

An Overview of the Fair Housing Act



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Historical Background of the Fair Housing Act

The federal Fair Housing Act, or Title VIII of the Civil Rights Act of 1968, was signed into law by President Johnson on April 11, 1968, just one week after the assassination of Martin Luther King, Jr. Prior to its enactment, the Fair Housing Act had been debated and considered by Congress numerous times but it failed to attract enough support. When Martin Luther King, Jr. was assassinated, President Johnson used the nation's sympathy and outrage to get the Civil Rights Act of 1968 passed into law. Martin Luther King, Jr. had been closely identified with the Fair Housing Act and, as a tribute to King and his accomplishments, Johnson wanted to have the law signed into effect prior to King's funeral.

Passage of the FHA was also motivated by the desire to provide affordable housing for Vietnam veterans and their families. Minority servicemen represented a significant amount of the casualties during the Vietnam War. It was especially troubling to civil liberty and veterans groups that, due to the discriminatory practices of housing providers, these United States servicemen were coming home from war only to find that they were being discriminated against when they looked for housing.

The FHA, as enacted in 1968, prohibited discrimination based on race, color, sex, national origin and religion. Subsequent amendments added fair housing protection for individuals based on disability and familial status. The FHA was also amended to establish new administrative enforcement actions and to expand the jurisdiction of the Department of Justice with respect to fair housing violations.

Who is protected under the FHA?

The FHA protects residents, applicants and prospective applicants from discrimination due to race, color, gender, disability, religion, nationality, or familial status. In addition, the FHA also protects the guests of residents, fair housing testers, and certain employees from acts of discrimination. Individuals that assist in the assertion of another individual's fair housing rights are also protected from retaliation or harassment.

What type of housing is covered by the FHA?

The FHA applies to almost every category of public and private housing. It also applies to the sale or leasing of vacant land. As a general rule, the FHA also applies to every type of housing-related transaction, including lender financing. Certain types of housing are exempt from the requirements of the FHA. These include buildings with no more than four units that are owner-occupied, single-family housing sold or rented without the use of a broker, and housing operated by private clubs and organizations that limit occupancy to members.

What does the FHA prohibit?

The FHA states that direct providers of housing cannot engage in discriminatory practices that limit, restrict or that make unavailable housing to an individual based on their race, color, religion, gender, nationality, familial status, or disability. A direct provider of housing includes landlords, real estate companies, banks and lending institutions, homeowners' insurance companies, and municipalities. The FHA also states that housing providers may not, in connection with the sale or rental of a property, make, print or publish any statement that indicates a discriminatory preference, limitation or intent. In addition, the FHA prohibits individuals from threatening, coercing, intimidating or interfering with an individual asserting their rights under the FHA. This protection extends to any person, such as an attorney or realtor, assisting another in asserting their right to fair housing under the FHA.

Racial and Religious Discrimination

Under the FHA, direct providers of housing are not allowed to discriminate against potential buyers or renters based on their racial status or the color of their skin. This includes a prohibition against practices such as steering and blockbusting. Steering occurs when a landlord, real estate agent or another type of housing provider tries to steer an individual seeking housing towards a particular neighborhood, area or building based on their race or religious affiliation. Blockbusting occurs when a realtor attempts to encourage individuals to sell their homes based on the fear that people of different races or religions will be moving into the area. In these situations the realtors then buy the properties up at a reduced rate, and then sell them to minorities at profit.

Gender Discrimination

Housing providers are not allowed to discriminate against or give a preference to individuals based upon their gender. In addition, the FHA also prohibits any form of sexual harassment against potential or existing tenants or homeowners. Sexual harassment includes harassing words and actions, including propositions that make it seem that continued housing is based on compliance with certain harassing actions. The harassment is actionable under the FHA whether it was conducted by the owner, landlord, employee or another resident of the facility.

Discrimination Based on Country of Origin

Housing providers are required to provide equal opportunities to all renters and buyers regardless of their ancestry or place of birth. The FHA also prohibits discrimination against individuals solely because they do not speak English. With respect to inquiring about immigration status, housing providers are permitted to ask for valid identification, however they are not allowed to ask for a Permanent Resident Card or green card.

Discrimination Based on Familial Status

Housing providers are not allowed to discriminate against families with children under the age of 18 years. This protection also extends to pregnant women. Housing providers also are not allowed to put any special limits or restrictions on families with children, including requiring them to live in certain designated areas of the building or unreasonably restricting or limiting their access to any service available to other tenants. The provisions of the FHA also provide that landlords cannot unreasonably restrict the number of people living in a house or an apartment.

The restriction against discrimination against families with children is inapplicable if the home or building is elderly housing in compliance with the Housing for Older Persons Act of 1995 (HOPA). When the FHA was amended to add disability and family status as protected classes, it specifically exempted housing designed for older persons. In order to qualify as senior housing, at least 80 percent of the housing facility must be occupied by at least one person who is 55 years of age or older. HOPA states that housing facilities do not have to provide significant facilities and services for the elderly.

Prohibited Acts under the FHA

The FHA prohibits housing providers from doing any of the following for a discriminatory purpose:

- Refusal to rent or sell.
- Refusal to negotiate.
- Falsely deny housing availability for inspection, rental or sale.
- Establish different terms and conditions or privileges in connection with sale or rental.
- Deny access to a membership or service related to sale or rental of property.
- Provide different services and facilities.
- Encourage blockbusting.

Mortgages and Lending

The FHA prohibits lenders from refusing mortgage loans or other financing for discriminatory purposes. Further, lenders cannot discriminate against members of the protected classes by refusing to provide information on loans, by offering less favorable terms and conditions, in their appraisal of property values, or by refusing to purchase a loan or offering less favorable terms in connection with a loan purchase.

What does the FHA require for disabilities?

For purposes of the FHA, disability is defined as a physical or mental impairment that substantially limits one or more major life activities. These major life activities have been defined to include seeing, hearing, walking, breathing, manual tasks, caring for one's self, learning, speaking, and working. The FHA considers an individual to be disabled if they have HIV, asthma, mental retardation, a history of drug or alcohol addiction, and chronic fatigue syndrome. An individual will not be considered disabled if they are a current user of a controlled substance, if they have been convicted of the illegal manufacture or distribution of a controlled substance, or if they are a sex offender or juvenile offender.

Housing providers must give disabled individuals the right and the ability to enjoy the property as if they were not disabled. This means that the housing provider must make reasonable accommodations with respect to rules and policies, practices and services that are essential to the disabled person's ability to enjoy the use of the property. This also includes the opportunity to enjoy any common areas or public use areas. While the housing provider is generally required to treat a disabled tenant the same as they would treat any other tenant, there are some exceptions to this rule. For instance, a housing provider may be required to make an exception to a no pets policy so that a disabled person can bring a service animal onto the property. Other reasonable accommodations a housing provider may have to provide include assigning a parking space to a disabled tenant or providing a disabled tenant with the option to rent the first floor residence if they have difficulty walking upstairs.

Under the FHA, most new multi-family buildings, including apartment and condominium complexes, need to be designed and built so that they are accessible to, and usable by, disabled persons, including disabled persons who require the use of a wheelchair. As a general rule, all buildings built after 1991 that have four or more units must be designed to have:

- Accessible entrances and accessible routes into it and through each dwelling.
- Accessible common and public use areas.
- Doors wide enough to accommodate wheelchairs.
- Bathroom walls that are strong enough to support grab bars.
- Thermostat controls, outlets and light switches that are accessible by someone in a wheelchair.
- Bathrooms and kitchens that are designed for use by individuals in a wheelchair.

Further, landlords are required to let disabled tenants, at their own expense, make reasonable modifications to the premises to enhance their use and enjoyment of the property. Owners and landlords may condition their approval of any modifications on the tenant's agreement to return the property to its original condition at the end of the lease term.

Generally, it is illegal under the FHA for a housing provider to inquire about the nature or severity of an individual's disability. Housing providers may make such inquiries to determine eligibility for a priority or dwelling available only to disabled persons. Standard inquiry regarding qualifications to purchase or rent property are also permitted. Housing providers are also permitted to make inquiries necessary to determine if an individual is a current user of or is a convicted manufacturer or distributor of a controlled substance.

Is Discriminatory Intent Necessary to Find a FHA Violation?

It is important to note that a violation of the FHA can be found even if there is no discriminatory intent or motive. It will be considered a violation of the FHA if an act or series of acts results in a discriminatory effect on a member of a protected class. A discriminatory effect will be found when the enforcement of a practice or rule has a harsher impact on a member of one of the protected classes. In order to prove a discriminatory effect, the complainant must show that the practice or rule has or will have a discriminatory effect on members of one of the protected classes. If the claimant is able to prove the discriminatory effect, the housing provider must justify the enforcement of the rule or procedure by proving that the practice or rule is necessary to achieve a substantial, nondiscriminatory interest. Even if it is determined that the housing provider's rule is justifiable, the claimant will have the opportunity to prove that the same purpose could be accomplished with an alternate rule or procedures that would not lead to a discriminatory effect.

Who enforces the FHA?

The provisions of the FHA are primarily enforced by the United States Department of Housing and Urban Development and the United States Department of Justice. Within HUD, the Office of Fair Housing and Equal Opportunity (FHEO) and the Office of General Counsel are responsible for fair housing enforcement and compliance. Many states and local governments have housing regulations that are similar to the requirements of the FHA and these state and local governments have agencies that are charged with enforcing their fair housing requirements. In some instances, where the state laws are as protective as the federal FHA requirements, HUD may transfer a complaint to the local authorities so they can make the final determination. In addition to governmental enforcement, private citizens that have been unfairly treated in violation of the FHA can initiate a civil proceeding against the housing provider that engaged in discriminatory practices. There are a number of private fair-housing advocacy groups, some of which are partially funded by FHEO, that can assist individuals trying to enforce their fair housing rights.

What is the process for pursuing a claim under the FHA?

Claimants can initiate an administrative or civil action against a housing provider for alleged discriminatory practices. Claimants have up to one year from the date of the incident to initiate an administrative claim and up to two years from the incident date to initiate a civil claim.

To initiate the administrative process, claimants must file a complaint with HUD by writing a letter or submitting an online Housing Discrimination Complaint Form. After the process is initiated, HUD will notify the housing provider who will have an opportunity to submit an answer to HUD in response to claimant's allegations. HUD will conduct its own investigation and make a determination of whether reasonable cause exists to believe that an FHA violation has occurred. Once reasonable cause has been found, HUD will attempt to reach a settlement agreement or conciliation with the housing provider. In this agreement, or conciliation, HUD will attempt to compensate the claimant and protect the interests of the general public by ensuring that this housing provider does not continue to engage in this type of behavior. If the housing provider breaches the settlement or conciliation agreement, HUD can request that the United States Attorney General's office initiate a civil action against the housing provider.

If a settlement or conciliation agreement is not reached within 120 days of filing the complaint, an administrative hearing will be held. At this point, either party may request that the matter be transferred to district court. Regardless of the venue, and as long as claimant uses HUD's attorneys, the matter will proceed at no cost to the claimant.

In some instances, claimants and HUD can ask the Attorney General to take immediate action by seeking temporary or permanent injunctive relief until the final outcome of the matter has been determined. To obtain injunctive relief, claimant needs to show substantial evidence of an FHA violation and the likely occurrence of irreparable harm if injunctive relief is not granted. For example, claimants can seek injunctive relief to stop the sale of a home to another person if violations of the FHA interfered with claimant's opportunity to purchase that home.

Remedies under the FHA

If the housing provider is found in violation of the FHA, the administrative law judge can order the payment of damages to claimant. These damages may include monetary compensations for actual damages, as well as compensation for humiliation, and pain and suffering. The administrative law judge may also order injunctive or equitable relief to put claimant in the position they would have been absent the housing provider's discrimination.

For instance, if claimant was denied a mortgage for discriminatory purposes and was forced to obtain a mortgage from another lender at a higher interest rate, the housing provider may be required to reimburse the claimant for actual damages based on the amount of additional interest paid as a result of the discriminatory practice. The housing provider may also be required to offer equitable relief, such as offering them a mortgage on the same terms and conditions that claimant was initially denied.

Because HUD and the DOJ are also concerned with protecting the interests of the general public, a civil fine can also be levied against the housing provider. For a first time offender, the maximum civil penalty that the administrative law judge can order is \$16,000 per discriminatory practice. If a housing provider is found guilty of a second offense within five years, the per incident penalty increases to \$42,500. If a housing provider is found guilty of more than two offenses within seven years, the per incident penalty increases to \$70,000.

Is there any assistance given to builders for complying with the requirements of the FHA?

HUD administers and supports the Fair Housing Accessibility FIRST program, which offers information, seminars and guidance to assist builders, developers and designers better understand the FHA and its requirements in connection with the "design and construction" of multi-family dwellings. This program is also designed to help disabled persons understand their rights under the FHA.

In addition, HUD has issued Fair Housing Accessibility Guidelines, which provide technical assistance to builders and developers regarding compliance with the accessibility requirements of the FHA. While builders and developers are not required to adhere to the Guidelines, doing so provides a safe harbor from HUD's administrative enforcement process.

Attorney's Fees under the FHA

If a claimant initiates a civil action for an FHA violation or retains their own attorney to represent them in an administrative hearing, claimant can be reimbursed for reasonable attorneys' fees and costs if they are successful in their claim against the housing provider. If a housing provider successfully defends itself against allegations of an FHA violation, it may also be entitled to reimbursement of reasonable attorney's fees and costs.

Impact of the FHA

Even after the passage of the FHA, housing discrimination continued to exist. Subtle tactics like steering and blockbusting paved the way for "white flight" and a marked increase in the number of minorities living in urban ghettos. While significant improvements in fair housing have been made, housing discrimination still exists and continued education and training is necessary to ensure continued progress. A recent HUD analysis of fair housing statistics for 2012 revealed that minority applicants were told about and shown fewer housing units than their white counterparts. For instance, African American applicants were shown approximately four percent fewer units than white applicants. This number increased to seven percent fewer for Asian and Hispanic applicants. While significant strides towards equal and fair housing have undeniably been made over the past few decades, it is important for housing providers, applicants and real estate professionals to be aware of the subtle means by which individuals may perpetuate housing discrimination.

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