JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Federal Fair Housing Basics

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Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ+ individuals, and people with limited English proficiency.

Our Commitment to Justice

- We believe that to advance justice in aging, we must ensure that everyone has access to what they need as they age, without discrimination and regardless of race, gender, gender identity, sexual orientation, ability, language or country of origin.
- We push for policies that will ensure that those experiencing the greatest barriers to economic security, health care, and housing can exercise their rights and fully access the services and programs they need.

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FIGHTING SENIOR POVERTY THROUGH LAW

Agenda

- Who and what the federal Fair Housing Act (FHA) covers
- Common fair housing issues affecting older adult renters
- FHA enforcement, including where to refer people with fair housing problems

The Federal Fair Housing Act

What is the Federal Fair Housing Act?

- The Fair Housing Act (FHA) is a federal law that makes it illegal for housing providers to discriminate in the rental, sale or financing of housing based on certain protected characteristics.
- The FHA is one of several federal laws that provide protections against discrimination.
- Many states have additional fair housing laws that are similar to and expand upon protections under the FHA.

Who is Covered?

- Protected Classes:
  - Race
  - Color
  - National Origin
  - Religion
  - Sex
  - Familial Status
  - Disability

Older Adults and the FHA

- Age is not a protected class under the FHA
- Older adults can claim discrimination based on the other protected classes
  - Many overlaps with disability discrimination
- Older adults are often “regarded as” having a disability

Disability under the FHA

- Disability defined as:
  - 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

What types of housing are covered?

- Most housing covered, with a few exceptions
- Definition of "dwelling"
  - "[A]ny building, 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 thereon of any such building, structure, or portion thereof."
- Examples of covered dwellings:
  - Private sector rental housing
  - Assisted living
  - Nursing homes
  - Federally-subsidized housing

Exemptions from the FHA

- Exemptions:
  - Single family homes under certain circumstances
  - Owner-occupied building with four or fewer units
  - Housing for older adults (familial status discrimination)
  - Religious organizations and private clubs (with exceptions)

Who is covered by the FHA?

- Broad interpretation, can include:
  - Landlords and their agents
  - Owners
  - Management companies
  - Maintenance companies
- Can be direct liability or vicarious liability

What are discriminatory practices under the FHA?

- Refusing to rent or otherwise making housing unavailable;
- Treating people differently in the terms, conditions or privileges of a rental unit;
- Treating people differently in provision of services or facilities in housing;
- Advertising or stating a preference or limitation for tenants based on protected class;
- Refusing to make reasonable accommodations or modifications;
- Failure to build housing that meets design and construction (accessibility) standards.

Theories of Discrimination

- Intentional Discrimination
  - Disparate Treatment
  - Discriminatory intent or motive
    - 24 C.F.R. § 100.500(a)
  - Look at direct evidence and indirect, circumstantial evidence
- Discriminatory Effect
  - Disparate Impact
    - *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 534 (2015)

Hypothetical 1

Mrs. M is 78 years old and is looking for a new apartment. She finds an apartment community advertised as “for working professionals” and decides to apply.

During the application process, the management asks Mrs. M questions about whether she needs a caretaker to assist her. She mentions that she has a daughter that will come and help her out.

After reviewing her application, the apartment community denies her application. They state in the denial that she would be more at home in a senior community instead.

Poll 1

- Could this be considered discrimination under the Federal Fair Housing Act? (Choose one)
  - Yes, based on age discrimination
  - Yes, based on disability discrimination
  - No, the property is for working professionals, not older adults
  - No, older adults have to live in senior communities
  - Not sure

Hypothetical 2

The same scenario as Hypo 1, but instead of denying her application, management says they will rent to her but she will need to put down a larger deposit to cover their liability if she falls. Management also informs her that she will not be able to use the communal pool area unless her daughter is with her. Management includes both these terms in her lease agreement.

Poll 2

- Could this be considered discrimination under the Federal Fair Housing Act? (Choose one)
  - Yes, imposing different terms based on perceived disability
  - No, landlords can require higher deposits based on the tenant
  - Not sure

Common Fair Housing Issues for Older Adult Renters

Disparate Treatment Based on Disability

- Intentional discrimination
- Examples:
  - Refusal to rent to someone because of their disability
  - Charging higher rent because of disability
  - Not allowing someone with a disability to use communal spaces

Reasonable Accommodations

- Change in rules, policies, practices to ensure people with disabilities have equal opportunity to use and enjoy their home
- Examples:
  - Providing closer parking space or ground-level unit
  - Allowing assistance animals
  - Allowing live-in aides

Reasonable Accommodations in Eviction Defense

- Reasonable accommodations often prevent evictions and homelessness for people with disabilities
- Examples:
  - More time to move out
  - Withdrawing lease violation notice so tenant can address behavioral health issues
  - Changing rent due date for Supplemental Security Income/Social Security Disability recipients

Reasonable Modifications

- Structural changes to premises to allow person with a disability to have equal opportunity to use and enjoy their home
- Examples:
  - Wheelchair ramps
  - Grab bars
  - Lowering cabinets

Design and Construction (Accessibility) Requirements

- Multifamily housing built after March 1991 with four or more units must have:
  - Accessible building entrance on an accessible route
  - Accessible common and public use areas
  - Usable doors wide enough for wheelchair users
  - Accessible route into and through the dwelling unit
  - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
  - Reinforced walls in bathrooms for later installation of grab bars
  - Usable kitchens and bathrooms (i.e., wheelchair users can maneuver in the space)

Criminal Records

- Overbroad denials based on criminal history
  - Disparate impact on protected classes (people of color, people with disabilities, etc.)

See JIA Issue Brief, Fair Housing Protections for Formerly Incarcerated and Justice-Involved Older Adults

- Reasonable accommodations for disability-related criminal records

LGBTQ+ Discrimination

- Fair housing testing revealed 48% of LGBTQ+ testers seeking senior housing experienced disparate treatment

See The Equal Rights Center's "Opening Doors: An Investigation of Barriers to Senior Housing for Same-Sex Couples"

- Examples:
  - Housing provider gave fewer options
  - Housing provider required more extensive application process
  - Housing provider quoted higher fees, rent

Fair Housing Enforcement

Enforcement Mechanisms

- Administrative complaints with U.S. Department of Housing and Urban Development (HUD) and/or litigation
- Deadlines
  - Administrative complaints: one year from date of last act of discrimination
  - Lawsuits: two years from date of last act of discrimination

Administrative Complaints

- Most cases settle via conciliation agreement
- Conciliation agreement must provide relief for complainant and the public interest

Common Remedies

- Equitable relief (housing provider takes steps to correct violation)
- Monetary damages
- Systemic policy and practice changes
- Attorneys' fees

FHIPs & FHAPs

- National network of FHIPs & FHAPs help enforce FHA on behalf of HUD
- FHIPs (get funding from HUD's Fair Housing Initiatives Program)
  - Nonprofits doing fair housing work
- FHAPs (get funding from HUD's Fair Housing Assistance Program)
  - State/local civil rights agencies

FHIP Organizations

- Can provide advice or legal representation
- Handle over 70% of all fair housing cases

  See National Fair Housing Alliance's 2025 Fair Housing Trends Report
- Some also do fair housing testing
  - Uncovers discriminatory housing practices and provides more evidence
  - FHIPs also have organizational standing to file their own administrative complaints or litigation based on testing

Where to Refer People with Fair Housing Problems

- FHIP organizations (especially organizations with Private Enforcement Initiative (PEI) grants)
- FHAP agencies
- Local legal aid programs that do housing work
- Disability rights organizations that do housing work
- HUD Office of Fair Housing and Equal Opportunity

Additional Resources

- Fair Housing Act: 42 U.S.C. §§ 3601-3619
- HUD regulations on discriminatory conduct under FHA: 24 C.F.R. Part 100
- HUD regulations on administrative fair housing complaints: 24 C.F.R. Part 103
- Article: Federal Housing Protections for People with Disabilities

Questions?

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