

Fair Housing Conference



U.S. Attorney's Office for the
District of Idaho
April 2012

Laws Enforced by DOJ

- Fair Housing Act (FHA)
- Equal Credit Opportunity Act (ECOA)
- Titles II and III, Civil Rights Act of 1964
- Religious Land Use and Institutionalized Persons Act (RLUIPA)
- Servicemembers Civil Relief Act (SCRA)
- Americans with Disabilities Act (ADA)



Fair Housing Act (FHA)

Prohibits discrimination on the basis of:

- race
- color
- religion
- sex
- disability
- familial status
- national origin



Who is NOT protected?

- Age
- Marital Status
- Sexual Orientation
- Source of Income

State or local law may prevent
discrimination on these
grounds



HUD Rule Aims to Cut Discrimination

A new rule took effect in March 2012 barring those who own or operate U.S. Department of Housing and Urban Development-funded housing from asking about an applicant's sexual orientation or gender identity.



Equal Credit Opportunity Act (ECOA)

Prohibits creditors from discriminating against credit applicants on the basis of:

- race
- color
- religion
- national origin
- sex
- marital status
- age
- receipt of public assistance
- exercise of rights under CCPA



Titles II & III, Civil Rights Act of 1964

Prohibits discrimination in certain places of public accommodation (hotels, restaurants, and places of entertainment) or in public facilities or services, because of:

- race
- color
- religion
- national origin



Americans with Disabilities Act

- Prevents discrimination against individuals with disabilities in places that serve the public such as parking facilities, common areas, parks, local government facilities, hotels, restaurants, and medical facilities.



Religious Land Use and Institutionalized Persons Act (RLUIPA)

Protects

- individuals
- houses of worship
- other religious institutions

from discriminatory or unduly burdensome zoning and landmarking laws



Servicemembers Civil Relief Act (SCRA)

Provides protections for military members as they enter active duty, covering such issues as:

- Rental agreements, pre-paid rent, security deposits
- Eviction
- Installment contracts
- Credit card and mortgage interest rates
- Mortgage foreclosure, civil judicial proceedings
- Automobile leases
- Life and health insurance
- Income tax payments



Fair Housing Act

- What it covers
- What it prohibits
- What to do if you believe you or someone you know is a victim of housing discrimination
- Roles of DOJ and HUD
- DOJ's enforcement activities
 - Remedies
 - Recent examples



FHA Covers “Dwellings”

- Houses and townhouses
- Apartments and condominiums
- Student housing
- Homeless shelters (even if stays are short-term)
- Vacation time shares (even if stays are part-time)

Not covered by FHA:

- Hotels and other places of “temporary sojourn”



FHA Prohibits

- Refusing to sell or rent after making bona fide offer
- Refusing to negotiate for sale or rental of dwelling
- Making unavailable or denying a dwelling
- Discriminating in “terms, conditions, or privileges” of sale or rental, or “in the provision of services or facilities”
- Making, printing, or publishing a statement or advertisement indicating a preference or limitation



FHA Prohibits (cont'd.)

- Representing that a dwelling is not available when in fact it is
- Discriminating in residential real estate-related transactions or in the terms or conditions of such transactions
- Intimidating, threatening or interfering with any person for exercising her or his housing rights
- Criminal threats, use of force, intimidation or interference



Retaliation

- The FHA also prevents retaliation for exercising FHA rights.

Example: Retaliation for advising someone how to file a Fair Housing Claim



“Making Unavailable or Denying”

- Homeowner refuses to rent or sell to an African-American
- Landlord establishes a “no kids” policy at an apartment complex not specifically designed for older persons
- Town enacts or enforces zoning code to prevent group home for persons in recovery from alcohol or illegal drugs because of the residents’ disability
- Architect and developer design and construct multi-family housing without certain accessible features
- Landlord demands sexual favors before agreeing to rent apartment



Sex Discrimination includes Sexual Harassment

- “Quid Pro Quo”
 - Special this month – 50% off the rent for sex with the landlord
- “Hostile Environment” – persistent physical and/or verbal unwelcome sexual advances
 - Would a reasonable person be offended?



“Terms, Conditions, or Privileges”

- Landlord forces Hispanic renters to transfer to less desirable apartments or buildings to make room for non-Hispanic renters
- Landlord charges families with children higher rent
- Homeowners association allows ornaments on doors for some religions but not others
- Rental agent offers to waive security deposit for white “tester” but not for black “tester”
- Landlord refuses to designate a parking spot for a resident who requests a “reasonable accommodation” because of a disability



Special Disability Provisions

- Landlords/Condo Associations must permit an individual with a disability, at his or her own expense, to make physical modifications to the premises
- Must make reasonable accommodations in rules, policies, practices or services to afford a person with a disability equal opportunity to use and enjoy a dwelling



Examples

- Refusal to rent to someone with a service animal due to a “no pet” policy
- Refusal to designate a suitable parking space for a resident with a disability
- Dwellings built after 1991 with four or more units must have elevators or accessible ground floor units



Examples of Criminal Violations

- Cross Burnings
- Arsons
- Assaults
- Threats
 - Homeowners
 - Prospective purchasers
 - Realtors
 - Visitors



What to do if you believe you or someone you know is a victim of discrimination

- File a lawsuit within two years after the occurrence or termination of the alleged discriminatory act
- File a complaint within one year with HUD or equivalent state agency
- If possible criminal conduct, call local law enforcement immediately
- If you're not sure whether there is a violation, call HUD



HUD's Role

- Receives individual complaints of housing discrimination
- Investigates and attempts to conciliate complaints
- Refers pattern or practice cases and land use or zoning cases to DOJ
- May issue a “charge” of discrimination if “reasonable cause” to believe discrimination occurred
- Hearing before administrative law judge unless complainant or respondent files notice of “election”
- If no “election,” HUD represents complainant in administrative proceedings



HOW DOJ Gets Involved in Enforcing Fair Housing Act

- Files “election” cases from HUD; acts on behalf of complainant (who may intervene in suit)
- Investigates other HUD referrals for possible enforcement action
- Independent authority to initiate lawsuits alleging “pattern or practice” of discrimination or denial of rights to group of persons that raises issue of “general public importance”



DOJ Enforcement Activities: Remedies

- Injunctive Relief (prevention and correction)
- Monetary Damages for Aggrieved Persons
-- includes emotional distress
- Civil Penalties (\$55,000 for the first violation)



Additional Sources of Information

Department of Justice, Civil Rights Division

www.usdoj.gov/fairhousing

www.usdoj.gov/crt

Housing Discrimination Tip Line:

800-896-7743

fairhousing@usdoj.gov



DOJ Fair Lending Basics

- **Fair Housing Act** prevents discrimination in terms and conditions or services in connection with the sale of housing
- **Equal Credit Opportunity Act** prevents discrimination in any aspect of a credit transaction
- **Servicemembers Civil Relief Act** provides relief to active service members



DOJ Fair Lending Basics

Types of Credit:

- mortgage and other housing-related
- auto, credit cards and other consumer
- small business



How does DOJ get its Fair Lending cases?

- Federal Bank regulators referrals
- HUD referrals
- Federal agencies
- Advocacy organizations, individuals, media, academic studies



Types of Cases under FHA and ECOA

- **Pricing** - higher fees
- **Steering** - steering to high cost products such as sub prime loans with high prepayment penalties
- **Redlining** - no loans to protected class
- **Reverse Redlining** - Predatory lending
- Targeting protected class for more expensive



DOJ Pricing Cases

HMDA = Home Mortgage Disclosure Act

- Most mortgage lenders must report each loan application
- Data is publicly reported

DOJ reviews and identifies lenders for investigation

- Proportion of higher-priced loans to minority borrowers
- Possible geographic patterns of high cost loans
- Racial or ethnic disparities in interest rates or denial rates

Consider non-HMDA information, including:

- Complaints to regulators or HUD
- Information about loan programs



DOJ Pricing Cases

Full evaluation of pricing disparities may include:

- applicant credit characteristics
- data on individual loan terms
- discretion in pricing
- overages and fees
- loan products & channels
- information on similar loans in the same market



DOJ Redlining Cases

Failure to provide lending services to minority areas:

- few or no branches
- little or no marketing
- Community Reinvestment Act assessment area excluding minority areas
- extremely low proportion of loans



Countrywide Settlement

- More than 200,000 African-American and Hispanic borrowers who qualified for loans were charged higher fees or placed into subprime loans
- The settlement provides \$335 million in compensation for victims of Countrywide's discrimination from 2004 - 2008



DOJ Redlining Settlements

All recent redlining settlements include:

- nondiscrimination provisions
- new branches in previously redlined areas
- outreach & consumer education
- training and changes to bank procedures
- monetary relief ranging from \$3 million to \$10 million in loan subsidies for previously redlined areas



How to detect direct discrimination?

- Who are the borrowers? Look at race, gender, ethnic origin
- How and where did they hear about the loan? Home? Community center? Church?
- Did the lender speak to them in their native language?
- Did they understand the terms of the loan?



Elements of a Fair Lending Case

- FHA and or ECOA violation
- Pattern or practice
- Either disparate impact or intentional discrimination
- Statistical evidence
- Courts apply Civil Rights Act standards



Emerging Fair Lending Issues

- Mortgage servicing/loan modification programs and illegal schemes
- Concentrated foreclosures and “foreclosure rescuers”
- Discriminatory loan denial patterns



Resources

www.usdoj.gov/fairhousing

fairhousing@usdoj.gov

202- 514-4713

or

800-896-7743

