

3: FAIR HOUSING RIGHTS

FAIR HOUSING BASICS

FEDERAL, STATE, AND LOCAL FAIR HOUSING LAWS PROHIBIT HOUSING DISCRIMINATION IN THE RENTAL, SALE, INSURING, AND FINANCING OF HOUSING. These laws protect everyone by making it illegal to discriminate based on certain protected characteristics. That means that you have certain legally protected rights should you experience illegal housing discrimination.

Most housing for rent or sale is covered by fair housing laws. There are some narrow exemptions for certain types of housing, but you should know that housing not covered by one law may be covered by another. For example, when it comes to housing discrimination based on race, color, and/or national origin, virtually all housing is covered.

Fair housing laws apply to every aspect of the housing process and real estate related transactions. We use the term **housing provider** to talk about who is required to follow fair housing laws. A housing provider may include a landlord or real estate broker; a co-op or condominium board; and a rental management company or building superintendent. The laws also apply to other types of people or entities involved in housing transactions, such as lenders, appraisers, insurance companies, apartment listing services, and housing developers.

THE LAWS

FAIR HOUSING ACT

The federal Fair Housing Act prohibits discrimination based on:

- Race
- Color
- Religion
- Sex
- National Origin
- Familial Status
- Disability

NEW YORK STATE HUMAN RIGHTS LAW

The New York State Human Rights Law includes all the federal protected characteristics and prohibits discrimination based on:

- Sexual orientation
- Age
- Marital status
- Military status

NEW YORK CITY HUMAN RIGHTS LAW

The New York City Human Rights Law includes all the federal and state protected characteristics and prohibits discrimination based on:

- Gender identity
- Domestic partnership status
- Alienage/citizenship status
- Lawful occupation
- Lawful source of income
- Status as a victim of domestic violence, sex offenses, and stalking

HISTORY AND TERMINOLOGY OF FAIR HOUSING PROTECTIONS FOR PEOPLE WITH DISABILITIES

The Fair Housing Act defines a disability as a physical or mental impairment that substantially limits one or more major life activities. It is important to note that people who currently have a disability, used to have a disability, or are perceived to have a disability are all protected. Some state and local fair housing laws have even broader definitions of disability.

A person with a disability has the right to a **reasonable accommodation**, which is an alteration of a rule, policy, practice, or service if such a change is necessary to provide the person with a disability an equal opportunity to use and enjoy the housing. For example, if a rental building has a strict no pet policy and a tenant with a disability requires the use of an assistance animal, then that tenant may request that the landlord change the policy as an accommodation.

A person with a disability also has the right to a **reasonable modification**, or a physical alteration of a dwelling unit or common areas, if the modification would afford the person with a disability the opportunity to fully use and enjoy the housing. For example, a Deaf person may request a light that flashes when someone rings the doorbell be installed in an apartment, or a person with a mobility impairment who uses a wheelchair may ask to install a ramp at the entrance to a common area with two steps that all building residents use. Depending on the type of modification and housing involved, the landlord or condo/co-op board may have to pay for the physical modification. However, in some instances, the resident may be required to pay. Fair housing laws vary on this issue.

Requesting an accommodation should initiate a "dialogue" between the parties to discuss how the accommodation or modification may be made. The purpose of this dialogue is to determine whether a request is reasonable and to consider alternative solutions so that individuals with a disability can fully use and enjoy their housing.

WHAT CONDUCT IS PROHIBITED BY FAIR HOUSING LAWS?

The following conduct is prohibited under fair housing laws if based on any of the protected characteristics:

- Refusing to rent, sell, insure or finance housing, or to negotiate for housing, or otherwise making housing unavailable.
- Advertising or making any statement that indicates a preference, limitation, or discrimination.
- Misrepresenting the availability of housing for rent, sale, or to show.
- Steering individuals into or away from certain buildings, parts of buildings, or neighborhoods to segregate populations.
- Discriminating in the terms or conditions of housing or providing unequal services and facilities.
- Refusing to provide a reasonable accommodation by altering rules, policies, practices, or services for persons with disabilities.
- Refusing to allow a reasonable modification to the premises for persons with disabilities.
- Harassing or failing to take corrective action in response to complaints about harassment.
- Threatening, coercing, intimidating, interfering with or retaliating against a person for exercising, or for assisting others to exercise, their fair housing rights.
- Failing to design and construct new multi-family housing built for first occupancy after March 13, 1991 in an accessible manner.

SEXUAL HARASSMENT IN HOUSING

Fair housing laws prohibit sexual harassment by a landlord, rental agent, building manager, superintendent, or other employees or agents of a housing provider. Sexual harassment can include, but is not limited to, the following types of conduct:

- Requesting sexual favors in exchange for reduced rent, rental services, repairs, or other accommodations (sometimes referred to as “quid pro quo”);
- Making sexually inappropriate comments or lewd gestures, unwelcome touching, or other severe or pervasive conduct that creates a sexually hostile living environment;
- Retaliating against a tenant who refuses an employee’s or agent’s sexual overtures.

If you are being sexually harassed, contact the FHJC or your local fair housing organization for assistance.

FAIR LENDING

Lending and real estate transactions can be complicated and difficult to understand for anyone, especially those who are new to the lending process. Thankfully, consumers do have protections from discrimination and unequal treatment. Fair housing and fair lending laws protect consumers when it comes to obtaining a home mortgage, home refinancing loans, home repair loans, and other real estate-related credit transactions.

Creditors are prohibited from considering a protected characteristic when:

- Determining whether to accept or reject an application;
- Setting terms or conditions, fees, and interest rates;
- Recommending or evaluating a borrower for certain loan products.

All lawful income should be considered and treated equally by a lender in a real estate-related credit transaction.

If any of the following occur, it may be a sign that lending discrimination is taking place:

- You are treated differently in person than on the phone.
- You are discouraged from applying for credit.
- You hear the lender make negative comments about groups of people protected under these laws.
- You are refused credit even though you qualify for it.
- You are offered credit with a higher rate than the rate you qualify for.
- You are told that the lender will not count your income because you are pregnant and expect to take maternity leave for a time.
- You are told that financing may be more difficult to obtain in certain neighborhoods.
- You are denied credit, but not given a reason why or told how to find out why.
- Your deal sounds too good to be true.
- You feel pushed or pressured to sign.

If you suspect that you are not being treated fairly by a lender, contact the FHJC or your local fair housing organization for assistance.

WHAT DOES HOUSING DISCRIMINATION LOOK LIKE TODAY?

Housing discrimination can sometimes be very overt and blunt. It may be easy for you to tell that you are being treated unfairly. However, much of the housing discrimination that occurs today is more subtle and difficult for home seekers to detect.

Here are some examples of what housing discrimination looks like today:

Example 1: An African American woman visits an apartment building to inquire about renting a one-bedroom apartment. The landlord tells her that there are no one-bedroom apartments currently available to rent within the building. However, an hour later, when a white woman asks about renting a one-bedroom apartment in the building, the same landlord informs the white woman about two available one-bedroom apartments and shows her the available apartments.

Under fair housing laws, it is illegal for housing providers to misrepresent the availability of housing based on protected characteristics.

Example 2: A woman who uses a wheelchair is looking for an apartment. She visits a newly constructed 27-story building that just opened. However, as the leasing agent shows her an available apartment, she discovers that some of the doorways are too narrow for her to pass through, there is a step up to the outside balcony, and the only bathroom is so small that it lacks the clear floor space needed to use the facilities.

The Fair Housing Act requires all covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991 to be accessible to and usable by people with disabilities.

Example 3: A woman lives in an apartment building for about a year and the landlord tells her that he plans to raise her rent. The landlord tells the tenant he could be persuaded to change his mind about the rent increase if she were willing to accede to his sexual advances.

Under fair housing laws, it is illegal for housing providers to harass or fail to take corrective action regarding complaints about harassment.

Example 4: A Latino home buyer meets with a real estate broker about his interest in purchasing a home for him and his family in a nearby suburban community that happens to be predominantly white. Instead of taking the prospective buyer to see homes in the requested community, the broker recommends homes in two communities which are predominantly Hispanic. The agent tells the man that he and his family will likely be “more comfortable” in these communities.

Under fair housing laws, it is illegal for housing providers to steer individuals into or away from certain buildings, parts of buildings, or neighborhoods to segregate populations.

Example 5: An elderly Deaf man is referred by his doctor to a local nursing home facility for care. He asks the nursing home if they would provide an ASL interpreter so that he can communicate with his in-house medical team on days when they meet with him. The nursing home refuses to provide an ASL interpreter or offer an equivalent auxiliary aid or service for him to ensure effective communication, citing the added expense as the reason for refusing his request.

Under fair housing laws, it is illegal for housing providers to refuse to provide a reasonable accommodation by altering rules, policies, practices, or services for persons with disabilities when such an accommodation is needed for effective communication so that the housing can be fully used and enjoyed.

Example 6: A Muslim man arrives home one day to discover that a racial and religious slur has been spray-painted across his apartment door. The tenant asks his building superintendent to repair his door. Not only does the super refuse to do so, but on his next rent bill he finds that the super has written a similar slur across the top of the bill. The tenant informs his landlord about the manager's conduct, but the landlord refuses to intercede to stop this harassment.

Under fair housing laws, it is illegal for housing providers to harass or fail to take corrective action regarding complaints about racial or religious harassment.

Example 7: During a conversation with the president of her condominium board, the president discloses to a white resident that he refuses to rent or sell apartments to Asian Americans because "their food is too smelly" and it might offend others in the building.

Under fair housing laws, it is illegal for housing providers to refuse to rent, sell, insure or finance housing, or refuse to negotiate for housing, or otherwise make housing unavailable based on race or national origin.

Example 8: A new rental building advertises available apartments as being perfect for young professionals. While taking a tour of the available units, a prospective tenant is told by the leasing agent, "This apartment building was really designed to meet the lifestyle needs of younger single people with lots of amenities geared to help today's millennials socialize. If you have children, you might want to look for a place where other families reside and that has playrooms and amenities better suited for children."

Under fair housing laws, it is illegal for housing providers to advertise or make any statements that indicate a preference, limitation, or discrimination based on family status.

Example 9: A leasing manager in a newly renovated building located in a gentrifying African American neighborhood begins offering substantial rent specials to white prospective tenants but does not offer the same rent incentives to persons of color who inquire about apartments for rent.

Under the fair housing laws, it is illegal for housing providers to discriminate in the terms or conditions of housing based on race or national origin.

Example 10: A family with a rental subsidy locates an available apartment below the maximum rent amount allowed by the subsidy program. The building's rental manager tells the family that the landlord does not accept any "programs" and suggests they look elsewhere for housing.

Many fair housing laws make it unlawful to discriminate based on lawful source of income, including the use of a housing subsidy.

Example 11: An elderly man with disabilities begins using a wheelchair. He has been living in the same rental building for 20 years. There are two steps at the entrance of the building, and he has found that he is no longer strong enough to open the door at the main entrance to the building. He requests that building management accommodate him by installing a ramp at the front door with an automatic door opener so that he can come and go from the building on his own. He also mentions in his letters to the company that other elderly tenants in the building would benefit from these changes and he attaches a note from his doctor explaining why he needs the modifications. The building management denies his request stating that the requested modifications would destroy the aesthetics of the building entrance.

Under fair housing laws, a person with a disability may request a reasonable modification if it is necessary to use and enjoy the housing. A refusal to grant such a request may constitute illegal housing discrimination. Depending on the type of modification and housing involved, the housing provider may have to pay for the physical modification. However, in some instances, the resident may be required to pay.

Example 12: An African American woman visits her neighborhood bank to inquire about obtaining a home mortgage to purchase her first home. The lender asks her questions about her income, debt, assets and credit and then strongly suggests she consider an FHA loan. She asks if that is the only loan program she qualifies for and the lender says it is. Thinking that she qualifies for other types of financing, she asks a white friend to visit the same lender and provide financial information that makes her similarly qualified in every respect. The same loan officer tells her friend that she would qualify for a first-time homebuyer loan product that the bank offers, as well as a 30-year conventional mortgage. The loan officer discourages the friend from considering an FHA loan saying that, in the long run, an FHA loan is costlier than the bank's first-time homebuying program.

Under fair housing and fair lending laws, it is illegal for a bank to provide different information or less favorable terms and conditions on a home mortgage based on race.

Example 13: An elderly man with disabilities is applying for an apartment and is asked for proof that his Social Security/Disability income will continue for at least 3 years before his application can be approved.

Under fair housing laws, it is illegal for housing provider to require more stringent terms and conditions based on disability or source of income.

Example 14: A single woman with three children applies to rent a two-bedroom apartment and she is told that no more than three people can reside in their two-bedroom apartments.

Under fair housing laws, it is illegal to establish overly restrictive occupancy standards that discriminate against families with children.

WHAT CAN YOU DO TO PROTECT YOUR FAIR HOUSING RIGHTS?

While there is nothing that home-seekers can do to prevent housing discrimination, there are some steps that you can take to protect yourself in the unfortunate event that illegal discrimination occurs:

- **Keep a Written Record/Take Notes.** Whether a person is searching for housing, contending with a discriminatory eviction or the non-renewal of a lease, or dealing with harassment or some other discriminatory practice, keeping a journal or written record is generally a good idea. Writing down dates and times of all contacts with housing providers and agents can be useful should the information be needed later to recount the events involving an alleged discriminatory housing practice. Whether renting or buying a home or apartment, consumers are advised to take notes during the housing search and keep the notes until the search has been concluded.
- **Save Documents.** Save receipts, copies of advertisements or listings, rental applications, leases, business cards, correspondence, brochures and any materials you receive from a housing provider. You never know if you may need those documents in the future.
- **Obtain Names.** When home buyers or renters initiate contact with a housing provider in person, over the telephone, or even by email or text, it is always a good idea to ask for the name of the person with whom they are communicating. Proving discrimination claims can be particularly challenging if the identity of the housing provider or agent is unclear or unknown.
- **Call the FHJC or your local fair housing organization.** If you suspect that you or someone you know have encountered illegal housing discrimination or have questions about fair housing rights, please call the FHJC or your local fair housing organization **as soon as possible**.

WHAT REMEDIES ARE AVAILABLE UNDER FAIR HOUSING LAWS?

Fair housing laws open doors, break down barriers, and repair the harm caused by discriminatory housing practices. If you believe you have experienced or witnessed housing discrimination, you can report it to HUD, your state or local government agency responsible for investigating housing discrimination complaints, or to your local fair housing organization. When you report housing discrimination, you are helping to stop discrimination, increasing housing opportunities to others who have previously been excluded, and making your community more open to everyone.

Depending on what organization you file a complaint with, there are several ways in which your complaint will be investigated and handled. Most local fair housing organizations are equipped to conduct, when possible, covert testing investigations to gather information about a housing provider's practices. Testers are individuals who pose as prospective renters or buyers and simulate transactions in fair housing investigations. If a testing investigation corroborates that discrimination is occurring,

this evidence can often be used to help victims of housing discrimination meet their burden of proof in an administrative hearing or court of law.

In general, when someone prevails with a housing discrimination complaint, the following types of remedies and penalties are available:

- **Court orders or injunctions** to stop the illegal discrimination. A court can require a housing provider take steps to ensure discrimination will not occur in the future, such as establishing non-discriminatory policies, providing training for agents, affirmative advertising, and similar activities. In situations in which people have been illegally denied housing, harassed, or threatened with an eviction or non-renewal of a lease for discriminatory reasons, court orders have been issued that enable individuals or families to obtain the housing sought or remain in their current housing.
- **Monetary compensation** to be paid to the victim of discrimination for out-of-pocket expenses, economic loss, lost housing opportunity, emotional distress, and other damages.
- **Punitive damages and civil penalties** to punish the discriminating parties and deter others in the community from discriminating in the future. Punitive damages are paid to the victim of discrimination. A civil penalty is a monetary fine paid to the government.
- **Attorney fees and costs** can, in most cases, be recovered by prevailing plaintiffs in fair housing cases.