Oxford House, to operate two family group homes with 10 and 12 residents respectively.

The court went on to note that the city's failure to agree to suspend enforcement of its zoning ordinance violated the law as it "was a failure to make a reasonable accommodation necessary to afford these handicapped plaintiffs with an equal opportunity to the housing for their choice." An accommodation is unreasonable if it requires a fundamental alteration in the nature of a program or if it imposes undue financial or administrative burdens on a municipality.

FAIR HOUSING: RETALIATION PROTECTION

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:

- Coercing a person orally, in writing, or by any other means, to deny or limit the benefits provided to that person in connection with the sale or rental of housing;
- Threatening, intimidating, or interfering with a person in their enjoyment of housing because of their protected class or because of the protected class of their friends, associates, etc.;
- Retaliating against a person that has complained, testified, or assisted, or participated in any action regarding a fair housing complaint.

Example: A New York man attacked a black man who was married to a white woman, burned a cross in the man's yard, and stood outside the man's home brandishing a noose and yelling threats and obscenities.

The man was charged with violating the intimidation portion of the Fair Housing Act and was sentenced to a 46 month prison sentence which was upheld by a New York federal judge.

FAIR HOUSING: REMEDIES

Victims of housing discrimination can file:

1. Administrative housing discrimination complaints directly with the U.S. Department of Housing & Urban Development or the Ohio Civil Rights Commission (OCRC) within one (1) year of the alleged discriminatory act(s).
2. Lawsuits in a federal district court within two (2) years of the alleged discriminatory act(s). The lawsuit must be based on a violation of the federal Fair Housing Act.
3. Lawsuit in a state court of common pleas within one (1) year of the alleged discriminatory act(s) if the suit is based on a violation of state fair housing law.

An administrative agency such as HUD or the OCRC will:

1. Notify you of receipt of your complaint.
2. Notify the respondent of your complaint and give an opportunity for response.
3. Investigate the complaint in order to determine whether there is probable cause to believe that discriminatory activity has taken place.
4. Attempt to reach a conciliation agreement with the respondent. If a conciliation agreement is reached, the case will close.
5. If a conciliation agreement cannot be reached and a probable cause determination is made, the parties will receive a notice of such and the right to choose whether the complaint will be heard by an administrative law judge or addressed in federal or state court.

If a conciliation agreement cannot be reached and a no probable cause determination is made, the complaint will be dismissed with the parties receiving a notice of such finding.

Both the administrative and court forums offer the following:

1. Free legal counsel – A government attorney may prepare and argue the case on behalf of the complainant.
2. Intervention – Complainants may intervene with their own legal counsel and recover legal fees if the government wins.
3. Injunctive Relief and Damages – May be awarded if the complainant wins.
4. Appeal – Judge’s final decision may be appealed to a U.S. Court of Appeals
5. Judges - Judges may administer oaths, examine evidence, witnesses, etc.
6. Evidence – Federal rules of evidence will be applied.

Differences between the administrative and court actions are:

1. Speed – The administrative process is much faster than the district court process and usually takes only 6 months to resolve, whereas federal court cases take at least two years before litigation starts.
2. Jury – In federal district court a jury is allowed, whereas in an administrative hearing, the case is tried by a judge.
3. Punitive damages – In federal district court punitive damages are unlimited, whereas in administrative court, they are limited.
4. Civil Penalties – In federal district court civil penalties are not allowed, whereas administrative court allows for civil penalties.

FAIR HOUSING: POINTERS FOR HOUSING PROVIDERS

1. Develop a fair housing policy and make sure that all employees are aware of it. In addition, post a copy of the policy in all offices, distribute to all employees, conduct periodic reviews with staff, monitor, and consider providing a copy to all prospective occupants who make onsite inquiries.
2. Review all leases, brochures, flyers, etc. and make sure they are free of discriminatory language.
3. Make sure that all advertising contains the equal housing opportunity phrasing or logo and only contains information about the housing.
4. Develop a reasonable accommodation process for persons with disabilities.
5. Make sure that occupancy policies are not restrictive and allow at least two persons per bedroom.
6. Keep good records and logs. Remember that a complaint based on a violation of the Fair Housing Act can be filed within two years of the alleged discriminatory activity.

7. Develop and implement objective criteria for determining housing eligibility. Such may include work history, income, criminal history, etc.
8. Never respond to questions about the racial, sexual, etc. composition of a neighborhood, building, or community.

FAIR HOUSING: IMPORTANT FAIR HOUSING CASES

Shelley v. Kramer, 334 U.S. 1 (1948) – The court ruled that equal protection clause of the 14th Amendment prohibits judicial enforcement by state court of racially restrictive covenants.

Jones v. Mayer Co., 392 U.S. 409 (1968) – The court ruled that 42 U.S.C. S 182 is valid exercise of power granted Congress to enforce the 13th Amendment, and it applies to private acts of racial discrimination.

Havens Realty Corp. v. Coleman, 102 S.Ct. 1114 (U.S. Sup. Ct. 1982), 633 F.2d 384 – The Supreme Court ruled that because it is illegal under the Act for a person or organization to misrepresent availability of housing, testers have enforceable right to truthful information and can suffer injury. In addition, the Court ruled that private fair housing groups have standing to challenge discriminatory housing practices and recover damages.

Persons, individuals, and organizations that have standing to file suits and complaints under the Fair Housing Act include:

1. Non-white home seekers who are direct victims of discrimination.
2. Spouses, children, family members, and roommates.
3. Testers – Persons who, without a bona fide intent to rent or purchase a home, apartment or other dwelling, pose as prospective renters or purchasers for the purpose of gathering information which may indicate whether a housing or insurance provider is complying with fair housing laws.

South Suburban Housing Center v. Greater South Suburban Board of Realtors, 935 F.2d 868 (7th Cir. 1991) – The court ruled that non-profit housing center’s affirmative marketing to whites of homes in black neighborhoods does not violate Fair Housing Act.

Pinchback v. Armistead Homes Corp., 907 F.2d 1447 (4th Cir. 1990) – The court ruled that futile gesture doctrine may be applied to a case brought under the Fair Housing Act.

Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972) – The court ruled that white and black tenants have standing as “aggrieved persons” under the Fair Housing Act to bring suite against landlord for discriminating against prospective non-white tenants.

FAIR HOUSING: FEDERAL, STATE, AND NATIONAL ORGANIZATIONS

U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

451 Seventh Street. S.W.
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NATIONAL FAIR HOUSING ALLIANCE

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Office of the Director

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IMPORTANT LOCAL AGENCIES

Akron Bar Association (attorney referral)	330-253-5038
Akron Health Department	330-375-2366
Akron Clerk of Courts (evictions)	330-375-2920
Barberton Clerk of Courts	330-753-2263
Barberton Health Department	330-745-6067
Summit County Auditors Office (For info on property ownership if unknown. Must have address.)	330-643-2636
Summit County Building Department	330-630-7280
Summit County Department of Development	330-643-2552
Community Legal Aid Services	330-535-4191

FAIR HOUSING: INFO SOURCES

Sources of information in this book include but were not limited to:

- Summit County Department of Development. Analysis of Impediments to Fair Housing Choice in Summit County, April 1998;
- Fair Housing-Fair Lending, Significant Fair Housing Case Decisions, Section 2351.

The Fair Housing Advocates Association (FHAA) seeks to be accurate in providing housing information to prospective and existing tenants and landlords, home seekers, housing providers, and the general public. It recognizes that errors may occur and they will be corrected when discovered. The information presented in this book is only intended to provide its readers with information and guidance. Should persons want legal advice, they should contact an attorney..

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