

Appendix D: Review of Federal and State Fair Housing Law

Federal Fair Housing Act of 1968

Title VIII of the Civil Rights Act of 1968 is known as the Fair Housing Act. The Act, as amended in 1974 and 1988, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability. These seven classifications are collectively termed federally protected classes. The federal familial status provision protects children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

Three significant changes to the Fair Housing Act were made recently.⁴³ These changes are described briefly as follows:

1. The Housing for Older People Act of 1995 (HOPA) made several changes to the 55 and older exemption. Since the 1988 Amendments, the Fair Housing Act has exempted from its familial status provisions properties that satisfy the Act's 55 and older housing condition. First, HOPA eliminated the requirement that 55 and older housing have "significant facilities and services" designed for the elderly. Second, HOPA established a "good faith reliance" immunity from damages for people who in good faith believe that the 55 and older exemption applies to a particular property, if they do not actually know that the property is not eligible for the exemption and if the property formally stated in writing that it qualifies for the exemption.
2. Changes were made in the Act to enhance law enforcement, including making amendments to criminal penalties in section 901 of the Civil Rights Act of 1968 for violating the Fair Housing Act.
3. Changes were made to provide incentives for self-testing by lenders for discrimination under the Fair Housing Act and the Equal Credit Opportunity Act. See Title II, subtitle D of the Omnibus Consolidated Appropriations Act, 1997, P.L. 104 - 208 (9/30/96).

The Fair Housing Act covers most housing. 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.

The Act in its entirety may be found online at <http://www.usdoj.gov/crt/housing/title8.htm>. The Fair Housing Act and its amendments refer to a number of prohibited actions. These actions are summarized briefly in the following pages:⁴⁴

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

⁴³ Information available at <http://www.hud.gov/offices/fheo/FHLaws/yourrights.cfm>

⁴⁴ *Ibid.*

- 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); or
- 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.

In 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; or
- Set different terms or conditions for purchasing a loan.

In Addition: It is illegal for anyone to do the following:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right; or
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Additional Protection if You Have a Disability: If you or someone associated with you:

- Have a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities;
- Have a record of such a disability; or
- Are regarded as having such a disability,

Your landlord may not:

- Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for the disabled person to use the housing. (Where reasonable, the landlord may permit changes only if you agree to restore the property to its original condition when you move.)
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.

Requirements for New Buildings: In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- Public and common areas must be accessible to people with disabilities

- Doors and hallways must be wide enough for wheelchairs
- All units must have:
 - a) An accessible route into and through the unit;
 - b) Accessible light switches, electrical outlets, thermostats and other environmental controls;
 - c) Reinforced bathroom walls to allow later installation of grab bars; and,
 - d) Kitchens and bathrooms that can be used by people in wheelchairs.

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units. These requirements for new buildings do not replace any more stringent standards in state or local law.

Housing Opportunities for Families: Unless a building or community qualifies as housing for older people, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under the age of 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 people is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly people under a federal, state or local government program; or
- It is occupied solely by people 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 intent to house people who are 55 or older.

A transition period permits residents on or before September 13, 1988, to continue living in the housing, regardless of their age, without interfering with the exemption.

Additional Federal Laws Protecting Housing Choice

The aforementioned legislation refers to housing that both receives and does not receive federal assistance. In addition, the Age Discrimination Act of 1975 applies to housing receiving federal assistance. Therefore, persons are also protected against age discrimination when applying to a federally funded program, including all Section 8 recipients.⁴⁵ Senior housing, however, may exclude families with children, but it must meet certain criteria, including intent to be senior housing.

Since the 1970s, the federal government has enacted several other laws that are aimed specifically at promoting fair lending practices in the banking and financial services industries. Although the record generally is improving, discriminatory lending practices have not been eliminated entirely.

⁴⁵ HUD.gov, Fair Housing Laws

A brief description of federal laws aimed at promoting fair lending follows:

- *Equal Credit Opportunity Act (ECOA)*: Passed in 1974, the ECOA prohibits discrimination in lending based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of any right under the Consumer Credit Protection Act.⁴⁶
- *Home Mortgage Disclosure Act (HMDA)*: In 1975, Congress enacted the HMDA, and then amended the act from 1988 through 1991. Under the act, financial institutions are required to report the race, sex, and income of mortgage applicants and borrowers by Census tract. Examination of HMDA data can reveal if loans are denied at higher rates for certain races, for example. A substantive analysis of HMDA data for the county is contained in this report.
- *Community Reinvestment Act (CRA)*: The CRA was enacted in 1977 to require each federal financial supervisory agency to encourage financial institutions to help meet the credit needs of their entire community, including low- and moderate-income neighborhoods within those communities. New regulations went into effect at the beginning of 1996.
- *Americans with Disabilities Act (ADA)*: Passed in 1990, the ADA prohibits discrimination against people with disabilities in the provision of goods as well as services, including credit services.
- *Fair Lending – Best Practices Agreements*: HUD has been working with the lending industry to promote these agreements. The agreements represent voluntary efforts to improve individual bank performance in providing homeownership opportunities to minorities and low-income people by eliminating discriminatory barriers.

Detailed information about individual banks is available. All banking institutions in the United States fall under one of the following four federal regulatory agencies: the Office of the Comptroller of the Currency, the Federal Reserve System, the Office of Thrift Supervision, or the Federal Deposit Insurance Corp.

No central agency within the county receives reports from the banking regulatory agencies about compliance with fair lending laws. However, such reports are public information and are available from the regulatory agencies themselves or at the individual banks.

Oregon Fair Housing Law

Oregon law includes the federally protected classes and adds protection against discrimination against individuals based on their marital status or source of income.⁴⁷ Oregon law forbids discrimination if you have won an eviction case brought by a former landlord.⁴⁸ State law also makes clear that housing discrimination is unlawful whether it is deliberate and intentional or has

⁴⁶ *Closing the Gap: A Guide to Equal Opportunity Lending*, the Federal Reserve Bank of Boston, April 1993.

⁴⁷ <http://www.fhco.org/>

⁴⁸ <http://www.osbar.org/public/legalinfo/1248.htm>

the effect, whether intentional or not, of having a disparate impact on people who are in a protected group.⁴⁹ Additionally, some jurisdictions in Oregon other than Clackamas County also add sexual orientation/gender identity and age as protected classes.

In most cases, neither federal nor state housing law protects people from discrimination based on age if the person being discriminated against is 18 years or older, or if the housing agency receives federal funds. However, the Equal Credit Opportunity Act prohibits discrimination based on age in credit transactions that include the purchase of a home.

⁴⁹ <http://www.osbar.org/public/legalinfo/1248.htm>