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# Fair Housing Act

HUD has played a lead role in administering the Fair Housing Act since its adoption in 1968. The 1988 amendments, however, have greatly increased the Department's enforcement role. First, the newly protected classes have proven significant sources of new complaints. Second, HUD's expanded enforcement role took the Department beyond investigation and conciliation into the area of mandatory enforcement.

Complaints filed with HUD are investigated by the Office of Fair Housing and Equal Opportunity (FHEO). If the complaint is not successfully conciliated, FHEO determines whether reasonable cause exists to believe that a discriminatory housing practice has occurred. Where reasonable cause is found, the parties to the complaint are notified by HUD's issuance of a Determination, as well as a Charge of Discrimination, and a hearing is scheduled before a HUD administrative law judge. Either party - complainant or respondent - may cause the HUD-scheduled administrative proceeding to be terminated by electing instead to have the matter litigated in Federal court. Whenever a party has so elected, the Department of Justice takes over HUD's role as counsel seeking resolution of the charge on behalf of aggrieved persons, and the matter proceeds as a civil action. Either form of action - the ALJ proceeding or the civil action in Federal court - is subject to review in the U.S. Court of Appeals.

## **Significant Recent Changes**

1. The Housing for Older Persons Act of 1995 (HOPA) makes 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, it eliminates the requirement that 55 and older housing have significant facilities and services designed for the elderly. Second, HOPA establishes a good faith reliance immunity from damages for persons who in good faith believe

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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 has formally stated in writing that it qualifies for the exemption.

HOPA retains the requirement that senior housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. It also still requires that senior housing publish and follow policies and procedures that demonstrate an intent to be housing for persons 55 and older.

An exempt property will not violate the Fair Housing Act if it includes families with children, but it does not have to do so. Of course, the property must meet the Act's requirements that at least 80 percent of its occupied units have at least one occupant who is 55 or older, and that it publish and follow policies and procedures that demonstrate an intent to be 55 and older housing.

A Department of Housing and Urban Development rule published in the April 2, 1999, Federal Register implements the Housing for Older Persons Act of 1995, and explains in detail those provisions of the Fair Housing Act that pertain to senior housing.

2. Changes were made 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).

## **Basic Facts About the Fair Housing Act**

### **What Housing Is Covered?**

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

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rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

### **What Is Prohibited?**

**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 handicap:

- 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 handicap (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:

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- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
  - 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.

Example: A building with a no pets policy must allow a visually impaired tenant to keep a guide dog.

Example: An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

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However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

### **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 persons with disabilities
- Doors and hallways must be wide enough for wheelchairs
- All units must have:
  - An accessible route into and through the unit
  - Accessible light switches, electrical outlets, thermostats and other environmental controls
  - Reinforced bathroom walls to allow later installation of grab bars and
  - 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 persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 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.

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Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Exemption: Housing for older persons 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 persons under a Federal, State or local government program or
- It is occupied solely by persons 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 an intent to house persons 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.

### **If You Think Your Rights Have Been Violated**

Call the Charleston Trident Urban League Fair Housing Hotline 843-579-7578.

HUD is ready to help with any problem of housing discrimination. If you think your rights have been violated. You have one year after an alleged violation to file a complaint with HUD, but you should file it as soon as possible.