Fair Housing Training Guide
Introduction

This Fair Housing Training Guide was produced by the Fair Housing Justice Center (FHJC) to be used in conjunction with FHJC’s Fair Housing Training Program. The FHJC is a regional civil rights organization dedicated to eliminating housing discrimination; promoting policies and programs that foster open, accessible, and inclusive communities; and strengthening enforcement of fair housing laws. The FHJC is the only full-service fair housing program based in New York City, serving all five boroughs, as well as the seven surrounding New York counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

Whether you work in the housing industry, non-profit sector, or government, it is important to know your rights and responsibilities under fair housing laws. Our perspective on fair housing training is that it can be of greatest assistance to housing providers and others who want to fully comply with fair housing laws.

Each Fair Housing Training Program is customized to include the history of fair housing laws, how fair housing laws are enforced, and information about contemporary housing discrimination. In addition, all training sessions contain a core module devoted to a detailed explanation of local, state, and federal fair housing laws. We urge all participants in FHJC’s Fair Housing Training Program to read this Guide from cover to cover. Participants may retain the Guide and refer to it as issues or questions arise. Fair housing laws are always changing and the FHJC will periodically update the Guide to ensure that we are providing accurate, complete, and current information about fair housing rights and responsibilities.

For builders, architects, developers, site engineers, and others who are involved in the design and/or construction of new multifamily housing, the FHJC offers a separate training program that is focused on the Fair Housing Act’s accessibility requirements. Please contact the FHJC for more information about the availability of this specialized training.

FHJC’s Fair Housing Training Program is intended to be interactive and participants are encouraged to ask questions. Everyone needs to know how to navigate various interactions with housing consumers in a way that is consistent with the requirements of fair housing laws.
Why Do We Have Fair Housing Laws?

Fair housing laws were enacted because our nation has a long and sordid history of systemic housing discrimination. Racially discriminatory policies and practices, by the housing industry and government, intentionally segregated our metropolitan regions by race.

Continuing housing discrimination not only restricts housing choice, but it can be a painful, humiliating, and costly experience for any individual or family. Discrimination in housing may limit access to important life opportunities. A discriminatory policy or practice that hurts one individual or family may have injured others in the past and, unless stopped, may harm more people in the future. Indeed, discrimination that illegally divides or segregates people does immense harm to the entire community.

Civil rights advocates and organizations fought hard to see that fair housing laws were enacted. Pervasive and persistent housing discrimination based on race, national origin, and other characteristics prompted local, state, and federal governments to enact laws that would prohibit housing discrimination.

What Are Fair Housing Laws?

Fair housing laws are civil rights laws that make housing discrimination illegal. The federal Fair Housing Act was enacted to ensure equal opportunity in housing and to enable our nation to move toward a more integrated society. Effective enforcement of fair housing laws can have a powerful, positive, and lasting impact by enabling people to find a place to live or retain their existing housing. These laws established fair housing as the law of the land, but fair housing laws only work if they are fully implemented and vigorously enforced.
What Fair Housing Laws are Described in this Guide?

Civil Rights Act of 1866 (Reconstruction Act)

The 1866 Civil Rights Act contains two provisions that potentially apply to housing situations. Section 1981 establishes the right of all persons to make and enforce contracts. Section 1982 establishes the right to lease or purchase property and consists of one sentence: “All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.” For 102 years, it was unclear that this law could be used to enforce fair housing rights. But on June 17, 1968, the Supreme Court ruled in Jones v. Mayer that Congress intended this law to prohibit all racial discrimination in the sale and rental of housing, enforceable by filing lawsuits in court. While Section 1982 only protects “citizens,” it applies to all real estate.

Title VIII of the 1968 Civil Rights Act (Federal Fair Housing Act)

On April 11, 1968, seven days after the assassination of Dr. Martin Luther King, Jr., President Lyndon B. Johnson signed into law Title VIII of the 1968 Civil Rights Act known as the federal Fair Housing Act. The twin goals of the Fair Housing Act are to 1) prohibit discrimination in housing based on race, religion, color, and national origin, and 2) replace existing patterns of residential racial segregation with “truly balanced and integrated living patterns.” The law states that federal agencies and recipients of federal funding have a duty to affirmatively further fair housing in all housing and community development programs and activities. The 1968 law contained some limitations in the remedies that could be obtained. There was a $1,000 cap on punitive damages; the Department of Justice (DOJ) could only seek injunctive relief; and the administrative process established at the Department of Housing and Urban Development (HUD) was woefully inadequate.

The Fair Housing Act was amended to include a prohibition on sex discrimination in 1974. In 1988, substantial amendments to the Fair Housing Act were enacted by Congress which added disability and familial status as protected characteristics; prohibited discrimination in real estate-related transactions; created an option for states and localities to participate if their state or local laws were substantially equivalent; and resolved many of the remedial limitations by removing the cap on punitive damages and significantly expanding the enforcement roles for DOJ and HUD.

State and Local Fair Housing Laws

In 1957, New York City became one of the first cities in the nation to pass a Human Rights Law that prohibited housing discrimination. In 1961, the State of New York amended its Human Rights Law to prohibit housing discrimination. In the New York City region, Nassau County, Rockland County, Suffolk County, and Westchester County also have local laws that prohibit housing discrimination.

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1 90 Cong. Rec. 2,281 (1968)
What Housing is Covered By Fair Housing Laws?

Most housing for rent or sale is covered by fair housing laws.

The federal Fair Housing Act covers a dwelling, which is defined as any building or structure which is occupied as or designed or intended for occupancy as a residence by one or more families. Vacant land offered for sale or rent for the construction or location of a dwelling is also covered.

Under the Human Rights Laws for New York City and New York State, a housing accommodation is covered and is defined as any building, structure, or portion which is used or occupied; or is intended, arranged, or designed to be occupied as the home, residence, or sleeping place of one or more human beings.

Under the 1866 Civil Rights Act, all real estate is covered when it comes to racial discrimination.

Under the federal Fair Housing Act, there are some narrowly carved out exemptions for:

- Temporary or transient housing
- Owner-occupied buildings with four or fewer units
- Single family homes under very limited circumstances
- Housing for members of religious organizations and private clubs

Also, housing that is designed as “housing for older persons” is exempted from renting to families with children, if:

- 100% of the housing units are occupied by persons 62 years of age or older;
- 80% are occupied by households where at least one person in the household is 55 years of age or older; or
- The Secretary of HUD has determined that a state or federal housing program is specifically designed and operated to assist elderly persons.
The New York State Human Rights Law exempts:
- Owner-occupied buildings with two or fewer units
- Rooming houses (only for sex discrimination)
- Discounts for seniors (65 and older) are permitted

The New York City Human Rights Law exempts:
- Owner-occupied buildings with two or fewer units, unless the housing has been advertised or made publicly available
- Dormitories (only for sex discrimination)
- Homeless shelters with shared living (only for sex discrimination and family status discrimination)

While there are some narrow exemptions for certain types of housing, please note that housing not covered by one law may be covered by another.

WHO MUST COMPLY WITH FAIR HOUSING LAWS?

Just as everyone is protected by fair housing laws, everyone is also required to abide by those same laws.

Landlords, rental management companies, and leasing agents must comply with fair housing laws.

All those licensed by the State of New York to rent or sell property, such as real estate brokers, real estate salespeople, and apartment listing services must comply with fair housing laws. Fair housing laws also apply to entities providing real estate-related services such as lenders, insurance companies, appraisers, and other real estate services. Anyone who is selling or renting a dwelling unit (includes vacant lots), or a housing accommodation, is covered by fair housing laws. Tenants, neighbors, and other individuals are prohibited from harassing or interfering with others who are attempting to exercise any fair housing right.

Who is Protected by Fair Housing Laws?

Fair housing laws protect everyone from housing discrimination. In the New York City region, there are federal, state, and local laws that prohibit discrimination in the rental, sale, insuring, and financing of housing based on protected characteristics. In addition to these laws, there are fair lending laws that apply to the provision of credit and home mortgage financing. Also, there are other federal civil rights laws that prohibit housing discrimination when federal financial assistance is involved.

The 1866 Civil Rights Act (Reconstruction Act) prohibits discrimination based on:
- Race
- Color
- National Origin

The Federal Fair Housing Act prohibits discrimination based on:
- Race
- Religion
- Color
- Sex
- National Origin/Ethnicity
- Familial Status (presence of children)
- Disability

The New York State Human Rights Law includes the federally protected characteristics above and also prohibits discrimination based on:
- Sexual Orientation
- Age
- Marital Status
- Military Status
- Gender Identity and Expression
- Lawful Source of Income (including housing subsidies)

Status as a Victim of Domestic Violence is a protected characteristic under the New York State Real Property Law. Also, inquiries into arrest records are impermissible under the New York State Human Rights Law.

The New York City Human Rights Law includes the federal and state protected characteristics and additionally prohibits discrimination based on:
- Domestic Partnership Status
- Alienage/Citizenship Status
- Lawful Occupation

Several suburban counties within the New York City region also have laws that prohibit housing discrimination based on additional protected characteristics.
What Conduct is Prohibited by Fair Housing Laws?

Not all “unfair” housing practices constitute illegal housing discrimination. It is important to understand the type of conduct that is prohibited by fair housing laws. Here is a partial list of practices that are prohibited under fair housing laws when based on any of the protected characteristics.

- Refusing to rent or sell after the making of a bona fide offer
- Refusing to negotiate for the rental or purchase of housing or otherwise making housing unavailable
- Advertising or making any statement that indicates a preference, limitation, or discrimination
- Falsely stating that housing is unavailable to show, rent, or purchase
- Steering applicants to or away from certain areas of a building or to different buildings or neighborhoods to segregate populations
- Requiring terms and conditions that are less favorable than those offered to other renters or buyers
- Denying or providing less favorable services and facilities
- For profit, inducing or attempting to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, or other protected characteristic
- Denying any person access to membership or participation in any multiple listing service, real estate broker’s organization or other service, organization, or facility relating to the business of selling or renting dwellings
- Discriminating in the terms or conditions of such access, membership, or participation in any multiple listing service, real estate broker’s organization or other service, organization, or facility relating to the business of selling or renting dwellings
- Refusing to provide a reasonable accommodation in rules, policies, practices, or services when requested by persons with disabilities

- Refusing to allow a reasonable modification to the premises when requested by persons with disabilities
- Failing to design and construct new multifamily housing built since 1991 in an accessible manner
- Failing to take corrective action regarding complaints about harassment by other tenants or by the agents of the housing provider
- Threatening, coercing, intimidating, interfering with, or retaliating against someone for asserting their fair housing rights, or for assisting others to exercise their fair housing rights
- In real estate-related transactions:
  - Refusing to make a loan or insure a property
  - Requiring different terms and conditions
  - Discriminating in appraisals
  - Refusing to purchase a loan or imposing different terms for the purchase of a loan
A Closer Look: Disability Discrimination

Fair housing laws broadly define a disability as a physical or mental impairment that substantially limits one or more major life activities. The definition also includes being regarded or perceived as having a disability or having a record of a disability. Although fair housing laws differ slightly in their application and protections for persons with disabilities, they all prohibit housing discrimination based on disability.

Under fair housing laws, a person with a disability may make a “reasonable accommodation” request to alter a rule, policy, practice, or service if such a change is necessary to provide the person with the disability an equal opportunity to use and enjoy the housing. For example, a rental management company may have a rule that only tenants can use the laundry room in an apartment building. A tenant residing in the building is unable to do her own laundry because of a physical disability. The tenant requests that management make an exception to the rule, allowing one of her relatives or a friend to use the laundry facility and assist her with her laundry. In this case, the tenant makes the request explaining why the accommodation is necessary. If the management company refuses the request, this action may violate fair housing laws.

A person with a disability may also request a “reasonable modification” of a dwelling unit or common areas if the modification would afford the person with the disability the opportunity to fully use and enjoy the housing. For example, a deaf person may need a light installed that flashes when someone rings the doorbell, or a person with a mobility impairment who uses a wheelchair may need a ramp installed to overcome two steps at the entrance to a common area that all building residents use.
Depending on the type of modification and housing involved, the landlord may have to pay for the physical modification. However, in some instances, the tenant may be required to pay. Fair housing laws vary on this issue. Also, for low-income tenants, programs may be available to assist with the cost of modifications. Contact the FHJC or your local fair housing organization for more information.

Persons making requests for a reasonable accommodation or a reasonable modification should understand that making the request is supposed to initiate a "dialogue" between the parties to try to figure out how the accommodation or modification can be made. Also, someone making a request should be prepared to describe how the need for the accommodation or modification is related to their disability. Letters from a medical professional, social worker, or other professional may be requested by a housing provider and can often be helpful in explaining how the accommodation or modification is necessary based on the person's disability.

In residential buildings built for occupancy after 1991 that have four or more attached units, certain accessible and adaptable features must be included. If the building has an elevator, all units must comply with these accessibility requirements. In non-elevator buildings, all first-floor units must comply. Anyone involved in the design and construction of a building (e.g., developer, builder, architect, engineer, etc.) can potentially be liable if these requirements are not met. Failure to design and construct multifamily housing in an accessible manner constitutes housing discrimination under fair housing laws. Accessibility is a civil right.

Disability discrimination can also occur when local governments are involved in land use and zoning decisions related to the approval of group homes for people with disabilities. Also, elderly people with disabilities may encounter discriminatory barriers when attempting to access independent living communities, assisted living facilities, and nursing homes.

A Closer Look: Family Status Discrimination

Familial status is a protected characteristic under fair housing laws that specifically prohibits discrimination against families with children under the age of 18 who live with:

- A parent;
- A person who has legal custody of the child or children; or
- The designee of the parent or legal custodian, with the parent or custodian's written permission.

Pregnant women and anyone securing legal custody of a child under the age of 18 are also protected.

Housing for older persons is exempted from the prohibition against familial status discrimination, but only if:

- All of the housing units are occupied by people 62 years of age or older;
- 80% or more of the housing units are occupied by at least one person who is 55 years of age or older; or
- The HUD Secretary has determined that the housing is specifically designed for and occupied by elderly persons under a Federal or State government program.

Housing providers are permitted to establish reasonable occupancy standards for the number of persons who can occupy a dwelling unit. Fair housing laws prohibit housing providers from discriminating against a family simply because there are children in the household. HUD has offered guidance that if a housing provider adopts an occupancy standard that is more restrictive than "two persons per bedroom," it may be an unreasonable occupancy standard and violate fair housing laws. Depending upon the size and configuration of rooms in a particular dwelling unit, it is even possible that a "two persons per bedroom" standard is too restrictive. Finally, occupancy standards must be based on the number of persons and not the number or ages of children in the household.

There are other common examples of family status discrimination. For example, a landlord cannot refuse to rent to families with children simply because lead paint poses a risk to children. The lead paint must be removed or abated so that the housing is safe for children.
Rules that govern the behavior of children in a housing development, but do not apply to adults, can violate fair housing laws. For example, a rule stating that children are not allowed to play on the lawn of an apartment complex is problematic if adults are permitted to engage in recreational activities in the same area. Children cannot be banned from using a swimming pool in an apartment complex.

Finally, some communities have attempted to use zoning regulations and withhold their permitting authority to restrict housing developments that might bring more children into a community. These actions may violate fair housing laws.

A Closer Look: Steering

Steering occurs when real estate agents or other housing providers make decisions about where people should live based on their race, religion, national origin, or some other protected characteristic. Where consumers search for housing is their choice. It is a very personal decision. Every person should make an informed choice about where to live. Perhaps the quality of the housing is most important. Maybe certain housing features, styles, or amenities are essential. Convenience to public transportation or commuting time to work may be paramount considerations. Whatever the case, it is unlawful for a housing provider to "steer" or direct home seekers to or away from specific housing opportunities or communities based on any of the protected characteristics to segregate or separate populations. For example, it would be illegal for a landlord to implement a policy of only allowing families with children to rent apartments on certain floors of buildings or in certain buildings within an apartment complex.

Some steering can be more subtle, but no less insidious. For example, real estate agents run afoul of fair housing laws by engaging in racial steering when they make comments like "I think you would be more comfortable in this area" and direct prospective clients toward certain buildings or neighborhoods based on their race and the racial composition of the neighborhood. Even without making such comments, choosing which available homes to show a client based on one or more protected characteristics violates fair housing laws.

A Closer Look: Harassment

Fair housing laws prohibit sexual harassment by a landlord, rental agent, building manager, superintendent, other employees of a housing provider, or by other tenants or residents. 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 (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 the sexual overtures from an agent

Fair housing laws can be quite effective in stopping illegal harassment in housing, whether that harassment is based on sex, race, national origin, gender identity, sexual orientation, or some other protected characteristic. Notice may be required to the owner or management if an employee is involved in the harassment. Also, tenant-on-tenant harassment and neighbor-on-neighbor harassment is covered by fair housing laws. No person should have to tolerate or endure illegal harassment.

Fair housing laws also make it illegal to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any fair housing right, or for assisting others to exercise any fair housing right. For example, it is unlawful to retaliate against someone for filing a housing discrimination complaint, for testifying, assisting, or participating in a legal proceeding.
A Closer Look: Discriminatory Advertising and Statements

Fair housing laws prohibit advertising or making any statement that indicates a limitation or preference based on a protected characteristic. This prohibition covers all advertising for the rental of apartments or sale of homes, as well as advertising for home loans, homeowners’ or renters’ insurance, and any service related to housing. The definition of advertising is broad, and includes print and online advertisements, materials such as brochures or applications, television and radio ads, and even speech.

When it comes to discriminatory advertising, there are no exemptions for smaller owner-occupied buildings. All housing is covered. Images used in advertising are also covered under fair housing laws. For example, marketing materials for a new housing development that consistently show only images of white adults could indicate a preference and deter people of color or families with children from applying to live there. Advertising images should be inclusive and representative of all communities that may be interested in the housing.

Targeted marketing that excludes persons with protected characteristics or people who reside in certain neighborhoods (because of the predominant race or ethnicity of populations in those neighborhoods) is also prohibited. This is especially applicable in online advertising, where technology allows advertisers to input various characteristics to target or exclude certain populations.

In New York, it is impermissible for housing providers to ask direct or indirect questions that may reveal a home seeker’s protected characteristics. Questions such as “How old are you?” or “Are you on active duty in the military?” are prohibited.

Additionally, application forms and other records may not be kept in such a manner that identifies or codes residents and prospective residents by protected characteristics. Examples might include sorting applicants by family or marital status, or marking applications to indicate a person’s race.

A Closer Look: Source of Income Discrimination

In addition to income from work, some people pay for their housing using child support, alimony, foster care subsidies; or income derived from Social Security, or any form of federal, state, or local public assistance. There are also government programs like the federal Housing Choice Voucher Program (Section 8), as well as local and state rental subsidy programs, that provide housing payment assistance to households who qualify.

Landlords, real estate brokers, management companies, and others may not refuse to negotiate with or refuse to rent or sell housing to persons because of their lawful sources of income. It is also illegal to charge a higher deposit or set different terms or conditions because a tenant has a rental subsidy or because of a tenant’s source of income. Additionally, making a statement or advertisement that indicates a landlord’s preference or limitation based on an applicant’s source of income (e.g. “No Section 8,” “Must be working,” “No programs,” etc.) is also illegal.
Enforcement of Fair Housing Laws

How Are Fair Housing Laws Enforced?

Depending upon where and how long ago the act of housing discrimination occurred, which protected characteristics are involved, and the type of remedies a complainant is seeking, there are different options available to pursue a housing discrimination complaint.

First, at the local, state, and federal level, there are government agencies that provide an administrative process for victims of housing discrimination. In New York City, complaints can be filed with the New York City Commission on Human Rights (NYCCHR). At the state level, complaints can be filed with the New York State Division of Human Rights (NYSDHR). The U.S. Department of Housing and Urban Development (HUD) is the federal agency charged with enforcing fair housing laws. With all three agencies, administrative complaints must be received within one year of the last act of discrimination. All three agencies will investigate any filed complaint, and each will attempt to mediate a resolution. Upon completion of an investigation, each agency reaches a preliminary finding of probable cause or no probable cause. If a probable cause finding is issued, a complaint moves forward. The administrative enforcement process and the remedies available through each agency vary somewhat, which is why the FHJC is available to counsel complainants on their options under local, state, and federal laws.

Another way that fair housing laws are enforced is by filing lawsuits in state or federal courts. A victim of discrimination is not required to exhaust any of the administrative remedies before going directly to court. There are deadlines for filing a lawsuit, but they are a little more generous than under the administrative complaint process. Under the 1866 Civil Rights Act, a lawsuit must be filed within three years of the last act of discrimination in New York (varies from state to state). Under the NYS Human Rights Law and the New York City Human Rights Law, a lawsuit must be filed within three years from the last act of discrimination. The federal Fair Housing Act requires that a lawsuit be filed within two years from the last act of discrimination. Again, the FHJC can provide information to complainants about filing options and available remedies through the courts. In addition, the FHJC may be able to refer complainants to cooperating fair housing attorneys who take referrals and represent complainants in the administrative or legal process.
While remedies vary depending upon the forum, victims of discrimination can obtain orders or injunctions to stop illegal housing discrimination under any of the laws. These orders can also require a housing provider to take steps to ensure that discrimination will not occur in the future such as providing training for their staff, adopting non-discrimination policies, affirmatively advertising the housing or services, and similar activities. In all cases, a complainant who prevails in the legal or administrative process can obtain compensatory damages for out-of-pocket expenses, economic loss, lost housing opportunity, emotional distress, and other damages. Depending upon the forum, punitive damages and/or civil penalties may also be available. In most instances, attorney’s fees and costs can be recovered by prevailing plaintiffs in fair housing cases.

In New York State, it is also possible to seek disciplinary action (including the suspension or revocation of licenses) against real estate licensees who engage in conduct that violates fair housing laws. The New York Department of State’s Division of Licensing Services (DLS) has the authority to sanction licensees in these situations.

Finally, all three administrative enforcement agencies along with the U.S. Department of Justice (DOJ) and the Office of the New York State Attorney General (NYAG) have the authority to proactively investigate and bring cases to challenge illegal housing discrimination that may not stem from the filing of individual housing discrimination complaints.

CONCLUDING COMMENTS

Thank you for taking time to read this Guide and attend FHJC’s Fair Housing Training Program. When housing providers become more aware of their rights and responsibilities under fair housing laws, everyone benefits. Complying with fair housing laws is good for consumers and good for business. Additional resources can be found in the back of this Guide for your information and use.