Fair Housing Laws and Discrimination Against Families

Fair housing laws protect individuals from many types of discriminatory housing practices. This paper focuses solely on one type of housing discrimination – discrimination based on familial status. The familial status protection covers individuals with children under the age of 18 and pregnant women. Landlords sometimes refuse to rent apartments to families with young children or pregnant women if the units contain or are suspected to contain lead-based paint and/or hazards. Such rental practices are considered discrimination based on familial status and are illegal under most fair housing laws, including the federal Fair Housing Act (FHA).

Under federal law, it is unlawful to refuse to rent a dwelling unit to a family with children or a pregnant woman, even if there are known lead-based paint hazards on the property, and the landlord believes that he is doing the right thing by protecting the prospective tenants from lead-based paint hazards. The choice to rent or buy remains with the prospective tenant, not with a landlord. The Disclosure Law, which requires landlords to inform prospective tenants about known hazards, is intended to enable prospective tenants to make well-informed housing choices.

State and local fair housing laws typically are very similar to the FHA; however, some state and local laws offer protections not included under federal law. Like the laws themselves, complaint and investigation processes and enforcement vary from state to state.

This paper provides an overview of fair housing laws and their enforcement. The first section briefly describes the FHA, which protects all Americans and serves as a model for many state and local fair housing laws. The second section provides basic information on state and local fair housing laws. The third section addresses enforcement of fair housing laws, including the process for filing a fair housing complaint and the interplay between federal, state, and local fair housing agencies. Finally, the last section offers suggestions on who to contact and questions to ask to learn more about local fair housing laws and their enforcement.

1. The Federal Fair Housing Act (42 U.S.C. § 3601 et seq.)

The Fair Housing Act (FHA) prohibits housing discrimination based on race, color, national origin, religion, sex, familial status, and disability. The Act defines familial status to include one or more children under the age of 18 who live with a parent, custodian, or designee. The FHA also protects pregnant women and people in the process of securing child custody.

Prohibited Activity under the FHA

Many activities are considered discriminatory under the FHA. The statute and regulations make it unlawful to engage in any of the following actions because of race, color, national origin, religion, sex, familial status, or handicap:

1. Refusing to rent or sell after an offer has been made or refusing to negotiate for rental or sale, including failing to accept a good faith offer; failing to negotiate; imposing different sales prices or rental charges; using different qualification criteria, such as income standards; or evicting tenants. 24 CFR 100.60.

2. Discriminating against a person in the terms, conditions, or privileges of sale or rental, for example, by using different provisions in leases or contracts of sale, such as those relating to security deposits, down payments, etc.; failing or delaying maintenance or repairs; failing to process an offer for sale or rental; and denying or limiting privileges, services, or facilities associated with a dwelling. 24 CFR 100.65.

3. Printing or publishing an ad or notice for sale or rental that indicates a preference, limitation, or discrimination; expressing to agents, brokers, employees, prospective sellers or renters, or any other person a preference for or limitation on any purchaser or renter; selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities; and refusing or requiring different terms for advertising the sale or rental of dwellings. 24 CFR 100.75.

4. Representing to any person that a dwelling is not available for inspection, sale, or rental when it is in fact available, including indicating that the lease or contract provisions restrict sale or rental of a dwelling to certain persons; enforcing discriminatory contract or lease provisions; and limiting information regarding suitably priced dwellings available for inspection, sale, or rental. 24 CFR 100.80.

5. Inducing or attempting to induce for profit a property owner to sell or rent a dwelling by reference to race, color, national origin, religion, sex, familial status, or handicap, for example by conveying that a neighborhood is undergoing a change in race. 24 CFR 100.85

The FHA also prohibits interference, coercion, or intimidation of persons who exercise their rights under the law.

1. Landlords many not coerce, intimidate, threaten, or interfere with a person's ability to exercise their rights under the Fair Housing Act, for example, by denying or limiting the benefits provided to a tenant; threatening, intimidating, or interfering with a person's use and enjoyment of their dwelling; threatening an employee or agent with dismissal for any effort to assist a person seeking access to the sale or rental of a dwelling; intimidating or threatening a person for making others aware of their rights; or retaliating against any person because they exercised their rights under the FHA. 24 CFR 100.40.

2. The Fair Housing Act protects individuals who have been retaliated against because they exercised their rights under the FHA. It does not protect individuals who have been retaliated against for reporting health or building code violations.

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Not all housing is covered under the FHA. The following housing is exempt:

- Owner-occupied buildings with no more than four units.
- A single-family house sold or rented by an owner without the use of a real estate agency, if the owner does not own more than 3 single-family homes at the same time. (If the house is not owner-occupied, the owner cannot own more than 3 homes within a 2-year period).
- Housing for the Elderly.

2. State and Local Fair Housing Laws[1]

Many state and local fair housing laws are similar in scope to the FHA. Some state and local laws, however, offer more protection than the FHA. Massachusetts housing discrimination law, for example, prohibits discrimination based on marital status, ancestry, veteran status, age, and receipt of public benefits. Local fair housing agencies can provide information about local fair housing laws, and complaint and investigation procedures. A list of local fair housing agencies can be obtained from the National Fair Housing Advocate online at: http://www.fairhousing.com/ (click on *links* under the Resources section), or from the National Fair Housing Alliance at: http://www.nationalfairhousing.org/html/memberOrgs/operating.htm.

3. Enforcement of Fair Housing Laws

Individuals whose rights have been violated can seek to enforce fair housing laws at the federal, state, and local levels of government. An individual can file a complaint with their state or local fair housing agency to enforce state or local fair housing laws and/or file a complaint with HUD or a "substantially equivalent" agency to enforce the federal FHA. Federal law also permits an individual to seek enforcement of the FHA through the judicial system. It is theoretically possible for an individual to file a complaint with a state and local agency, file a complaint with HUD or a "substantially equivalent" agency (see Section 3A, below for an explanation), and file a lawsuit in federal district court all at the same time. Filing a claim in multiple forums increases the likelihood that action will be taken. However, it is unlikely that an individual could recover damages in more than one forum. The FHA expressly prohibits recovery through the judicial system if a person has previously settled the case or received an administrative decision on the same complaint.

A. Process for Seeking Redress under the Federal Fair Housing Act

In seeking redress under the federal Fair Housing Act, an individual may file an administrative complaint with HUD or a "substantially equivalent" state or local agency, or

[1] Some state and local laws prohibit landlords from retaliating against tenants who exercise their rights to a housing inspection or who report health and building code violations. Generally, these anti-retaliation provisions fall within landlord-tenant law rather than fair housing laws.

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may file a lawsuit in federal district court. It may be advantageous to file complaints in both administrative and judicial fora, and proceed in the forum that first takes action on the complaint.

HUD has designated a number of state and local agencies as "substantially equivalent" for purposes of fair housing enforcement. These agencies are located in states with fair housing laws that are "substantially equivalent" to the FHA and are compensated for their services via grant funding. A list of "substantially equivalent" state and local fair housing agencies is available through HUD at: http://www.hud.gov/offices/fheo/partners/FHAP/agencies.cfm. A list of HUD's regional offices is also available at: http://www.hud.gov/offices/fheo/aboutfheo/fhhubs.cfm.

Different statutes of limitations apply, depending on the forum. An individual has only one year from the date the alleged discrimination occurred (in cases where there was one discriminatory incident) or terminated (in situations where there was on-going discrimination) to file a complaint with HUD or a "substantially equivalent" agency, whereas the statute of limitations on claims filed in federal district court is two years.

Filing an Administrative Complaint with HUD or a "Substantially Equivalent" Agency

1. **Filing a complaint -** There are several ways to file a complaint with HUD or a "substantially equivalent" state or local agency.

- **Complaint forms -** HUD or a "substantially equivalent" agency can provide complaint forms. Complaint forms also can be downloaded at http://www.ezrc.hud.gov/offices/fheo/index.cfm, or requested by calling 1-800-669-9777. An aggrieved person also can write a letter containing their name and address, the name and address of the alleged violator, the address of the house/apartment they were trying to rent or buy, the date the incident occurred, and a short description of what happened.

- **Submitting the complaint -** Complaints can be submitted on-line or mailed to:

  Office of Fair Housing and Equal Opportunity
  Department of Housing and Urban Development
  Room 5204
  451 Seventh St. SW
  Washington, DC 20410-2000

  Complaints also can be mailed to one of HUD's regional offices or a "substantially equivalent" state or local agency.

2. **Investigation -** HUD or a "substantially equivalent" agency must either investigate the complaint within 100 days after filing or send written notification to both parties as to why the investigation was not done in the first 100 days.

3. **Issuing charges -** If, after investigating, HUD or a "substantially equivalent" agency determines that there is reasonable cause to believe that a discriminatory housing practice has

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occurred, then a charge is issued against the person accused of committing the discriminatory act.

4. **Settlement option -** HUD or the "substantially equivalent" agency will try to settle with the defendant before proceeding to a hearing. If the parties settle, no further action will be taken on the matter. If the parties fail to settle, the case proceeds to a hearing.

5. **Choosing a forum -** After a charge is issued, the aggrieved person may elect to have their claims decided in a federal court or by an administrative law judge. HUD Attorneys will represent aggrieved individuals in an administrative hearing and the Attorney General will represent individuals who elect to pursue a civil action in a federal district court. In either situation, the aggrieved person may elect to be represented by a private attorney.

6. **Relief -** The judge may award monetary damages to individual plaintiffs and also may assess civil fines payable to the government. Individual plaintiffs may be awarded actual damages to compensate them for their loss, punitive damages to punish the defendant and deter similar conduct in the future, and injunctive relief whereby the judge forces a property owner to either take or refrain from taking an action. Injunctive relief might include mandating that a landlord rent an apartment to the plaintiff. A prevailing plaintiff also can collect attorney's fees under the FHA.

Filing a Complaint in Federal District Court or State Court

1. **Filing a complaint -** An aggrieved person may file a lawsuit in a U.S. District court or a state court no more than two years after the occurrence or termination of a discriminatory act. The two year period does not include any time during which an administrative proceeding was pending with respect to the complaint or charge.

2. **It is not necessary to first file a complaint with HUD -** An aggrieved person may file a civil action without regard to the status of any complaint with HUD unless an Administrative Law judge has already commenced proceedings or a settlement agreement has already been reached.

3. **The court may appoint an attorney for the aggrieved person or waive the fees associated with bringing a civil action.**

4. **Relief -** Courts may award actual damages, punitive damages, injunctive relief, and attorney's fees and costs.

Enforcement by the Attorney General

Pattern of Discrimination cases- The Attorney General may commence a civil action when there is reasonable cause to believe that any person or group of persons is engaged in a *pattern or practice* of housing discrimination (as opposed to isolated instances of discrimination).

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4. Follow-up/ Additional Information

This paper focuses primarily on federal fair housing law. To learn more about local fair housing laws in your area contact a state or local fair housing organization or an attorney with experience in state and local fair housing law. The National Fair Housing Alliance (http://www.nationalfairhousing.org/) also may have information on the interplay between federal, state, and local fair housing laws.

Listed below are some questions to consider asking a local fair housing agency or attorney to find out more about fair housing law in your jurisdiction.

1. How does fair housing enforcement work in my area?

-Does my state have any "substantially equivalent" agencies that are capable of enforcing the FHA?
-Where should I refer potential victims of housing discrimination?
-Is it advisable to file a fair housing complaint with a local fair housing organization *and* with HUD?
-How does one file a complaint with a local fair housing agency? How long does it generally take before complaints are acted on?
- How do local fair housing agencies go about investigating complaints?

2. Are any pro-bono or reduced-fee legal services available in the area to assist victims of housing discrimination?

3. Do my state or local fair housing laws offer protection above and beyond that provided under the FHA? (i.e. protection against discrimination based on income or student status)

-If yes, what additional protection is provided?
-What type of relief is available under state/local law?
-How might I get copies of my state/local fair housing laws?

4. How can I help inform consumers about their rights under fair housing laws?

-Do you have any informational pamphlets or brochures about fair housing?
-Does your fair housing organization offer presentations or informational sessions on fair housing law for housing providers and/or consumers?

This paper should not be construed as legal advice.

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