

# 2009 Michigan Conference on Affordable Housing

## Introduction to Fair Housing and Predatory Lending

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PART I

# FAIR HOUSING

# “Fair” Housing vs. Fair Housing

- Fair Housing is based on statute.
- “Fair” Housing is based on perceived fairness.

# “Fair” Housing vs. Fair Housing

(Continued)

## Examples:

1. Renter applies for a vacant apartment and is told that he will not be accepted because his credit score is below 650 despite current and reliable adequate income.
2. Disabled person in a wheelchair applies for an apartment and is rejected because 25 years ago when he was 19 he was convicted of felony possession of marijuana. He has no prior or subsequent criminal record and states that he was only using marijuana to cope with depression after the car accident that led to his paralysis.

# Fair Housing Act

- Primary (but not only) statute covering Federal Fair Housing law.
- Also known as Title VIII of the Civil Rights Act of 1968 (42 United States Code, §3601).
- Enforcement is the responsibility of the U.S. Dept. of Housing and Urban Development.
- Significantly Amended in 1974 and 1988.

# Fair Housing Act

(Cont.)

## Protected Classes:

1. Race
2. Color
3. National Origin
4. Religion
5. Gender (“Sex”, added in 1974)
6. Familial Status (added in 1988)
7. Disability Status (“Handicap” added in 1988)

# Other Protected Classes

1. Federal Fair Housing Law is not preemptive; states and localities are free to add other anti-discrimination policies covering other practices or that afford protection to other protected classes other than what is covered in the Fair Housing Act.
2. For example, the State of Michigan adds Age and Marital Status to its list of protected classes. (but those complainants could not be investigated by the federal government).

# Race, Color and National Origin

1. Race includes all races, including allegations of so-called “reverse discrimination.”
2. Color is separate from Race, and can apply to cases of discrimination between members of the same race where skin tone or color is a basis for discrimination .
3. National Origin could mean the place where an individual was born, or where their ancestors came from.

# Religion

1. Not many complaints filed under this protected class.
2. Protects believers and non-believers alike.
3. Often is associated with National Origin.
4. Use of things like certain religious symbols in advertising can be problematic, in addition to simply preferring one religion over another.

# Gender

1. “Sex” added in 1974 as a protected class without much legislative discussion.
2. Though outright discrimination based on gender is obviously illegal, the issue more often arises under a “sexual harassment” situation.

# Sexual Harassment

1. Is actionable under the Fair Housing Act's prohibition against discrimination based on "sex" (gender).
2. Protects men and women.
3. Case law is sparse in the housing context, but borrows from employment law and recognizes claims under both "quid pro quo" and "hostile environment" theories.
4. Harassment based on sexual orientation probably not covered under Federal Fair Housing Law.

# Familial Status

1. Added as a protected class in 1988 and was the source of a major legislative struggle.
2. Prohibits discrimination based on families who have children under the age of 18 living with the parent, a person with custody, the designee of such parent or custodian, a person about to secure legal custody or a pregnant woman.
3. So-called “adult communities” are now illegal (but there are exceptions for housing for older persons).

# Disability

1. Added as a protected class in 1988, prior to the passage of the ADA.
2. The statute uses the term “Handicap” but “Disability” is the more politically correct term.
3. Definition: “A physical or mental impairment which substantially limits one or more of a person’s major life activities, a record of having such an impairment, or being regarded as having such an impairment.”

# Disability

(Continued)

1. According to the Fair Housing Act, “transvestites” are not considered disabled (without some other qualifying condition).
2. According to the Fair Housing Act, “current, illegal use of or addiction to a controlled substance” is not considered a disability (current illegal use is the important part, persons in recovery are covered and considered disabled).
3. Law covers non-disabled persons “associated” or residing with persons who are disabled.

# Disability

(Continued)

1. “Reasonable Accommodations” must be made in rules, policies, practices, or services necessary to afford disabled persons equal opportunity to use and enjoy a dwelling. “Reasonable” means feasible and practical.
2. Financial or Administrative burden is a defense.
3. Fundamental Alteration of program is a defense.

# Disability

(Continued)

1. “Reasonable Modification” (structural modifications) must be allowed of existing premises if such modifications may be necessary for a disabled person’s full enjoyment of the premises.
2. Reasonable Modification is not limited to the actual residential unit, but extends to all the common use areas of the facility.

# Disability

(Continued)

3. Disabled person must pay for the modification (unless in public housing, including section 8 voucher program).
4. Landlord can require that modifications will be done in a workmanlike manner and that any required building permits will be obtained.
5. Landlords can require the return of premises to the original state unless the modification would not be seen as an encumbrance to any future tenant (e.g. widening a doorway vs. lowering kitchen cabinets).

# Design and Construction Requirements

- The Fair Housing Act imposes Design and Construction requirements on covered properties which include:
  1. Multi-Family Buildings with four (4) or more units.
  2. Designed for first occupancy after March 12, 1991.
  3. If the building has an elevator, all units and common areas on all floors are subject to the design and construction requirements. If the building does not have an elevator, all ground floor units and common areas are subject to the design and construction requirements.

# Design and Construction Requirements

- There are many “safe harbors” (building codes) HUD has identified that constitute compliance with the Design and Construction requirements of the Fair Housing Act. Additionally, HUD has a detailed set of “Fair Housing Accessibility Guidelines.”
  1. Accessible entrance on an accessible route.
  2. Public and common use areas must be accessible.
  3. Doorways must be wide enough to accommodate wheelchairs.
  4. Accessible route into and through the dwelling.
  5. Light Switches, electrical outlets, thermostats, and other environmental controls must be placed in accessible locations.
  6. Bathroom walls must be reinforced to allow installation of grab bars.
  7. Kitchens and Bathrooms must have sufficient space to allow people in wheelchairs to maneuver about.

# Prohibitions

## ■ §804(a) Refusal to Sell or Rent:

1. Includes anything that makes a prospective tenant or owner feel unwelcome (that is not done to members of a non-protected class).
2. Examples could include outright refusal to sell or rent, but more often include items like higher security deposits, giving false information about availability, or rescission of a bona fide offer upon learning about protected class of prospective owner or renter.

# Prohibitions

(Continued)

- §804(b) Discriminatory terms, conditions, or privileges in sale or rental.
  1. Prohibits discrimination in the provision of services to tenants and purchasers after a sale or rental has occurred.
  2. Also prohibits discriminatory privileges, terms, or conditions on prospective purchasers or renters who are members of a protected class, or associated with members of a protected class.

# Prohibitions

(Continued)

- §804(c) Discriminatory advertisements with respect to the sale or rental of a dwelling.
  1. It is unlawful to “make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference limitation, or discrimination based on membership in a protected class, or an intention to make any such preference, limitation or discrimination.”

# Prohibitions

(Continued)

- §804(d) Misrepresentation that a dwelling is not available for inspection, sale, or rental.

1. It is unlawful to “represent to any person, because of their protected class status, that any dwelling is not available for inspection or sale or rental when such dwelling is in fact so available.”

# Prohibitions

(Continued)

## ■ §804(e) Blockbusting:

1. For profit, attempting to induce a person to sell or rent any dwelling by representations regarding the entry or prospective entry into a particular neighborhood of a person or persons of a particular protected class.

# Prohibitions

(Continued)

- §804(f) Reasonable Modifications and Reasonable Accommodations:
  1. These requirements were previously discussed on slides 15-17.

# Prohibitions

(Continued)

## ■ §805 Discrimination in Lending and Residential Real Estate related Transactions.

1. Residential Real Estate related Transactions are defined as “marking or purchasing of loans or providing other financial assistance (a) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or (b) that are secured by residential real estate.
2. The selling, brokering or appraising of residential real property.
3. Prohibitions extend to the secondary mortgage market.

# Prohibitions

(Continued)

- §806 Discrimination in provision of brokerage services.
  1. Prohibits discrimination with respect to membership or participation in multiple listing or other brokerage services.

# Prohibitions

(Continued)

- §818 Prohibition against threats, harassment and retaliation:
  1. Section 818 makes it unlawful to coerce, intimidate, threaten or interfere with any person's exercise of his or her rights protected under any of the previous sections.
  2. Basic reading of the language seems to apply only to the exercise of rights granted by the Fair Housing Act (such as filing a complaint) but has also been used under claims of sexual harassment.

# Exemptions

(Continued)

- §803(B)(1) Single-Family House Exemption

The sale or rental of a single family house is exempt from coverage under the Act if the owner:

1. Owns, sells or rents the house.
2. Owns three or fewer single family homes at any one time.
3. Does not use the services or facilities of a real estate agent or broker.
4. Does not advertise in violation of §804(c).

# Exemptions

(Continued)

- §803(B)(2) “Mrs. Murphy” Exemption-  
Property is exempt from the statutory requirement (except §804(c) discriminatory statements or advertising) if:
  1. House or living units occupied or intended to be occupied by no more than four families living independently.
  2. Owner maintains or occupies one of the living quarters.

# Exemptions

(Continued)

- §807(B) Housing for Older Persons can be exempt from the familial status provisions if:
  1. The housing is a state or federal run program specifically designed and operated to assist the elderly, or
  2. The housing is intended for, and solely occupied by, persons 62 years of age and older, or
  3. The housing is intended and operated for occupancy by persons 55 years or older, and at least 80% of the units are occupied by at least one person who is 55 years or older.

# Exemptions

(Continued)

- There are several other exemptions under the Fair Housing Act, and though they are fairly uncommon, it is good to be aware of them.
  1. Some housing operated by a religious organization can favor a specific religion.
  2. Some housing operated by a private club can give preference to its members.
  3. Reasonable local occupancy standards will be allowed regarding the number of people who may live in a dwelling.
  4. Action may be taken against a person due to conviction for the illegal manufacture or distribution of a controlled substance .

# Jurisdiction

- A victim of discrimination may file a Complaint if:
  1. They have standing: The complainant must have suffered an actual or threatened injury. Both individuals and civil rights organizations may have standing.
  2. The Respondent and dwelling are covered under the Act: Practically any entity can be named as a respondent, but the previously noted exemptions may apply.

# Jurisdiction

(Continued)

## 3. The subject matter is covered under the Act:

Nearly anything related to real estate could potentially be covered by the Fair Housing Act, though other laws and regulation may apply as well. Sales, rentals, occupancy, advertising, financing, insurance, brokering, appraisals, access to facilities or membership in certain associations could all potentially be covered.

# Jurisdiction

(Continued)

4. Complaint must be timely filed: Complaints must be filed with HUD within one year from the date of the last incident of discrimination.
  - HUD works with numerous Fair Housing Assistance Programs (FHAPs) operated by states and localities all over the United States to investigate and process complaints. Some of their jurisdictional time frames vary and are shorter than stipulated in the Fair Housing Act. Under the Michigan Department of Civil Rights, Complaints must be filed within 180 days, not one year, from the last discriminatory act.

# The Complaint Process

- Complaints of Discrimination can be filed in several ways, including by phone, in writing or on the internet.
- HUD will determine if the complaint is jurisdictional.
- If jurisdictional, HUD will assign an investigator to the case.
- The investigator will contact the parties and begin an investigation, collecting all relevant information

# The Complaint Process

(Continued)

- Investigator will attempt conciliation throughout the investigative process.
- HUD Attorneys review all investigations.
- Investigation can conclude that there is “reasonable cause” or “no reasonable cause” to believe discrimination occurred.
- If “reasonable cause” is found, the parties will go to an Administrative Hearing, or any party can elect to have the case heard in Federal Court.

# The Complaint Process

(Continued)

- Conciliation is still attempted throughout all phases.
- Investigations are to be completed within 100 days (unless more time is needed).
- Regardless of the outcome of the administrative process, Complainant may always file a lawsuit at any time, up to two years after the alleged discrimination occurred (and the time the administrative process was open does not count).

## PART II

# PREDATORY LENDING

# Predatory Lending

- Pejorative Term
- Not Necessarily a Fair Housing Issue
- No Specific Definition

# Predatory Lending

- **Definition:** A group of abusive practices employed by financial and real estate services in order to extend credit to individuals at grossly unfavorable terms.

# Predatory Lending

The perpetrators can include:

1. Brokers
2. Lenders
3. Appraisers
4. Building and Home Improvement Contractors

# Frequently Targeted Victims

- Poor Communities
- Minority Communities
- The Elderly
- Asset “rich,” Cash “poor.”
- ANYONE CAN BE A VICTIM!!!

# Predatory Lending Tactics

1. Charging Excessive Fees (1% vs 5% or more)
2. “Loan Flipping” (No advantage to consumer)
3. “Steering” applicants into higher interest rates than they should pay (Yield Spread Premiums)

# Predatory Lending Tactics

(Continued)

4. Knowingly lending more money than the borrower can afford (often secured with high value assets).
5. Misrepresenting borrower's income or encouraging the borrower to do so.
6. High pressure sales tactics.

# Predatory Lending Tactics

(Continued)

Foreclosure Rescue Scams: Subprime crisis has spawned many new and inventive scams to defraud victims of money and/or their home equity with promises to help avoid foreclosure.

Age old adage: If it sounds too good to be true it probably is!!!!

# Racial/Ethnic Discrepancies in Lending

**KEY POINT:** Nearly all major studies into racial and ethnic differences of those seeking residential mortgages have come to the same conclusion: Even accounting for credit score and income levels, minorities, particularly African-American consumers, are much more likely to receive subprime loans than non-minority applicants.

- Issues are complex and don't lend themselves to "obvious" or easily implemented solutions.

# RESOURCES

Important contacts for victims or potential victims of housing discrimination or predatory lending:

- State Attorney General, (Consumer Protection Division)
- Federal Trade Commission ([www.ftc.gov](http://www.ftc.gov))
- U.S. Dept of Housing and Urban Development ([www.hud.gov/fairhousing](http://www.hud.gov/fairhousing))
- HUD Approved Housing Counseling Agencies (1-800-569-4287)
- HUD Housing Discrimination Complainant Hotline Midwest Office (1-800-765-9372)
- HUD Housing Discrimination Email Complainant Address Midwest Office (Complaints\_office\_05@hud.gov)

# Questions or Comments:

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