

WHAT KINDS OF ACTIVITIES ARE PROHIBITED BY THE FAIR HOUSING LAWS?

Regarding members of “protected classes,” the federal Fair Housing Act makes it illegal to do the following:

- Refuse to rent or sell (or otherwise make unavailable) a dwelling.
- Discriminate in the terms, conditions, privileges, or provision of services relating to the rental or sale of a dwelling.
- Make a statement that indicates any preference, limitation, or discrimination.
- Print or publish advertising that indicates any preference, limitation, or discrimination.
- Falsely represent that a dwelling is not available for rent or sale.
- Refuse a “reasonable accommodation” for a disabled person concerning modifications to the dwelling or to rules, policies, practices, and services.
- Coerce, intimidate, threaten, or interfere with any person exercising their rights under fair housing laws.

During the leasing process, the leasing agent generally may not ask an applicant questions relating to his/her status in a “protected class” (e.g. race, disability, etc.). The *absence* of objective rental criteria itself can be important evidence supporting a finding of discrimination. Housing providers may require all applicants to complete a rental application form; however, housing providers should use objective criteria such as credit standing, employment history, income, personal references and rental history in the screening process. These criteria should be applied uniformly to all applicants. Failure to follow established procedures may constitute evidence of illegal discrimination.

Even if a housing provider applies a uniform selection process, however, he/she may still violate fair housing laws if less stringent criteria could be used to assess the applicant’s ability to meet tenancy obligations. Courts may carefully scrutinize whether or not the housing provider actually relied on permissible factors when rejecting an applicant who is a member of a “protected class.”

Housing discrimination can take many forms. The foregoing information is designed to explain the fair housing laws in everyday language and is not intended to be, and it should not be considered a substitute for professional legal advice or services when the need arises. Each situation has its own peculiarities and laws frequently change. Therefore, you should always seek the advice of legal counsel when a legal matter arises. Drake & Associates – 813-662-1536; www.danielgdrake.com

Regarding the leasing process, the housing provider may want to ask him/herself the following questions when considering whether or not his/her actions violate fair housing laws:

- Did I request the same information from the rejected applicant and other accepted applicants (i.e., did I apply objective and uniform criteria)?
- Did I verify the information from other sources and otherwise check the accuracy of the information for every applicant?
- Did I objectively consider this information in making a decision as to whom I should rent or sell?
- Did other accepted applicants rate better on my criteria than the rejected applicant?

Obviously, overt and illegal discrimination is present when a landlord tells a prospective tenant, "We don't rent to people like you," or "Sorry, we don't rent to people with children," or "Sorry, we don't allow pets, including your seeing-eye dog." Even if there is no express statement, a landlord can give the impression of discriminatory intent by his/her gestures or demeanor.

The courts have established various formulas for determining whether disparate treatment has occurred. If a complainant can show:

- [1] that he or she belongs to a protected group, i.e., he is African-American, or she is a person with a disability, etc.;
- [2] that he or she applied for and was qualified to rent the property;
- [3] that he or she was rejected; and
- [4] that the dwelling remained available thereafter;

then the burden will shift to the landlord to offer a convincing explanation for the disparate treatment. If the landlord does not do so or if the landlord's explanation is a mere pretext for discrimination, the court may find that the Act has been violated.

"Testing" by fair housing agencies is often used to seek out discriminatory practices. In 1991, the Civil Rights Division of the U.S. Department of Justice

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established a fair housing testing program within the Housing and Civil Enforcement Section and commenced testing in 1992. “Testing” refers to the use of individuals who, without any bonafide intent to rent a home, apartment, or other dwelling, pose as prospective renters for the purpose of gathering information, which may indicate whether a housing provider is complying with fair housing laws.

The Civil Enforcement Section employs various means to accomplish testing in local communities, including contracts with private fair housing organizations, contracts with individuals, and by using non-attorney Department of Justice employees throughout the country. Since 1992, the testing program has recruited and trained over 1000 employees from various Department of Justice components throughout the nation to participate as testers. The Civil Enforcement Section conducts numerous investigations simultaneously at any given time.

Over the past thirteen years, the Department of Justice has filed 79 pattern and practice testing cases with evidence directly generated from the fair housing testing program. The vast majority of testing cases filed to date are based on testing evidence that involved allegations of agents misrepresenting the availability of rental units or offering different terms and conditions based on race, and/or national origin, and/or familial status. Of the 81 suits filed, 79 have been resolved. Of the 79 resolved cases, the Department of Justice has recovered more than \$12 million, including over \$2 million in civil penalties and over \$10.3 million in other damages.

Another way that discrimination can be proved, apart from showing disparate, is showing a disparate “impact.” For instance, a rule that only one person can occupy a one-bedroom apartment is neutral on its face, but the effect of the rule may be to exclude children from a dwelling. Similarly, a zoning ordinance restricting occupancy in a unit to persons related by blood or marriage may operate to exclude a group home for the persons with disabilities.

Proof of a discriminatory impact does not make the rule or regulation automatically illegal. The landlord may still try to argue that the rule is justified by sound business concerns independent of the discrimination. The policy or practice

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will be held to be illegal, however, if the landlord's legitimate purpose can be accomplished through measures that have a less discriminatory impact.

"Steering" is a form of housing discrimination and arises when a housing provider channels persons of one race to one area of an apartment community and persons of another race to another area. This practice denies applicants a full choice in housing and often has the result of creating or maintaining segregated areas within an apartment community. On the upside, courts have distinguished illegal racial or familial steering from cases where a leasing agent is merely responding to a prospective tenant's own preferences. The line may not always be clear. The author's advice is, if a prospective tenant ever makes an inquiry that appears to be merely stating a preference, the leasing agent should always finish his/her answer with, "but you are free to choose any available apartment in our community" to make it very clear to the prospective tenant that he/she is not being steered. It is also the author's advice that a leasing agent should never offer suggestions as to location unless asked, and even then the leasing agent should be very careful in giving an answer. Many management companies prohibit leasing agents from giving any input to a prospective tenant regarding location; the author believes this is a sound policy.

In addition to the illegal practices already described, any other action that makes a dwelling unavailable or that discriminates in the terms, conditions, or privileges of sale or rental, or in the provision of services or facilities on the basis of any prohibited classification is illegal. Also, discriminatory advertising, such as when only white models are used in an advertisement, is illegal. Even if a person is not denied housing, conduct that makes it difficult or unpleasant for a person belonging to a protected class to live in a dwelling is illegal under the fair housing laws.

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