

Basic Coverage of the Federal Fair Housing Laws

IAOHRA Conference

August 14, 2024

Michael P. Seng

The UIC Law School Fair Housing Legal Support Center

- I. Policy of Fair Housing Act is to assure equal housing opportunities throughout the United States.

The Act requires the Secretary affirmatively to further fair housing.

- II. Protected Classes

A. Protected Classes under the Fair Housing Act (FHA) are different from suspect classes under the Equal Protection Clause of the 14th Amendment, which requires state action.

B. 1866 Civil Rights Act (42 U.S.C. sections 1981, 1982)

- a. Resurrected in 1968 in *Jones v. Alfred Meyer*
- b. Grounded on the 13th Amendment—no state action required
- c. protects only race
- d. covers all property
- e. no exemptions
- f. judicial remedies only
- g. follows state statute of limitations
- h. covers only purposeful discrimination

C. Protected Classes under FHA

- a. Race
- b. Color
- c. National Origin
 - Includes both place of birth and ancestry
 - Does not on its face prohibit discrimination against non-citizens, immigrants, or because of language; however, immigrants can assert the

rights of aggrieved persons if they are discriminated against on the basis of another protected class

d. Religion

No duty to accommodate, but cannot intentionally target persons because of their religious beliefs. *Block v. Frischolz*, 587 F.3d 771 (7th Cir. 2009). Duties under Fair Housing Act different from duties under Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act, which hold that courts must strictly scrutinize government actions that substantially burden one's exercise of religion

e. Sex

Added in 1974

Includes sexual orientation and gender identity. HUD regulations protect sexual orientation and identity in federally subsidized housing programs and expand the definition of sex so that a partner who is discriminated because of his or her sex may be covered

The US Supreme Court has interpreted identical language in Title VII to include sexual orientation and gender identity. *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020)

Includes sexual harassment – both quid pro quo and hostile environment
Also covers victims of domestic violence

f. Handicap

Defined by FHAA of 1988 (42 U.S.C. section 3602(h))

Includes:

- i. a physical or mental impairment that substantially limits a major life activity
- ii. a record of such an impairment
- iii. regarded as having such an impairment

Excludes current users of drugs (42 U.S.C. section 3602(h)(3)) or persons who are dangerous to the health or safety of others (42 U.S.C. section 3604(f)(9))

Special treatment sometimes required: reasonable accommodations and modifications

Accessible new construction for multi-family dwellings of four units or more

g. Familial Status

Defined by FHAA of 1988 (42 U.S.C. section 3602(k))

Protects children under 18

Sometimes used as a proxy for race or national origin

Allows “reasonable” occupancy standards, compliance with local codes

No “separate but equal” defense
Includes equal access to services and amenities
Does not include marital status
Senior housing exemption from familial status

D. Additional classes protected under state law

III. Covered Property and Exemptions under Federal Law

A. What is a Dwelling? (42 U.S.C. section 3602(b))

- occupied or designed as a residence, examples
- includes vacant land

B. Exemptions

- a. Mrs. Murphy owner occupied buildings, four units or less (42 U.S.C. section 3603(b)(2))
- b. Single family homes, except use of broker or agent or discriminatory advertisement under 804(c) or more than 3 sales in any 24 month period if not owner occupied (42 U.S.C. section 3603(b)(1))
- c. Private Club – not generally open to the public and not commercial (42 U.S.C. section 3607(a))
- d. Religious organizations – cannot base it on race, not commercial (42 U.S.C. section 3607(a))
- e. Housing for older persons – 62 and older or 55 and older, exempt only from familial status and not other provisions in act. This a fertile area for discrimination on race and disability (42 U.S.C. section 3607(b)(2))
- f. Shared living arrangements – *Fair Housing Council v. roommates.com*, 666 F.3d 1216 (9th Cir. 2012)

IV. Prohibited Practices under Federal Law

A. Section 3604 –

a.refusal to rent or sell or otherwise make unavailable

Pre- v. post-occupancy discrimination *Halprin v. Prairie Homes*, 388 F.3d 327 (2004); *Block v. Frischolz*, 587 F.3d 771 (7th Cir. 2009).

- b. (b) discriminatory terms or conditions
- c. (c) discriminatory advertising or statements
- d. (d) false representation

- e. (e) block busting
- f. (f) disability – requires affirmative duties, reasonable accommodations or modifications or accessibility

- i. What is reasonable accommodation? Examples:

- Parking spaces

- Support animals

- Special arrangements to make payment

- Problems of conflicting needs among residents

- ii. What is a reasonable modification?

- iii. Accessible housing

- Covered units

- The seven design & construction requirements

- Accessible building entrance and on an accessible route

- Accessible public and common-use areas

- Usable doors

- Accessible route into and through unit

- Accessible electrical and environmental controls

- Reinforced walls in Bothrooms

- Usable kitchens and bathrooms

- Compliance with state or local building codes not enough

- Statute of Limitations

B. Section 3605 – mortgage lending or appraisals – can include predatory lending practices

C. Section 3606 – discrimination in allowing access to brokerage services

D. Section 3617 – interference, coercion or intimidation, includes retaliation

E. Section 3631 – criminal penalties