FAIR HOUSING ACT

PROTECTED CLASSES

Race
Color
Religion
National Origin
Sex
Familial Status
Disability
According to the National Fair Housing Alliance 2021 Trends Report, 49% of cases reported to HUD alleged disability discrimination.
THEORIES OF DISCRIMINATION

DISPARATE TREATMENT
Treating someone differently because they are a member of a protected class

DISPARATE IMPACT
Does not require demonstrations of discriminatory intent
Neutral policy or practice that disproportionately impacts a protected class
DISCRIMINATORY ADVERTISING & STATEMENTS

It's unlawful to make statements or publish advertisements that indicate any preference, limitation, or discrimination based on a protected class, or an intention to make any such preference, limitation, or discrimination.
DENYING HOUSING
Applicant is qualified to rent, but denied because of their protected class

REFUSING TO NEGOTIATE
Unwillingness to negotiate the rental or sale of a unit because of the protected class of the person inquiring

EVICION, TERMINATION, REFUSAL TO RENEW
Evicting, terminating, or refusing to renew a lease because of a person's protected class
TERMS & CONDITIONS

APPLICANT
Housing provider subjects or proposes to subject the protected class applicant different

TENANT
Housing provider places discriminatory terms or conditions on the protected class tenant during the course of a tenancy

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FALSE DENIAL OF AVAILABILITY

Housing provider falsely informs a protected class member that the desired housing is unavailable.
STEERING TO A SEGREGATED NEIGHBORHOOD OR LESS DESIRABLE HOUSING

A housing provider steers a potential applicant to housing concentrated by their protected class OR away from the desired housing while encouraging someone not of their protected class to pursue the housing.
COERCION, INTIMIDATION, THREATS, INTERFERENCE

BASED ON PROTECTED CLASS

BASED ON PROTECTED ACTIVITY
Protected class member OR someone assisting a protected class member

RE蒂ALIATION
Protected class member engaged in protected activity or another person encouraged a protected class member to engage in protected activity
HARASSMENT

ANY PROTECTED CLASS
Housing provider creates an intimidating or offensive housing environment based on the complainant's protected class.
SEXUAL HARASSMENT

HOSTILE ENVIRONMENT
- Unwelcome
- Severe
- Pervasive

QUID PRO QUO
- Housing is negatively impacted because they refuse requests for sexual favors
- Tenant acquiesced to the request for sexual favors to protect their housing
- Unwelcome
DENYING REASONABLE MODIFICATIONS

CHANGE IN THE PHYSICAL PREMISES
Must be reasonable & necessary

COSTS
Tenant pays for the modification UNLESS housing provider receives federal financial assistance

RESTORATION
Tenant is obligated to restore to previous condition only where it is reasonable to do so and where the housing provider has requested the restoration.
REASONABLE ACCOMMODATIONS

REASONABLE
- Request cannot impose an undue financial and administrative burden. Case by case basis. Depends on cost, financial resources of the provider, etc.
- Interactive process

NECESSARY
- Must be a disability-related need for the requested accommodation

FUNDAMENTAL ALTERATION
- Alters the essential nature of a provider’s operation

DIRECT THREAT
- Individual assessment based on reliable objective evidence. Must consider whether there are other reasonable accommodations that will eliminate the direct threat

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DISPARATE IMPACT
**DISPARATE IMPACT-BURDEN SHIFTING**

**STEP 1**
Plaintiff has burden of showing that practice or action has a discriminatory effect on the plaintiff.

**STEP 2**
Defendant has burden of providing a justification for the action or practice and must show it was necessary to achieve a legitimate, non-discriminatory purpose.

**STEP 3**
Plaintiff has burden of showing that defendant could have reached the same objective with a less discriminatory alternative.
Nuisance Ordinances

STEP 1:
• On average, women comprise 80% of all DV survivors each year
• Adverse affects of a nuisance ordinance fall more heavily on women

STEP 2:
• Can the local government show that the challenged practice is necessary to achieve a substantial, legitimate, non-discriminatory interest
• Difficult to meet that burden if the ordinance cuts off emergency services and/or requires or encourages housing providers to evict survivors of DV or other crimes or others in need of emergency services

STEP 3:
• If local government can show a substantial, legitimate, non-discriminatory interest, plaintiff could still prevail by showing the interest could be served by another practice that has a less discriminatory effect
  • Repeal or amend ordinance, policy, or practice
** exempting DV survivors from an ordinance’s coverage is probably not sufficient since policy and emergency providers may misclassify the call
STEP 1:
• Studies found racial disparities in credit scores
  • 2010 study by Woodstock Institute found predominately Black zip codes in Illinois, over 54.2% had a credit score less than 620; 20.3% of Illinois residents statewide had credit score less than 620; only 16.8% of individuals in predominately white zip codes had a credit score of less than 620

STEP 2:
• What are the legitimate non-discriminatory business purposes?

STEP 3:
• How can landlord reach the same objective in a less discriminatory way?

AFFH: Can jurisdictions receiving federal funds address credit scoring?
JUNE 2019: Challenge to one-size-fits-all policy of rejecting any and all applicants with criminal backgrounds as racially discriminatory

POLICY: Written policy of barring applicants who have any felony or select misdemeanor convictions — no exceptions

In Chesterfield County, VA a Black resident is 3X more likely than a white resident to have a felony or misdemeanor conviction

OUTCOME: Settlement reached in August 2019
• Revamp policy on criminal record screening
• Specific categories of offenses
• Five year look back
• Excludes all arrests, misdemeanor convictions, and vacated or reversed convictions
• Does not people differently based on whether the applicant is on probation or parole
• Assures individual consideration for every applicant with a history of specific felony convictions

IN 2021 THIS POLICY WAS ADOPTED AS THE COMMONWEALTH OF VIRGINIA’S MODEL POLICY FOR TENANT SCREENING
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Affirmatively Furthering Fair Housing

Adrian Garcia, Director of Fair Housing & Commercial Property Division
Who is the PHRC?

- Leading Civil Rights Enforcement Commission for the State of PA
- Empowered by the PA Human Relations Act of 1955,

What do we do?

Two-Part Mission:
• Enforce PA/Federal non-discrimination laws
  • PA Human Relations Act
  • PA Fair Educational Opportunities Act
  • Enforce the Federal Fair Housing Act of 1968 as amended in 1988
• Promote Equal Opportunity for ALL in PA
Three Regions Served by PHRC
The PA Human Relations Commission promotes equal opportunity for all and enforces Pennsylvania’s civil rights laws that protect people from unlawful discrimination.
Fair Housing Act

FHA prohibits discrimination in the sale, rental, and financing of housing based on race, color, religion, national origin, sex, (and as amended) handicap and familial status. Title VIII of the Act is also known as the Fair Housing Act (of 1968).

PHRA

race, color, familial status, religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.
The Fair Housing Act has two goals: to end housing discrimination and to promote diverse, inclusive communities. The second goal is referred to as Affirmatively Furthering Fair Housing (AFFH), and it embodies our strongly-held American values of fair access and equal opportunity.
EQUALITY
EQUITY
History of AFFH

• The Affirmatively Furthering Fair Housing provision was part of the Fair Housing Act when it was passed by Congress in 1968. Through that provision, Congress directed HUD to make sure that neither the agency itself, nor the cities, counties, states and public housing agencies it funds, discriminate in their programs.
Obligation to Affirmatively Further Fair Housing

- Federal funding recipients with an AFFH obligation must be proactive in combatting segregation; it is not sufficient to merely prohibit discrimination.
This includes...

- HUD
- State Governments
- County Governments
- City Governments and any governmental entity receiving federal funding
- Multi-family Housing Providers receiving federal funding (Project-based HCV, Mainstream, VASH, Section 811, etc.)
- Non-profit/for profit housing development entities (LIHTC)
...also includes

- Lending institutions (Community Reinvestment Act)
- Federal Mortgage Providers and Lenders
- USDA fund Recipients
- PA Land Banks
- Housing Counseling Agencies
a. Replace the AI with a more effective and standardized Assessment of Fair Housing (AFH) through which program participants identify and evaluate fair housing issues, and factors contributing to fair housing issues (contributing factors);

b. Improve fair housing assessment, planning, and decision-making by HUD providing data that program participants must consider in their assessments of fair housing—designed to aid program participants in establishing fair housing goals to address these issues and contributing factors;

c. Incorporate, explicitly, fair housing planning into existing planning processes, the consolidated plan and PHA Plan, which, in turn, incorporate fair housing priorities and goals more effectively into housing, and community development decision-making;
d. Encourage and facilitate regional approaches to address fair housing issues, including collaboration across jurisdictions and PHAs; and

e. Provide an opportunity for the public, including individuals historically excluded because of characteristics protected by the Fair Housing Act, to provide input about fair housing issues, goals, priorities, and the most appropriate uses of HUD funds and other investments, through a requirement to conduct community participation as an integral part of the new assessment of fair housing process.
2015 - Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”
Examples of AFFH

• Inclusive Zoning that allows for development of housing both market rate and affordable.

• First-time homebuyer programs and down payment closing cost assistance.

• Rental Assistance Program and Landlord Mitigation Funds

• Enacting Legislation that will protect traditionally marginalized members of the community.
Opportunities for Improvement

• Inclusive Zoning that allows for development of housing both market rate and affordable. Too many, counties, townships, villages and boroughs preventing AFFH.

• Individuals with disabilities are segregated exclusively to living in the cities due to absence of transportation, local amenities, accessible routes, etc.

• Substandard Housing conditions in rural areas many of which are occupied by individuals within protected classes.
Benefits of AFFH

• The chance to affirmatively further fair housing connects all communities to greater opportunity, which benefits both individuals and their communities. Individuals receive specific cultural, educational, and employment opportunities from more inclusive and diverse communities, and those communities benefit as well.

• According to the National Association of Home Builders (NAHB) estimates that every 100 typical tax credit apartments generate approximately $7.9 million in local income, $827,000 in taxes and 122 local jobs within one year. On an annually recurring basis, the same development produces $2.4 million in local income, $441,000 in taxes and 30 local jobs.
Thank you!

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