

Public Interest Law Section
The Florida Bar

FAIR HOUSING LAW

April 26, 2019

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OBJECTIVES

- Gain a better understanding of state and federal fair housing laws
 - Scope of Protections
 - Theories of Liability
 - Administrative Process
 - Private Litigation
- Q & A

RELEVANT LAWS

- Fair Housing Act of 1968 (aka Title VIII of the Civil Rights Act)
- Florida Fair Housing Act
- Florida Service Animal Act
- Section 504 of the Rehabilitation Act
- Architectural Barriers Act
- Americans with Disabilities Act
- Title VI of the Civil Rights Act
- Section 109 of the Housing & Community Development Act
- Age Discrimination Act
- Section 3 of the Housing & Urban Development Act
- and more...

FAIR HOUSING LAW

Federal, State and Local* laws ensure that all people have the right to housing free from unlawful discrimination.

WARNING!

When facing a housing issue, do
NOT rely on ADA law.

The ADA does NOT cover housing.

The **Fair Housing Act** is the
governing law, and is much more
accommodating to individuals than
the ADA.

PROTECTED CLASSES*

RACE/COLOR

RELIGION

SEX

NATIONAL ORIGIN

DISABILITY

FAMILIAL STATUS

PERSONS ASSOCIATED WITH A MEMBER OF ONE OF
THE ABOVE**

RETALIATION

*Local jurisdictions may have additional protected classes. SASS LAW FIRM ©2019

PROTECTED CLASSES*

Disability

Individuals are protected if they

Have a physical or mental impairment which substantially limits one or more major life activity

Have a record of having such an impairment

Are regarded as having such an impairment, even if they have no disability

Familial Status

Individuals are protected if they are

A parent or other person with legal custody of an individual under the age of 18

A designee of a parent or other person having legal custody, with the written permission of such parent or other person

Pregnant

In the process of securing legal custody of any individual who has not attained the age of 18 years

WHO IS PROTECTED?

Any “aggrieved person” which includes “any person who . . . claims to have been injured by a discriminatory housing practice.”

- Individuals
- Testers
- Cities and Municipalities
- Fair Housing Organizations
- Developers
- More...

WHAT TYPES OF HOUSING ARE SUBJECT TO FAIR HOUSING LAWS?

“Dwelling”

Any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure.

Rental - Purchase - Assisted Living - Group Home
Extended Stay Hotel - Vacation Home - Dorm - Shelter

POTENTIAL DEFENDANTS

Anyone who has control over a dwelling,
including:

- Landlords
- Rental Managers
- Property Owners
- Condo Associations
- HOAs

- Real Estate Agents
- Banks
- Developers
- Builders
- Cities/Municipalities

INDIVIDUAL LIABILITY!

WHAT IS PROHIBITED?

Refusal to
Rent or Sell

Includes refusal
to negotiate

Terms and
Conditions

- Criteria
- Rules/Procedures
- Harassment

CASE STUDY: TENANT ON TENANT HARASSMENT

- Francis v. Kings Park Manor, Inc., 917 F.3d 109 (2d Cir. 2019), opinion withdrawn, 15-1823, 2019 WL 1510425 (2d Cir. Apr. 5, 2019).
- Landlord could be liable under FHA for failing to intervene in tenant-on-tenant racial harassment of which it knew or reasonably should have known and had the power to address.
 - Issuing and enforcing notices to quit
 - Issuing threats of eviction
 - Enforcing evictions
- Opinion withdrawn without comment, stay tuned...

CAN PLAINTIFF SUE NEIGHBOR?

- Retaliation (FHA § 3617) prohibits coercion, intimidation, threats, interference.
- A § 3617 claim may be based upon conduct motivated by a protected class which is designed to “drive the individual out of his or her home.”
- Court rejected invitation to interpret § 3617 more broadly to cover “*any* discriminatory conduct which interferes with an individual's enjoyment of his or her home.”
- “Congress did not intend that the FHA reach so far. If Plaintiffs' construction were adopted, any dispute between neighbors of different races or religions could result in a lawsuit in federal court under the FHA.”
- Egan v. Schmock, 93 F. Supp. 2d 1090, 1093 (N.D. Cal. 2000) (citing *Ohana v. 180 Prospect Place Realty Corp.*, 996 F. Supp. 238 (E.D.N.Y.1998) (stalking, expletives, pounding on apartment walls while yelling “Jews move,” and threatening to kill the plaintiffs) and *Stirgus v. Benoit*, 720 F. Supp. 119, 123 (N.D.Ill.1989) (firebomb).

ADDITIONAL DISCRIMINATORY PRACTICES

- **Misrepresent** availability of housing
- **Zoning restrictions** – Distance requirements, zoning changes
- **Blockbusting** – Persuade owners to sell or rent for profit by telling them that persons of a particular race, color, national origin, sex, familial status or disability are moving into the neighborhood
- **Redlining** – Unwillingness to lend to applicants or borrowers in particular neighborhoods or geographic regions
- **Reverse Redlining** – Targeting people in certain geographic areas for disadvantageous or abusive loan terms and conditions
- **Steering**
- **Denying** access to brokerage services

DISCRIMINATORY ADVERTISING

- Advertising or statements that indicate a preference or dis-preference based on a protected characteristic
 - For “active” older adults
 - “No Kids”
 - “Mature Applicants Only”
 - Next to [name] synagogue, mosque, cathedral
 - Photos of only white families
 - Symbols
- “Ordinary Listener” standard
- Applies to both the person who drafted or placed the ad as well as the publisher*

CASE STUDY: FACEBOOK®

- Facebook® designed its advertising platform so that advertisers could “target” their audience using two general actions - “including” specific types of people and “excluding” specific types of people- using a pre-populated list of demographics, and Facebook®’s algorithms delivers the ads to the intended audience.
- Examples:
 - Parents with toddlers (01-02)
 - African-Americans
 - Hispanics
- When a service provider crosses the line from merely providing a platform to creating and providing content based services, it may lose immunity and face liability for violation of fair housing law.

DESIGN & CONSTRUCTION REQUIREMENTS

Minimum accessibility requirements applying to multi-family properties built after March 1991

Owner is responsible for these costs:

- Accessible public use and common use areas
- Sufficiently wide doorways
- An accessible entrance on an accessible route
- An accessible route into and through the dwelling
- Light switches, outlets, thermostats, etc.
- Reinforcements in bathroom walls to support grab bars
- Kitchens and bathrooms with room to maneuver

REASONABLE ACCOMMODATIONS

- Individual with a disability must make a request
- Request does not have to be in writing
- No magic words
- Request should be granted if:
 - Person is a **covered person** (meets definition of disability)
 - The requested accommodation/modification is **necessary** to ensure equal access
 - There is a **nexus/connection** between the requested accommodation/modification and the person's disability

SERVICE AND SUPPORT ANIMALS

The United States Department of Housing and Urban Development (HUD) uses the term “**assistance animal**” to cover any animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.

SERVICE AND SUPPORT ANIMALS

- Fair Housing Law:
 - Not limited to a “dog”
 - Animal may not require any training
 - Cannot charge an additional deposit for the animal
 - Cannot charge additional monthly rent for the animal
 - The animal can accompany the tenant in all common/public areas of the complex
 - Cannot require tenant to obtain additional insurance
 - Can ask for reliable documentation of need for support animal due to a disability

REASONABLE MODIFICATIONS

- Applies to all properties, particularly relevant to those built before 1991.
- Landlords must permit reasonable modification of existing premises at expense of the person with a disability.
 - Rehabilitation Act Exception
- Property owner can require renter to restore premises when renters leave.
- Can require prior plan approval, licensed contractor and quality materials.

UNREASONABLE REQUESTS

Accommodation and/or modification requests are unreasonable if they:

- Impose undue financial or administrative burden
- Would require a fundamental alteration of the nature of the operation
- Pose a direct threat to the safety of the individual or others

EXEMPTIONS

Single Family Exemption

Religious Group/Private Club

Housing for Older Persons (familial status only)

Mrs. Murphy Exemption

Design & Construction Exemptions

Exemptions are very technical, and this is not an exhaustive list of requirements!

THEORIES OF DISCRIMINATION

- Overt Discrimination
 - “No kids.”
 - “This apartment is not suitable for someone with a disability.”
- Disparate Treatment
 - Treating comparable tenants differently because of a protected characteristic – even if “unintentional”

DISPARATE IMPACT: STEP ONE

The plaintiff must show:

- 1) An outwardly neutral policy, procedure, or practice (ie. criminal history ban); and
- 2) A significantly adverse or disproportionate impact on persons of a protected class caused by the policy.

“Robust” causation requirement

DISPARATE IMPACT: STEP TWO

The burden then shifts to the defendant to supply a “substantial, legitimate, nondiscriminatory” justification for the policy.

Safety
Liability
Payment Risk

DISPARATE IMPACT: STEP THREE

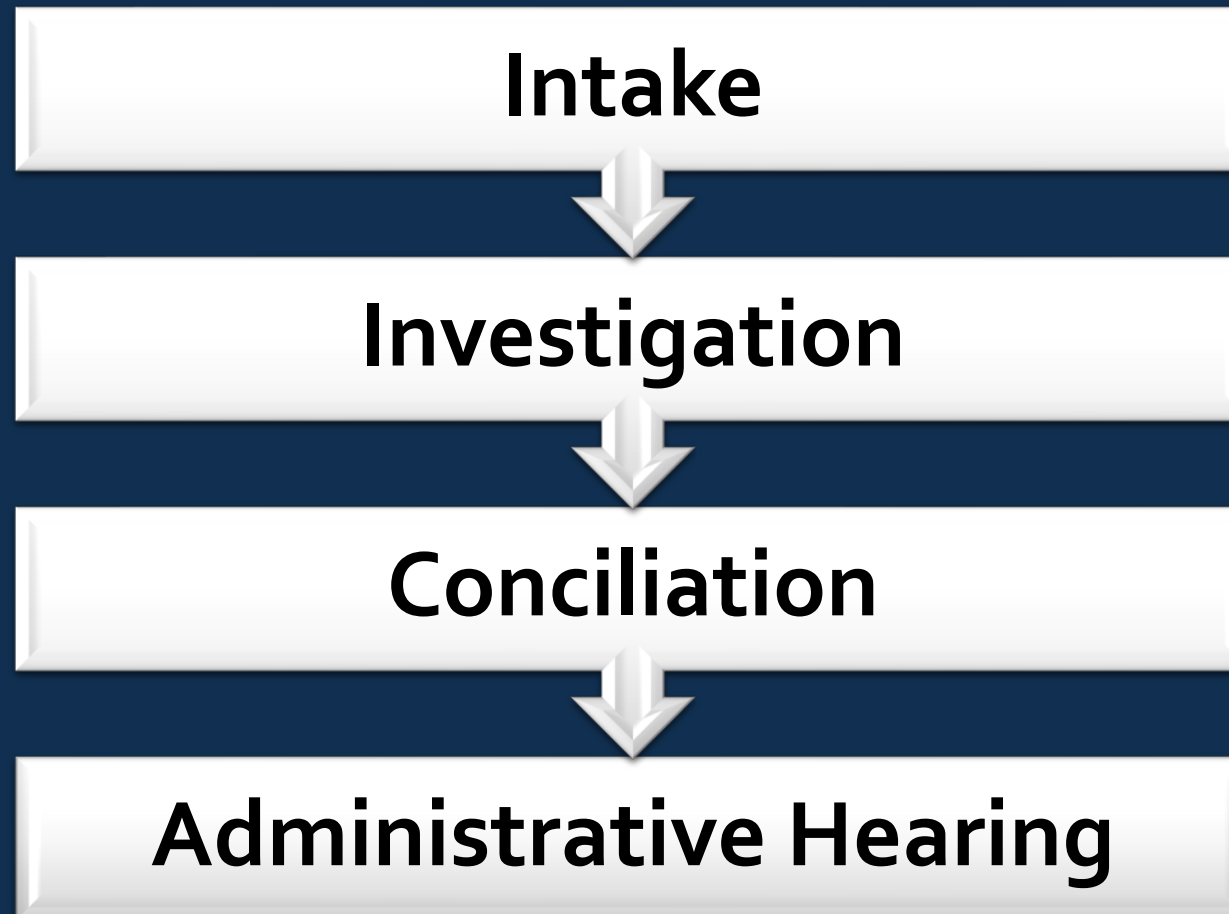
The plaintiff must show the business interest could be met by a different practice that has a less discriminatory effect.

Example: A blanket ban vs. a tailored policy

ENFORCEMENT ADMINISTRATIVE COMPLAINT

- Administrative Complaint (Dual filing)
 - Florida Commission on Human Relations
 - Must file within 1 year of alleged discriminatory act
 - Department of Housing and Urban Development
 - Must file within 1 year of alleged discriminatory act
- Local Commissions

ADMINISTRATIVE COMPLAINT PROCESS



FILING A COMPLAINT

- FCHR does not currently accept charges online. Complainants must fill out and submit a Technical Assessment Questionnaire (TAQ) for FCHR to determine if it has jurisdiction.
 - http://199.250.30.53/fchr/complaints__1/housing
- HUD accepts complaint via its online form, or a complainant can call to speak with an intake specialist or mail/email HUD's questionnaire.
 - https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint

FILING A COMPLAINT

- An attorney is not required.
- If in doubt, complainant should make the inquiry. If the claim is not potentially jurisdictional, then the Commission or HUD will refuse it or close it.
- Complainant must sign and verify the final complaint form sent to him/her.
 - This is different than EEOC procedures!

JURISDICTION

- Covered activity – Claims of discrimination due to specified protected class
- Covered Respondent – no exemption
- Standing – concrete injury
- Timely

DETERMINATION

- “No Cause” Determination
 - FCHR – Complainant may request an administrative hearing
 - Florida Administrative Code Chapter 60Y
 - HUD – No appeal (Complainant may file a civil action.)
- “Cause” Determination
 - FCHR
 - Complainant may request FCHR institute administrative hearing or civil action (Complainant charged no fees!)
 - Complainant may file his/her civil action in court
 - HUD
 - HUD may file an administrative hearing (Complainant charged no fees!)
 - DOJ may file civil action (Complainant charged no fees!)

ENFORCEMENT PRIVATE LITIGATION

- Private Action
 - State Court
 - Must first file with FCHR*
 - 2-year statute of limitations
 - Federal Court
 - No exhaustion requirement
 - 2-year statute of limitations

ENFORCEMENT PRIVATE LITIGATION

Florida FHA Claim

Must first file with
FCHR*

2-year statute of
limitations

FHA Claim

No exhaustion
requirement

2-year statute of
limitations

Don't forget local jurisdictions.

REMEDIES

- Possible remedies for housing discrimination include:
 - Injunctions
 - Actual Damages
 - Punitive Damages
 - Attorney Fees
 - Civil Penalties

HUD GUIDANCE

- Joint Statement on Reasonable Accommodations Under the Fair Housing Act
- Joint Statement on Reasonable Modifications Under the Fair Housing Act
- Service Animals and Assistance Animals for People with Disabilities in Housing
- HUD Guidance on Criminal History, Victims of Domestic Violence, etc.
- Joint Statement on Accessibility (Design and Construction) Requirements for Covered Multi-Family Dwellings
- More...

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