



Professional Practices

Lesson 19

Fair Housing

An Overview of Federal and Louisiana Fair Housing Acts

45 Hour Louisiana Post-Licensing

Introduction

The basic premise on which federal and Louisiana Fair Housing Acts are built is simply this: all persons are entitled to live in the place of their choosing so long as they can afford to live there. Anything that we, as real estate licensees, do to prohibit this free choice is a fair housing violation. This applies to rentals as well as sales.

It does not apply to the lease, rental or sale of commercial properties. Landlords who own four or more residential rental properties are considered to be dealing in commercial properties as well.

Buyers, sellers and landlords of commercial properties are regarded under the law as professionals and are therefore not protected by fair housing acts.

We will examine the provisions of the laws as they apply to the actions or inactions of real estate licensees with regard to listing, advertising, showing and selling residential properties.

Private owners who sell properties not listed with real estate licensees or who purchase unlisted properties directly from property owners are subject to the same laws as govern real estate licensees and individuals who do business with licensees.

QUESTIONS:

1. Licensees who not know about a provision of the fair housing act cannot be found guilty of violating it.
 - a. True
 - b. False
2. Consumers who not know about a provision of the fair housing act can be found guilty of violating it.
 - a. True
 - b. False

ANSWERS:

1. The correct answer is b. Knowledge of the fair housing acts is considered basic knowledge required of any who represent others in the lease, rental or sale of real property.
2. The correct answer is a, although the penalty for consumers may be lighter that that given to a real estate licensee if the consumer can prove ignorance of the fair housing acts.

Louisiana Open Housing Act

The Louisiana Open Housing Act (La. R.S. 51:2601, et seq.) has been deemed substantially equivalent with the Federal Fair Housing Act. Administration and enforcement of the Act is by the Louisiana Department of Justice, which may receive complaints directly from individual citizens or by referral from the department of Housing and Urban Development (HUD) of the federal government.

First, HUD investigates complaints of housing discrimination based on race, color, religion, national origin, sex, disability, or familial status. At no cost to the complainant, HUD will investigate the complaint and try to conciliate the matter with both parties. If the complaint is found to have merit, it is often turned over to the state for further actions. At this time the Louisiana Open Housing Act governs the proceedings.

This is typical of the way fair housing complaints are handled in all states that have a fair housing act. In some states the state law varies from the federal law. One of the most common differences is adding "age" as one of the protected classes. The Louisiana Open Housing Act does not vary from the federal acts, therefore all that is said in this course about the federal law is identical to the Louisiana law.

Exemptions to Fair Housing Acts

In the following course when the term "housing" is used it is important to remember that there are exceptions listed in the fair housing acts. These and only these are exempt:

1. Owner-occupied buildings with no more than 4 units
2. Single family housing sold or rented without the use of a broker
3. Housing operated by organizations for the use of members
4. Private clubs that limit occupancy to members

Penalties for Fair Housing Violations

- Civil Action fines up to \$11,500 for the first offense and up to \$50,000 for repeated offenses
- Unlimited punitive damages if the case proceeds to federal court
- Loss of real estate agent's professional license
- Compensation for actual damages, including humiliation, mental distress, and loss of housing opportunities
- Equitable relief; for example, access to the housing in question or providing comparable housing
- Structural changes to make housing facilities accessible

QUESTION:

Elderly Mr. Brown, a life-long bachelor, is taken to his heavenly reward. He had neither children nor any other living relatives. The last years of his life were eased by the congregation of his church, who cared for him and his home, making his last days as pleasant as possible. Mr. Brown willed all of his property to his church, including his personal residence and the five rental properties he owned. The congregation votes to restrict renters of these properties to members of the congregation. Is this lawful under the fair housing acts?

- a. Yes, the congregation is exempt from the fair housing acts
- b. No, there are more than 4 units and Mr. Brown is not presently living in any of them

ANSWER:

The answer is a. The congregation is entitled to restrict the use of the housing to members of the congregation. This is one of the exemptions to the fair housing acts.

QUESTION:

Ms. Jones, a single lady, loves to dance but has reached an age where the number of dancing gentlemen is severely restricted. She lives in a 5-plex that she owns. She had a brainstorm to solve all her problems in a single swoop by advertising the four rental units in her building as “available ONLY to gentlemen over the age of 55 who love to dance and are willing to go dancing with the owner at least once each week.” Is this a lawful action?

- a. Yes. It's her home and she can rent to whoever she wants.
- b. No. She exceeds the number of units that would allow her the exemption for this action.

ANSWER:

The answer is b. Ms. Jones is not exempt from the fair housing acts because she is renting 4 units plus the one in which she is living.

Federal Fair Housing Act Review

1866: The **Civil Rights Act of 1866** guaranteed all citizens equal rights to “inherit, purchase, lease, sell, hold and convey real and personal property.” This law was not enforced until almost a century later when the 1962 law was passed.

1868: The **Fourteenth Amendment** to the constitution was passed to specifically guarantee full citizenship and civil rights to African Americans.

1962: The **Executive Order, “Equal Opportunity in Housing”** was proclaimed by then president John Kennedy. Within the executive order were prohibitions against all discrimination in the sale, rental or use of residential property owned, operated or financed by the federal government.

- 1964:** The **Civil Rights Act of 1964** made discrimination in public accommodations illegal. Within the 1964 law were listed the first protected classes; discrimination against individuals based upon race, color, religion, or national origin were prohibited.
- 1968:** **Title VIII of the Civil Rights Act of 1968**, commonly known as the Fair Housing Act prohibited discrimination in the sale, rental and financing of dwellings and in other housing-related transactions based on race, color, religion or national origin and added familial status and handicap. Familial Status was defined as including children under the age of 18 living with parents or legal custodians, pregnant women and persons in the process of securing custody of children under the age of 18. Handicap was defined as a disability that interferes with the individual's ability to perform basic functions.
- 1974:** The **Housing and Community Development Act** added sex to the list of personal characteristics for which discrimination was prohibited.
- 1988:** The **Fair Housing Amendments Act** specifically added civil rights protection to individuals with physical and mental handicaps and to families with children.

A Real Case

After a fair housing complaint was filed with HUD and subsequent investigation found that there were grounds for a fair housing violation, the state (not Louisiana) took over the handling of the case.

In *Housing Rights Center v. Cobian*, the Housing Rights Center and the African-American family sued the landlords and manager in state court (not Louisiana) in May 2002, alleging that defendants discriminated against applicants on the basis of race in the operation of the complex. Specifically, the complaint alleged that defendants ratified the conduct of their on-site manager who made racial slurs and targeted the plaintiff family for eviction.

QUESTIONS:

1. In the case above, would the property owner have been within his rights if he had insisted that his case be tried in federal court instead of state court?
 - a. Yes, but he would have to be prepared to receive the same verdict.
 - b. No, HUD decided where fair housing cases will be tried.
2. Why were the owners prosecuted when the violation was made by the on-site manager?
 - a. HUD was unable to locate the manager
 - b. The owners had deeper pockets
 - c. Property owners are liable for the actions of their employees
 - d. On-site managers cannot be sued

ANSWERS:

1. The answer is b. If a complaint is filed with HUD, only HUD will decide where it will be tried.
2. The answer is 3. Liability goes with ownership.

The Protected Classes

There are seven classes of individuals who are protected by federal and state law from discrimination when purchasing a personal residence. Those classes are:

1. Race
2. Religion
3. Color
4. National Origin
5. Sex
6. Handicap Status (disability)
7. Familial Status (children under the age of 18 living with parents or legal guardians, pregnant women and persons securing custody of children under 18)

If one individual discriminates against another, and the discrimination is found to be based on the second individual's membership in one or more of the protected classes, the individual committing the act(s) of discrimination may be found guilty and penalized under the federal and/or state fair housing acts.

If, in addition to being a real estate licensee, you are also a REALTOR, there may be additional penalties imposed by your local realtor association. In fact, realtors are expected by the National Association of Realtors not only to serve the needs of the protected classes, but to make an effort to seek out persons in the protected classes to serve.

Complaints against Louisiana (also: Arkansas, New Mexico, Oklahoma and Texas) licensees are filed with the Fort Worth Regional Office of the Department of Housing and Urban Development.

The HUD Web Site

The HUD web site is your most up-to-date source for accurate information on the federal fair housing acts. If you learn to use it, you will never be accused of violating the fair housing acts because someone gave you incorrect or out-of-date information.

In the publications list you will find the whole of two pamphlets, "Fair Housing: Equal Opportunity for All" and "Fair Housing—It's Your Right." These two publications are free to read on the web site, download to your computer or print out. These are the publications that are given to the general public and include all information that any consumer will need to know to determine if they have been discriminated against. For that reason, they should be familiar to all real estate licensees who wish not to violate the fair housing acts.

QUESTIONS:

1. A wheelchair-bound applicant for an apartment must have the kitchen and bathroom counters lowered in any unit he leases so that he will be able to live alone. He is willing and able to pay for the alternations he requires. The on-site manager at the apartment complex he likes refused to allow the alterations because "if I make alternations for you I'll have to let all the other residents make any alterations they want."
 - a. The manager is correct, once he violates the apartment rules for one tenant he will have to allow all tenants the same privilege.
 - b. The manager is incorrect. There are special rules for handicapped citizens that supersede apartment rules.
2. A new housing development is being built around a lovely, but very small pond. The lot sizes are narrower than usual in order for each lot to have pond frontage. Pre-development sales have been very brisk, with the majority of the lots selling to members of the evangelical church located just across the street. A Hindu couple is also interested in purchasing one of the lots.
 - a. In the best interests of the Hindu couple, the salespersons for the development should explain why they might not feel very comfortable in this neighborhood.
 - b. Salespersons should not discuss religion with any persons who are interested in buying in this development.

ANSWERS:

1. The answer is b. Under the Americans with Disabilities Act landlords must allow alterations to properties to accommodate the needs of handicapped tenants. This is one of the ways in which the Fair Housing Act requirement of not discriminating against persons based on handicap is accomplished.
2. The answer is b. Real estate licensees should not discuss religion with ANY customers or clients in association with ANY properties.

Lawful and Unlawful Discrimination

It is important to keep in mind that there is never an exemption to the fair housing acts if the intention of the property owner or real estate licensee is to discriminate against any member of the protected classes. This is the definition of unlawful discrimination.

Lawful discrimination, on the other hand, is not regulated by law. It is perfectly lawful to refuse to rent to individuals who have a poor rental payment record with other landlords, unacceptable credit history or who have a history of conviction of criminal offenses. But when practicing lawful discrimination it is very wise to apply the same restrictions to all applicants.

It is probably not a good idea to require a credit check of Asian bikers with many piercings and tattoos unless you are going to make the same requirement of American spinster school teachers with pierced ears and tattooed eyeliner. Someone really literal-minded might decide that both have piercings and tats, so if one is refused there may be some unlawful discrimination going on. It costs money to defend against a false claim of unlawful discrimination, too.

Whether or not you believe alcoholism is a disease, the federal government may. It is important to differentiate between gentle Mrs. Jones who drinks a bit of sherry to help her sleep and never makes a bit of trouble and Mrs. Smith who drinks a lot of wine to improve her aim with the family shotgun when she spies anyone who reminds her of the long-gone Mr. Smith. Mrs. Smith can be evicted, but she must be evicted based on her tendency to shoot up the common areas, not her wine consumption.

Landlords do not have to suffer the presence of destructive and dangerous renters. They are not a protected class and can be evicted. If former landlords are willing to write of their experiences, with Mrs. Smith and her trusty shotgun on their recommendations or if there is a police record, it is not necessary to rent to her in the first place.

QUESTION:

It is unlawful discrimination to refuse to rent to a known, but nonviolent, alcoholic. Why is it lawful to rent to a known, but nonviolent marijuana addict?

- a. Alcohol is legal and marijuana is not
- b. Alcohol can be bought in supermarkets
- c. Marijuana is the first step in drug addiction
- d. Marijuana users are not to be trusted

ANSWER:

The answer is a. In this country, sale and use of alcohol is legal while sale and use of marijuana is not.

Prohibited Acts

Certain specific acts are prohibited under the fair housing acts if the intent to take these actions is based on membership in the protected classes. The acts as listed on the HUD web site are:

- Refusal to rent or sell
- Refusal to negotiate for housing
- Making housing unavailable
- Deny a dwelling (set different terms for persons in protected classes)
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale or rental
- For profit, persuade or try to persuade homeowners to sell or rent dwellings by suggesting that persons of a particular race or other protected class have moved or are about to move into the neighborhood (blockbusting)

- Deny any person access to, or membership or participation in, any organization, facility or service related to the sale or rental of dwellings, or discriminate against any person in the terms or conditions of such access, membership or participation
- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
Make, print, or publish any statement, in connection with the sale or rental of a dwelling that indicates a preference, limitation or discrimination based on membership in a protected class.
This prohibition applies to single family and owner occupied housing that is otherwise exempt from the fair housing act.

Additionally, there is protection, over and above protection afforded by the above prohibited acts if you or someone associated with you has a mental or physical disability, a record of such a disability that substantially limits one or more major life activities; these disabilities include:

- Hearing, mobility and visual impairments
- Cancer
- Chronic mental illness
- AIDS or AIDS Related Complex
- Mental retardation

It is a violation of the fair housing acts to refuse to allow reasonable modifications to a dwelling or common use areas (at the expense of the renter or owner). It is also a violation to refuse to make reasonable accommodations in rules, policies, practices or services necessary for the disabled person to use the housing on an equal basis with nondisabled persons ("Fair Housing: Equal Opportunity for All" Downloaded from www.hud.gov/fairhousing on March 11, 2013.)

Refusal to Rent or Sell

When properties are listed for sale or rental with a broker, it is a violation of fair housing acts to refuse to rent or sell to individuals because of their membership in a protected class. For the law to be in effect, the properties would have to be made available to individuals not in protected classes while being denied to persons in the protected class. This includes being "temporarily" taken off the market and returned within a short period of time.

QUESTION:

In an attempt to fulfill the real estate licensee's duty of obedience to his client, a designated listing agent informs an African American couple they cannot purchase a property because "it is right next door to the house where this property owner lives and he refuses to live next door to African Americans."

- a. The designated listing agent is fulfilling his legal obligation to the seller, therefore has not violated the fair housing acts.
- b. The fair housing acts have been violated, but by the seller, not the designated listing agent.
- c. Both seller and designated listing agent have violated the fair housing acts.
- d. No one has violated the fair housing acts because the seller does not own more than four properties.

ANSWER:

The correct answer is c. The seller is guilty of discrimination based on race. The designated listing agent is guilty of discrimination based on race. The licensee is not guilty of failing to render obedience to the seller because he must only obey the seller when directed to perform legal acts.

Refusal to Negotiate

If a listing brokers or designated listing agents receive an offer on a property they may not lawfully disclose the offeror's membership in a protected class to the seller without the express written consent of the offeror. If the protected class is race, it is risky to make the disclosure even with written permission. If the sellers know (from personal observation) of the buyer's protected status and, based on that status alone, refuse to negotiate with the buyer, the seller is in violation of the fair housing act. If brokers or designated listing agents of brokers continue in their listing contract with a seller who is guilty of this violation, they are also violators.

QUESTION:

A designated listing agent presents an offer to a seller. The seller was visiting with a neighbor while his house was being shown and knows that the offer was made by an Hispanic couple. Against the advice of the listing agent, the seller rejects the offer rather than make a counter offer. The seller states to the listing agent that if an offer is made by "real Americans" he will be glad to negotiate but if "those people" want to buy his property they will have to pay the full listed price with no concessions. At this point the listing agent should

- a. Contact his broker to request that the listing be terminated
- b. Inform the seller that the listing is terminated
- c. Look for "real American" buyers
- d. Report the seller to HUD

ANSWER:

The answer is a. Once the seller communicates his intention to violate the fair housing acts the broker is required to terminate the listing in writing.

A Real Case

The Secretary, United States Department of Housing and Urban Development, on behalf of Steve Ellis Times and Betty A. Brinson, Charging Party, v. Annette Banai, Janos Banai, Sylvia M. Arias, and Manhattan Group Real Estate, Inc., Respondents.

This matter arose as a result of a complaint filed by Steve Ellis Times on his own behalf and on behalf of Betty A. Brinson ("Complainants") alleging discrimination based on race and color in violation of the Fair Housing Act, as amended, 42 U.S.C. " 3601, et seq. ("the Act"). On May 12, 1994, following an investigation and a determination that reasonable cause existed to believe that discrimination had occurred, the Department of Housing and Urban Development ("HUD" or "the Charging Party") issued a charge against Annette Banai, Janos Banai, Sylvia M. Arias, and Manhattan Group Real Estate, Inc. ("Respondents") **alleging that they had engaged in discriminatory practices in violation of 42 U.S.C. " 3604(a) and (c), and that Respondents Arias and Manhattan Group Real Estate, Inc. had violated 42 U.S.C. ' 3605(a).**

Part of Case Testimony:

Ms. Banai asked "what kind of people" they were. Tr. 1, p. 30. The rest of the conversation was substantially as follows:

Ms. Arias: A very nice couple.

Ms. Banai: Are they Hispanic?

Ms. Arias: No.

Ms. Banai: Are they black?

Ms. Arias: Yes.

Ms. Banai: No, I cannot rent the house to black people because I live in part of the house and because of what the neighbors will say about something like that.

Ms. Arias: We were not supposed to discriminate in that way.

Ms. Banai: Look for somebody else.

QUESTION:

1. Why is the lease agent, Ms. Arias, named in this lawsuit?
 - a. She has deeper pockets than the owner
 - b. She shared the race of the prospective tenants
 - c. She discriminated against the prospective tenants
 - d. Both b and c

ANSWER:

The correct answer is d. A real estate licensee may not divulge a client or customer's membership in a protected class.

Make Housing Unavailable

If a seller requires that potential buyers of specified protected classes be told that their residences are unavailable for viewing no matter when the viewing is requested, and if anyone else may see the property during the same, or almost the same, time period, the seller is guilty of a fair housing violation. If the broker or designated listing agent does not immediately terminate the listing process, they are also violators.

QUESTION:

The listing forms are complete except for the seller's signature. The seller, a Viet Nam veteran, looks the listing agent right in the eye and states that his property can be shown to anyone except "gooks" and if any come onto his property he will shoot first and ask questions later. He further states that he is aware of the fair housing acts but does not accept them as binding on him. The listing agent should

- a. Thank the seller for his service to the country and honor his wishes
- b. Thank the seller for his service to the country but refuse the listing

ANSWER:

The answer is b. This seller is in violation of the fair housing acts and is attempting to place the listing agent in violation also.

Deny a Dwelling

Denying a dwelling is defined as establishing a different set of more restrictive or more expensive terms especially for persons in protected classes. A dwelling is denied to protected classes when deposit amounts or down payments are greater, when mortgage interest or rental rates are higher, or when terms are more stringent than for persons not in protected classes.

Provide Different Housing Services or Facilities

If families with children are denied access to apartments near swimming pools, that is providing different services. If buyers of a given race are only allowed to purchase or lease in a particular section of a development that is out of view or removed from common areas, that is viewed as providing different facilities. In order to comply with the fair housing acts, there must be a single standard of services and delivery of facilities. This means that everyone may use the same facilities at the same time and may have equal opportunity to purchase or rent any unit.

A Real Case

Housing Rights Center v. Cobian
CA Sup. Ct. No. BC 273483
Complaint filed: May 2002
Mediation Agreement reached: March 25, 2003

Federal judge enters \$23,064 default judgment against landlord in California family status case

A single mother from California won a \$23,064 default judgment from a landlord who informed the woman that her children would not be able to play outside and subjected her to sexual comments and jokes during a tour of a rental house. The landlord made threats to countersue the plaintiff but never did. He refused to respond to the lawsuit, prompting Federal District Judge Margaret Morrow to issue a default judgment.

Jennifer Fleming of Rosemead received an offer from landlord Ken Fredricy to rent the house next to his residence, but it was not an offer she could accept given this landlord's comments during her tour. Those anti-children and sexually discriminatory comments violated the Fair Housing Act, according to the Housing Rights Center's and Fleming's complaint in U.S. District Court in Los Angeles. Specifically, complaint alleged that while showing Fleming the house, the Fredricy told her about a rule that would have prohibited her children from playing outside in the front yard. This rule, along with sexual comments and jokes made during Fleming's tour of the house, discouraged her from accepting Fredricy's offer to rent.

On June 3, 2003, Judge Margaret Morrow granted the last of a series of motions by plaintiffs, under which Fredricy must pay a total of \$23,064 in damages and attorneys fees to the plaintiffs.

"No kids outside" rules violate Fair Housing Act

Earlier, the judge had agreed with plaintiffs that the rule against children violated the Fair Housing Act and effectively denied Fleming equal housing opportunity. She ruled that while Fredricy's sexual statements and jokes were reprehensible, they did not amount to sexual harassment. Judge Morrow also ruled that HRC was injured by the Fredricy and entitled to damages to cover its investigation and community education efforts. The plaintiffs were represented by Gary Rhoades and Danielle Jones from HRC.
Housing Rights Center v. Fredricy

Falsely Deny Housing Is Available for Inspection, Sale or Rental

If a property is for sale or rent, it is for sale or rent to everyone. If a house is listed for sale or a unit for rent, it is unlawful to offer it to others while denying it is available to members of protected classes. Refusing to allow a property to be viewed by members of protected classes in order to prevent them making an offer is a violation of the fair housing acts. Another form of denying availability is called steering, or directing members of protected classes to certain properties while directing them away from other available and affordable properties.

QUESTION:

The seller of a property directs his listing agent to use a code word when calling for an appointment to show his property to members of a certain ethnic group. If the code word is used, the appointment will be denied. Is this a violation of the fair housing acts?

- a. Yes. The purpose of the code word is to discriminate against members of a named ethnic group.
- b. No. The prospective buyers will never know about the code word and are therefore unlikely to be offended by its use.

ANSWER:

The answer is a. Whether or not the person who is being discriminated against knows there is discrimination is not the test under the fair housing acts.

Blockbusting

For profit, to persuade or try to persuade homeowners to sell or rent dwellings by suggesting that persons of a particular race or other protected class have moved or are about to move into the neighborhood. When asked by homeowners if persons in protected classes moving into neighborhoods will impact value, real estate licensees are expected to refrain from encouraging them to list immediately so they can sell before property values decline. Real estate licensees are further prohibited from addressing meetings of homeowners, going door to door or advertising in any medium to suggest owners list and sell before values decline as a result of the influx of persons in a protected class.

QUESTION:

A real estate licensee is getting tired of going to the same neighborhood several times a week to counsel homeowners who are afraid that the influx of a certain racial group might decrease property values. Gasoline is expensive, and selling the properties listed in this neighborhood will be a process of long duration. He decided to call a meeting of property owners at a local tavern and give all of them the bad news in a single visit. He brings an assistant and a lot of listing agreements to the meeting. This licensee is about to become guilty of

- a. Efficiency
- b. Steering
- c. Blockbusting

ANSWER:

The answer is c. This is the textbook description of blockbusting.

Deny Any Person Access to, or Membership or Participation in, Any Organization, Facility or Service Related to the Sale or Rental of Dwellings, or Discriminate Against Any Person in the Terms or Conditions of Such Access, Membership or Participation

Members of protected classes may not be denied membership in real estate associations or trade groups, in multiple listing services or any other networking venues developed by real estate licensees for the purpose of expanding or discovering real estate business opportunities.

History of Women's Council (of Realtors)

Early Years

In the 1930s, the National Association of Real Estate Boards (the predecessor of NAR) witnessed a growth of women working in real estate and an increased participation of women at national conventions, as women were becoming aware of their potential in and importance to the industry.



A Women's Division had already been created in 1924 by the California Real Estate Association. Fourteen years later, 1938 National President Joseph Catherine encouraged the formation of a national Women's Council after being impressed by the California group.

At the time, NAR was already 30 years old, but most decisions were still made by local boards—most of which were resistant to offering membership to women. However, the National Association was ready to recognize women in real estate, and a positive vote resulted in the formation of a women's division at the Annual Convention in Milwaukee in November 1938. Thirty-seven ambitious women represented nine states at that meeting for WCR's inception.

Copied from WCR web site, March 15, 2013

QUESTION:

1. In 1938 the National Association of Real Estate Boards recognized women in real estate but many local boards did not allow women members to attend board meetings until the early 1950s.
 - a. True
 - b. False

ANSWER:

The answer is a. Women in real estate who wished to network with other real estate professionals to sell their listings or find properties to sell (no MLS in those days) joined the Women's Council of Realtors. By 1975 women in real estate outnumbered men but until the present female managing brokers are still fewer than male managing brokers.

Threaten, Coerce, Intimidate or Interfere with Anyone Exercising a Fair Housing Right or Assisting Others Who Exercise That Right

No threat or act of physical violence or mental, emotional or economic reprisal may be committed against anyone who is exercising a fair housing right or assisting a person or persons who are exercising a fair housing right. Such actions are violations of the fair housing acts and are subject to penalties. If there is physical violence involved, it is possible that there can be criminal charges resulting in prison sentences for those found guilty.

A Real Case

African American family and real estate agent win \$135,040 in Mississippi racial intimidation case
Home > News Archive > The Fair Housing Advocate > July 2002

United States Department of Housing and Urban Development (HUD) Administrative Law Judge Robert Andretta has ordered a Mississippi man to pay \$135,040 for threatening and intimidating an African American family. Chris Hope made violent threats and told Michael and Pamela Keys, an African American couple with three children, that he and his neighbors did not want African Americans in his neighborhood.

Andretta's May 8, 2002 order awarded \$125,000 to the Keys and \$7,500 to real estate agent Katherine Beard for the "intangible harm" of Hope's discrimination. He also awarded the Keys \$1,400 for new carpeting in the home they later purchased and \$500 for the earnest money they forfeited on the home next to Hope's. Judge Andretta awarded Beard, the sellers' agent, \$200 to reimburse her for additional expenses associated with selling the property next to Hope's and \$440 in lost commissions. Andretta also ordered Hope to pay the maximum civil penalty of \$11,000. According to their HUD complaint, the Keys made a contract offer on a house on Dana Street in Brandon, Mississippi on March 15, 1999. The Keys and the sellers scheduled a walk-through on April 20, 1999.

The walk-through of the home went well, and the Keys were excited as their real estate agent, Michele Nesbitt, took them on a home tour. Outside, the group noticed two barking dogs next door. The dogs slightly disturbed Mrs. Keys, but the walk-through continued without additional problems, until the group made its way to the front yard. As Nesbitt and the Keys made their way out front, Chris Hope pulled into his driveway. Nesbitt invited Hope to come over to meet his "new neighbors."

At first, Hope appeared friendly. He shook everyone's hand and spoke pleasantly. However, Hope's demeanor quickly changed and he began shouting angrily. Hope said, "You're kidding me. You just bought this house?" After repeating those statements several times, he asked the Keys why they would want to live on Dana Street.

Mr. Keys responded that he and his wife liked the neighborhood, because it was nice and quiet. He also said he thought it would be a good place to raise their children.

Respondent: My dogs "don't like blacks, either."

Hope responded that it was a good neighborhood, because it was "an all-white neighborhood." Hope then added, "We don't want blacks here. That's why my wife had to go hold the dogs. They were going crazy, and they don't like blacks, either." Hope then asked the Keys why they didn't "go back to South Jackson," which is a predominantly African American neighborhood. Mr. Keys responded, "Sir, we didn't come from South Jackson. We live less than three minutes from here." Hope continued to verbally assault the Keys, asking them why they liked his "redneck neighborhood." Hope backed away, pointed to his dogs, and said that he was going to go tell a neighbor who owns a gun shop about the Keys. "He feels the same way I do," Hope said.

After the confrontation, the Keys felt frightened and left. They later decided that they could not go through with the purchase of the home on Dana Street. The home eventually sold to a single white woman for less than what the Keys had offered to pay. The sellers of the Dana Street home made some vague threats that they might sue the Keys for backing out of the real estate transaction but never followed through.

In early June, Secretary Martinez approved Judge Andretta's decision and order. He approved the decision and order as written.

HUD v. Hope HUD ALJ 04-99-3640-8, 04-99-3509-8

Make, Print, or Publish Any Statement, in Connection with the Sale or Rental of a Dwelling that Indicates a Preference, Limitation or Discrimination Based on Membership in a Protected Class.

There is probably no real estate licensee left in Louisiana who is so uninformed as to commit to print (hard copy or virtual) a preference for buyers, sellers, renters or landlords of any race, but there are times when enthusiasm for a deal or a property may result in unintentional slurs against individuals in protected classes. Some terms that might be considered offensive to persons in protected classes include: "Christian Community" and "Family Neighborhood." Each of those terms are perfectly acceptable in social conversation and communications but may become problems when used in professional real estate advertising. It is very important to objectively read all advertising before it becomes public. A good rule of thumb is to make advertising about the property and not the anticipated buyers.

From Inman News Online
Agent dragged into fair housing actsuit over listing he didn't represent

Discriminatory language in listing descriptions can create legal liabilities
BY ANDREA V. BRAMBILA, WEDNESDAY, MARCH 13, 2013.

The plight of a Florida agent who was dragged into a fair housing actsuit over the description of a property he did not represent has raised awareness among real estate professionals that they can be sued for the content of listings that appear on their websites, regardless of whether they are the author.

Tampa-area agent Jeff Launiere and the brokerage he works for, Charles Rutenberg Realty, were sued in federal court last November by Cristin Forrest, a self-described "independent fair housing tester." In her [complaint](#), Forrest said she was looking for fair housing violations online when she saw a listing advertising the sale of a condominium at Broadmoor Villa that read "Adunt [sic] only community no children under 16."

Broadmoor Villa Inc. was also named in the suit, which alleged that all three parties had violated the federal Fair Housing Act, which prohibits discrimination on the basis of familial status, among other things.

Broadmoor Villa was [dismissed](#) from the case and Charles Rutenberg Realty agreed to settle the case -- potentially leaving Launiere on the hook for the \$5,000 deductible on his brokerage's errors and omissions insurance policy.

Industry experts say that such occurrences are rare, but that the lawsuit highlights the importance of flagging potentially troublesome language or images that appear in Internet Data Exchange (IDX) listings before they are displayed on broker and agent IDX websites. MLSs, brokerages and agents also provide listing data to other, third-party websites like Realtor.com, Zillow and Trulia.

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Refusal to Make Reasonable Accommodations for Disabled Persons

Landlords may not refuse to allow disabled persons renovations that accommodate their handicaps and allow them the same usage of properties as tenants without disabilities enjoy. Disabled persons must pay for the accommodations, but the price for making them cannot exceed what is typical in the community. When a disabled person vacates a property, the disabled person must also, if the landlord desires it, pay to return the property to its original condition (within reason). "Within reason" means, to name a few examples, if a doorway has been widened to allow for wheelchair access, or light switches have been lowered to accommodate the handicapped person, those renovations can just as easily be used by persons without handicaps and need not be restored to original condition. Other renovations, such as special doorbells for the hearing impaired, may not work as well for hearing persons and will have to be restored.

Man Settles Federal Fair Housing Act Lawsuit for More Than \$160,000

Chicago, Illinois--(January 17, 2002)-- Today, the Chicago Lawyers' Committee for Civil Rights Under Law, Inc., and the law firm of Freeborn & Peters, announced that a settlement has been reached in a federal Fair Housing Act lawsuit filed on behalf of Michael Scialabba, a disabled young man; his parents, James and Barbara Scialabba; and HOPE Fair Housing Center against the Sierra Blanca Condominium Number One Association in Hanover Park, Illinois, and ABC Property Managers, Inc.

Under the general terms of the settlement, the Condominium Association and Property Manager agree to pay \$110,000 to the Scialabbas, HOPE Fair Housing Center, and their attorneys, and to take measures to prevent and eradicate discrimination against any current or future resident at Sierra Blanca on the basis of the individual's actual or perceived disability. The defendants also agreed to purchase an annuity for Michael Scialabba's benefit.

In 1984, Michael, who was 16 years old at the time, suffered a traumatic brain injury in an automobile accident. As a result of the injuries he sustained in the accident, Michael's speech and movements are impaired, causing him to have difficulty speaking and to walk unsteadily.

The lawsuit, alleged, among other things, that the Condominium Association and Property Manager failed to reasonably accommodate Michael's disability in violation of the federal Fair Housing Act, and that the association failed to follow its own rules and regulations in violation of the Illinois Condominium Property Act.

The federal court made two important rulings prior to the case settling. First, the court determined that housing providers have a duty to make good faith efforts to accommodate disabled residents before they attempt to remove them from units. This is true even if a landlord or association contends that a disabled resident may pose a direct threat to the property, health or safety of others. To escape liability, a housing provider must show that it attempted to reasonably accommodate the resident's disability and that the resident remained a direct threat despite these accommodations before it attempts to force the resident out. If an accommodation could eliminate the risk posed by a resident considered to be a threat, a housing provider must provide that accommodation.

Second, the court determined that the Illinois Condominium Property Act allows a cause of action based on negligence, meaning that an association may be held liable for negligently failing to follow its declaration, by-laws, rules and regulations.

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