

THE BASICS OF FAIR HOUSING

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INTRODUCTION

Fair housing laws¹ are intended to prevent discrimination in how housing is sold, rented, appraised, financed, and advertised. These laws protect everyone. They protect people of all races and religions, people with disabilities, the elderly, and families with children. These laws also protect all homeowners and residents from being victimized by destructive practices such as steering potential residents to only certain communities, neighborhoods, or developments.

Fair housing laws mainly regulate the actions of property owners, landlords, lenders, realtors, and appraisers. However, municipalities also must comply. Municipal responsibilities are derived from a complex and changing body of law. This paper is intended to brief municipal officials with only the basics of these responsibilities.

FAIR HOUSING DEFINED

Fair housing laws are intended to enable people to make choices about housing without other people or the government discriminating against them. Because *Fair Housing* specifically addresses housing discrimination, it is different from

- ❖ **Public Housing** (government-owned housing),
- ❖ **Assisted Housing** (housing that is subsidized to make it more affordable),
- ❖ **Affordable Housing** (subsidies to enable low or moderate income persons to reside in decent housing that they can afford), and
- ❖ **Homeless Programs** (shelter and/or services to homeless people).

FEDERAL FAIR HOUSING PROCEDURES

Under the *Fair Housing Act*, a person who believes that he or she is a victim of housing discrimination may file either a complaint with HUD or a lawsuit in federal or state court. When a complaint is filed with HUD, the Department

- 1) Notifies the alleged violator and permits that person to answer the complaint,
- 2) Investigates and determines whether there is reasonable cause to believe that the *Act* has been violated, and
- 3) Tries to reach a conciliation agreement with the alleged violator.

If HUD

- 1) finds there is reasonable cause to believe that there has been a violation of the *Act* and
- 2) is unable to reach a conciliation agreement with the alleged violator,

HUD attorneys will litigate the complaint before an Administrative Law Judge.

If the complainant or alleged violator wishes, the case may be decided by (or appealed to) federal court.

EXAMPLES OF MUNICIPAL FAIR HOUSING VIOLATIONS

Municipalities carry out four broad categories of activities that affect housing. Each category can trigger municipal fair housing responsibilities.

- 1) **Regulatory Activities** – When a municipality enacts and administers regulations (e.g., zoning or building/housing codes) that affect existing or potential residential properties;
- 2) **Provision of Services** – When a municipality provides routine services in residential areas or to residents;
- 3) **Provision of Subsidies** – When a municipality offers financial incentives (e.g., grants, loans, or loan guaranties) or special services (e.g., special infrastructure projects or housing rehabilitation services) to residential property owners or to residents; and
- 4) **Proprietary Activities** – When a municipality buys or sells real property, particularly if the property was used or will be used as a residence.

A municipality has fair housing responsibilities regardless of whether or not the federal or state government has funded the activity that is the basis for the complaint. A fair housing violation does not require a discriminatory intent: A violation can be found even if only a discriminatory impact or burden results. In many cases, a violation is found simply because municipal officials carried out regular activities in a routine way and failed to recognize their special fair housing responsibilities. To demonstrate the care that municipal officials must take, the remainder of this section provides examples of municipal activities that have been found to constitute violations of the *Fair Housing Act*.

EXAMPLES OF REGULATORY ACTIVITIES FOUND TO BE VIOLATIONS

- ❖ Excluding multifamily housing in residential zoning districts with predominantly white residents while permitting multifamily housing only in residential zoning districts with predominantly minority residents.
- ❖ Delays in issuing building permits for residences in a housing development that was generally known to have greater minority ownership than the community-at-large.
- ❖ Requiring the approval of neighboring property owners or residents as a condition for issuing a conditional use permit for a group home.
- ❖ The rezoning of the only area where multifamily housing was permitted so that only industrial uses would be allowed, after an application for a multifamily housing project was proposed. A similar case found a violation when a property was annexed and rezoned, thereby preventing a racially integrated housing project.
- ❖ Enforcement of building code regulations disproportionately in developments with predominantly minority residents.
- ❖ Failing to make "reasonable accommodations" for residences for people with disabilities (as required by the 1988 Amendments to the *Act*), as in the following examples:
 - ❖ A city's refusal to allow zoning rear yard setback requirements to be met in the side yard of a residence proposed for mentally ill or recovering substance abusers;
 - ❖ Denial of a special use permit for the conversion of an office building to a residence for persons with AIDS. The city argued that this use most closely fit the zoning ordinance's definition of a "hospice," not permitted in commercial zoning districts.
 - ❖ Attempting to regulate a group home for HIV positive residents as a "chronic nursing home," not permitted in the residential zoning district where the group home was proposed.

EXAMPLES OF SERVICE PROVISION ACTIVITIES FOUND TO BE VIOLATIONS

- ❖ Termination of police protection to minority residents following acts of racial violence.
- ❖ Selection of a school site near the center of an area with predominantly minority residents, instead of at the edge of such area, which would promote integrated enrollment.

EXAMPLES OF SUBSIDY ACTIVITIES FOUND TO BE VIOLATIONS

- ❖ "Steering" minority applicants for Section Eight housing vouchers to buildings with predominantly minority residents.
- ❖ Use of federal Community Development Block Grant funds by a community for water and sewer projects only in areas with predominantly white residents, where areas with predominantly minority residents had a greater need for such projects.
- ❖ Providing misinformation and selectively disposing of applications for a residential rehabilitation and energy conservation program.

EXAMPLES OF PROPRIETARY ACTIVITIES FOUND TO BE VIOLATIONS

- ❖ Acquisition and demolition of the only housing occupied predominantly by minority residents as part of a downtown revitalization project where there was no provision of replacement housing.
- ❖ Failure to comply with fair housing regulations in advertising and selling a residence to the highest bidder.
- ❖ Systematic disinvestment in and non-maintenance of existing public housing.
- ❖ Prohibition of "mentally infirm" residents, unwed mothers, and residents dependent on guide dogs from public housing.

MUNICIPAL COSTS

The costs to a municipality when it must defend against a complaint based on the *Fair Housing Act* include

- ❖ Its own attorney's fees,
- ❖ One-half of the court costs,
- ❖ The costs of diverting municipal officials from their regular duties to assist in the preparation of a defense, and
- ❖ The loss of community prestige through adverse publicity.

The additional costs to a municipality if it is found to have violated the *Fair Housing Act* may include

- ❖ Nominal or compensatory damages to the complainant (including those for pain and suffering, mental anguish and emotional distress, and humiliation),
- ❖ Punitive damages to the complainant (which may be imposed by a court for intentional and willful violations),
- ❖ Civil penalties (up to \$10,000 if it is the violator's first violation, up to \$25,000 if the violator has had a previous violation in the past five years, or up to \$50,000 if the violator has had two or more violations in the past seven years; and up to \$50,000 if a "pattern and practice" is shown or up to \$100,000 if the violator has been previously found to have engaged in a "pattern and practice"),
- ❖ The complainant's attorney's fees and share of court costs,
- ❖ The loss of eligibility for federal funding of municipal projects and programs,

- ❖ Court-supervised or HUD-supervised oversight of municipal services, and
- ❖ Court-ordered or HUD-ordered municipal expenditures for projects and programs to accomplish specific objectives (including record keeping and reporting of municipal activities).

As this briefing paper has indicated, fair housing laws impose special obligations that can supersede a municipality's regular ordinances and routine administrative practices. The fact that fair housing laws may add to the cost and time of undertaking municipal actions does not diminish a municipality's obligation to comply with these laws. Municipal officials who are considering a new ordinance, expenditure, or action, or reviewing an existing one can begin to avoid allegations of failing to meet these obligations by asking, "What are the fair housing implications in undertaking this action?"

ACTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING

A local government that receives a HUD grant must certify that it affirmatively furthers fair housing. HUD has identified actions that a local government can take to demonstrate that it has complied with this certification. Technically, these actions do not insulate a community from liability under the *Fair Housing Act* (for example, specific acts of intentional discrimination by municipal officials are not excused by a pattern of previous municipal actions that further fair housing). However, a municipality that demonstrates that it has undertaken such actions may persuade a HUD official or court that is investigating a fair housing complaint that the municipal actions that are the basis of the complaint should not be regarded as violations of the *Act* or should not be regarded as "intentional and willful" violations of the *Act*.

Current HUD regulations identify the following actions as affirmatively furthering fair housing*:

- ❖ Enactment and enforcement of an ordinance providing for fair housing consistent with federal fair housing law;
- ❖ Support in the administration of state fair housing laws;
- ❖ Participation in voluntary partnerships developed with public and private organizations to promote the goal of fair housing choice.
- ❖ Contracting with private organizations, including fair housing organizations, to address fair housing impediments.
- ❖ Activities that assist in remedying findings or determinations of unlawful segregation or other discrimination involving assisted housing within a recipient's jurisdiction and other actions in response to fair housing impediments; and
- ❖ Conducting neighborhood meetings or similar mechanisms for educating and sharing information with residents of areas aimed at overcoming opposition to acceptance into the area of persons in the categories covered under the Act.

NOTES

¹The Federal *Fair Housing Act* and its *1988 Amendments* authorize individuals to file complaints alleging housing discrimination on the basis of their race, color, national origin, religion, gender, handicap, or familial status and requires the Department of Housing and Urban Development (HUD) to administer its programs and activities "...in a manner affirmatively to further the policies of this subchapter." Individuals alleging housing discrimination also may allege related acts of discrimination that are governed by other federal laws (such as §1982 of Title 42 of the U.S. Code or Title VI of the *Civil Rights Act of 1964*).

Vermont (9 VCS 4503) prohibits any person from engaging in "unfair housing practices" (such as the refusal to sell or rent and many other actions involved in the advertisement, financing, and brokering of a dwelling) because of a person's race, sex, sexual orientation, age, marital status, religious creed, color, national origin, or handicap, intent to occupy a unit with one or more minor children, or because a person is a recipient of public assistance. The Human Rights Commission has jurisdiction of investigating and enforcing complaints of §4503 violations. The Commission follows a complaint review procedure (detailed in 9 VCS 4554) that is similar to the procedure used by HUD for investigating complaints of Federal Fair Housing Act violations (see page 2).

²Draft regulations (proposed by HUD in 1994) identify the following additional actions as addressing impediments to housing choice:

- ❖ Provision of additional security services in an area where minority or disabled families have reason to feel threatened and are thus reluctant to move into such area or, having moved there, are considering moving from such area;
- ❖ Agreements with lending institutions to enhance housing choices;
- ❖ Identification of the location of proposed new housing construction for low & moderate income persons by census tracts or groups of census tracts (and for those projects proposed for HUD assistance, considering the site and neighborhood standards established by HUD) to increase the choice of housing opportunities for low & moderate income persons, including members of minority groups and female-headed households;
- ❖ Efforts to achieve spatial deconcentration of such housing opportunities and actions to affirmatively further fair housing on a metropolitan-wide basis;
- ❖ Activities that equalize the conditions between minority and non-minority neighborhoods through the investment of state/local/HUD/other federal government funds; and
- ❖ Other actions consistent with law determined by the local jurisdiction to be appropriate to address identified fair housing impediments.