

SEX DISCRIMINATION & THE FAIR HOUSING ACT

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Agenda

History of the Fair Housing Act & Sex Discrimination

Sexual Harassment

Gender Discrimination

Sexual Orientation
Discrimination

The Fair Housing Act & Sex Discrimination

The Fair Housing Act (established by the Fair Housing Act of 1968) prohibits discrimination in housing based on:

- Race
- Color
- Religion
- Sex (including sexual orientation)
- National Origin
- Disability
- Familial Status (including pregnant women and families with children under the age of 18)

These are also known as “Protected Classes”

History Of the Fair Housing Act

- Section 109 of Title I of the Housing and Community Development Act of 1974
 - Prohibits discrimination the basis of race, color, religion, national origin and sex in any program or activity funded by HUD (including CDBG)
 - These protections include gender identity and sexual orientation
- Executive Order 13988
 - Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- Signed by President Biden January 20, 2021
 - Requires HUD to administer and fully enforce the FHA to prohibit discrimination because of sexual orientation and gender identity



Discrimination Based on Sex

- The Fair Housing Act prohibits discrimination based on sex.
- This includes:
 - Sexual harassment
 - Harassment based on sexual orientation
 - Harassment based on gender identity



DOJ PSA: Sexual Harassment in Hou...



- + • **WHAT IS SEXUAL HARASSMENT DISCRIMINATION?**

- <https://youtu.be/z76bA-mf7o0>



Sexual Harassment in HUD Housing

- In 2016, HUD issued a Rule on sexual harassment under the Fair Housing Act
 - The Rule addresses and forms standards to use in the investigation of claims of quid pro quo and hostile environment discrimination
 - Quid pro quo – Latin for “something for something”
 - A favor or advantage granted or expected in return for something
- *Can be explicit or implied

<https://youtu.be/TloReiE2zVw>

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2016 Sexual Harassment Rule Continued

Hostile Environment Harassment

- When unwelcome conduct is sufficiently “severe or pervasive’ as to create a hostile environment
- Evaluated from the perspective of a reasonable person in the aggrieved person’s position
- Proof of hostile environment would not require demonstrating psychological or physical harm
- Evidence of psychological or physical harm is relevant in determining whether a hostile environment was created
 - Also relevant to possible damages
 - Psychological nor physical harm, however, must be demonstrated to prove that a hostile environment exists.

<https://youtu.be/DrN0W7hOKsw>

Sexual Harassment In Housing

- Harassment can take different forms
 - Unwelcomed sexual advances
 - Request for sexual favors
 - Offensive remarks or other hostile behavior due to a person's sex
 - Can be verbal or physical in nature
 - The harassment may be oral, written, or other non-physical contact
 - Can be created out of a **single** incident



Addressing Sexual Harassment in Housing

- In April 2018, the DOJ and HUD announced the creation of a task force to combat sexual harassment
- The task force is determined to:
 - Explain how sexual and other types of discriminatory harassment violate the FHA
 - Inform Public Housing Authorities “PHAs”, tenants, private housing owners and staff about their responsibilities in preventing harassment
- It is important to teach PHAs, their employees, private owners and tenants about their rights and steps to take when a complaint of sexual harassment has been reported
- PHAs and private owners must ensure that their housing is free from discrimination
 - They should also be educated on what to do if an incident of harassment is reported by a tenant or staff member

Liability in Sexual Harassment Cases

- The property owner and/or management can be held liable under FHA
- Property management employees may also be liable
- PHA is also potentially liable
- Liability occurs when housing providers:
 - Engage in harassment themselves
 - Fail to take actions within their power to stop harassment
 - The provider knew or should have known about the harassment
 - Providers are also liable if they retaliate against someone who complains about harassment

Responsibility of Housing Providers

If a provider becomes aware of possibly harassing conduct, they must:

- Ensure that the conduct stops immediately
- Must investigate the complaint and ensure corrective action is taken to stop the conduct
 - Verbal warnings are not adequate
- If there is an employee policy regarding standards of conduct, the provider must enforce the policy

• RESPONSIBILITY

- Responsibility is having the obligation to complete a task or oversee the output of others that you are directly in charge of.

• ACCOUNTABILITY

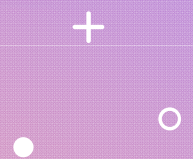
- Accountability is the acceptance, good or bad, of your personal actions that contributed to attaining or failing to meet an intended goal.



GENDER DISCRIMINATION



"Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love...All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation."



Gender Discrimination

- The FHA of 1964 includes “sex” as a protected class
- As the country and world has evolved since the enactment of the FHA, the definition of “sex” has changed
 - No longer means just male or female heterosexual persons
- The January 2021 Executive Order 13988 now ensures protection based on because of sexual orientation and gender identity
- Gender discrimination can be cross-sectional between other forms of discrimination (ie. race, national origin, disability)



<https://youtu.be/IsSK05c7UQE>

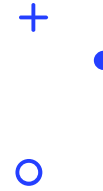


Violence Against Women Act (VAWA)

- The Violence Against women Act was enacted in 1994
 - 24 C.F.R. §§ 5.2001 – 5.2011 – provides protections for victims of domestic violence, dating violence, sexual assault, or stalking under the FHA
 - Victims cannot be discriminated against based on any protected characteristic
 - Housing providers must provide to each of its applicants and to each of its tenants the notice of occupancy rights
 - Notice of Occupancy Rights explains VAWA protections; including the right to confidentiality and limitations on those protections
 - A HUD certification form is provided to the victim to document an incident of domestic violence
- A tenant in a covered housing program may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking

Retaliation

- Retaliating against any person because that person reported a discriminatory housing practice to a housing provider or other authority is a violation of the Fair Housing Act



retaliation
is

discrimination



QUESTIONS?

Contact information:

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Save the Date

UNDERSTANDING FAIR HOUSING

Training for Landlords, Property Managers and Realtors

This training is designed to assist landlords, property managers and realtors in understanding Fair Housing laws and obligations, including who is protected, what types of housing are covered, prohibitions, and more.

HUD Fair Housing staff will also take participants through the process of how fair housing investigations are conducted. A question-and-answer session will follow the training.

Date: Thursday, May 26, 2022

Time: 11:00am

[Click here to Register](#)

To join the webinar, an email will be sent out prior to the event.



Questions regarding Fair Housing laws and requirements may be submitted in advance by emailing Jon.P.Thomas@hud.gov