



Fair Housing Laws

What are They and Why are They Important?

Town Residential Flatiron Office – August 13, 2014

Pierre E. Debbas
Romer Debbas, LLP
183 Madison Avenue – Suite 904
New York, NY 1001
212-888-3100 – PDebbas@romerdebbas.com
www.romerdebbas.com

I. PURPOSE OF THE FAIR HOUSING ACT

The Fair Housing Act prohibits discrimination against members of certain groups of people who are actively searching for housing. In New York City, a person purchasing or renting almost any type of housing, or applying for the financing thereof, enjoys protection under, and may seek legal redress through, three tiers of Fair Housing laws – federal, state and local (together, the Fair Housing laws).

The Fair Housing laws are effective in preventing discrimination in two ways. First, at the very beginning of the process, the laws prevent individuals from arbitrarily discriminating against those in the protected classes from renting or buying housing. Second, the Fair Housing laws allow individuals to protect their rights by filing claims against those discriminating parties and pursue civil and criminal charges.

II. HISTORY OF THE FAIR HOUSING ACT

Title VIII of the Civil Rights Act of 1968 was enacted during the presidency of Lyndon B. Johnson in order to provide a federal enforcement mechanism for the Civil Rights Act of 1964. Together with the 1988 Fair Housing Amendments Act, these acts worked together to prohibit discrimination in the sale, rental, lease or financing of property based on race, color, religion, sex, national origin, disability and familial status (having one or more children under the age of 18).

In addition to the aforementioned federally protected classes, the New York State Human Rights Law prohibits discrimination based on creed, marital status, sexual orientation, age and military status.

In New York City, in addition to all of the aforementioned classes, the NYC Human Rights Law prohibits discrimination based on partnership status, alienage or citizenship status, lawful source of income or occupation and gender identity (together, with the classes enumerated under the federal and state laws, the “protected classes”). An individual purchasing or renting housing, or attempting to purchase or rent housing, in any of the five boroughs of NYC, enjoys protection under all three tiers of the Fair Housing laws.

III. PROCEDURE FOR FILING A COMPLAINT

FEDERAL:

Under the Fair Housing Act, one can pursue a claim by filing a federal complaint with the U.S. Department of Housing and Urban Development (“HUD”). Anyone can file a complaint with HUD by mail, telephone or by the internet. After interviewing the complainant and gathering information, a representative from HUD determines if HUD has the jurisdiction to file a complaint. If so, a complaint is written up, sent to the complainant to sign, and the respondent is notified that a complaint has been filed against him. HUD will then investigate by interviewing the respondent and, if available, deposing relevant witnesses.

HUD is mandated by the Fair Housing Act to attempt to bring the parties together for a conciliation – if the parties agree to a conciliation agreement, then the matter is closed. The matter can also be closed if HUD finds that there is no reasonable cause for the complaint. However, if HUD finds that discrimination has occurred, then the respondent will be charged with having violated the applicable law. After filing the charges, the HUD Administrative Law Judge will hear the case unless one of the parties chooses to have the case heard in federal civil court. The Judge can award a maximum civil penalty of \$11,000 per violation for first offense, in addition to other fines and types of relief. An adversely affected party may appeal the ruling within 15 days.

If a party elects to have the case heard in federal court, the Department of Justice (DOJ) takes up the complaint and files charges against the respondent. If the court finds that discrimination has taken place, they may award actual and punitive damages and attorneys’ fees.

City:

The NYC Human Rights Law provides that an alleged victim of discrimination may file a complaint with the Law Enforcement Bureau of the NYC Commission on Human Rights. The Commission has the authority to assess fines and obtain cash settlements on behalf of those victimized by discrimination as described under the NYC Human Rights Law. The process for filing a complaint and achieving relief on the city level is very similar to the process at the federal level.

A complainant must begin the process within one year of the last alleged discriminatory act. After scheduling a meeting with a staff attorney from the Commission on Human Rights, a complaint is filed. The parties are then invited to mediate – if this fails, then an investigation takes place during which witnesses are interviewed and documents reviewed. If the Commission makes a determination of “probable cause,” then an attorney is assigned to the case to prosecute; if the determination is “no probable cause,” the case is dismissed and the complainant may appeal.

An administrative law judge then holds a pre-trial conference in an attempt to resolve the conflict. If a settlement is not achieved, an official hearing is conducted and the judge issues a Report and Recommendation. The Commission, through a panel of commissioners appointed by the Mayor, then issues a final Decision and Order. If the Commission determines that the respondent engaged in unlawful discriminatory practices, various types of relief may be ordered through injunction or through fines. The Commission has the power to order a civil penalty of up to \$250,000 if it determines that the discrimination was the result of a willful or malicious act.

IV. VIOLATIONS

Real estate brokers and agents in New York City can violate the NYC Human Rights Law and the federal Fair Housing laws in many different ways. Examples include, but are not limited to:

1. Refusing to sell or rent to a member of one of the protected classes for no other reason than because of their membership in that protected group.
2. Misrepresenting the availability of housing in a particular community in order to preserve a particular racial makeup of that community.
3. Distributing advertising that calls for applicants of a certain race, age range, income level, etc. to apply for financing or to meet with a representative from a brokerage. This is an example of discrimination under the Fair Housing laws because the advertisement may implicitly discriminate against those members of a protected class.
4. Imposing varying rents to different applicants or applying different eviction criteria amongst unit occupiers.
5. Threatening retribution in response to the assertion of a tenant’s rights under the NYC Human Rights Law/federal Fair Housing laws or refusing to perform maintenance or repairs in order to usher the occupant out of a unit.
6. Redlining – a practice which involves attempting to steer members of certain classes into or away from particular neighborhoods due to their racial or ethnic background.
7. Blockbusting – a practice where a community pressures an individual homeowner, based on their membership in a protected class, to sell or rent their housing.
8. Providing varying terms of financing to potential buyers of a unit, such as different rates, points or fees.
9. Falsely stating that a unit is not available for inspection, purchase or rental to an applicant of a protected class while allowing another applicant, not from the same protected class, to inspect, purchase or rent that same unit.
10. Discrimination against those with mental health disabilities and those with HIV/AIDS or

past drug or alcohol issues is also illegal. However, the federal law does not protect someone who is a current illegal drug user.

These are examples of violations with which a real estate broker could conceivably be involved and the associated penalties.

1. Retaliating against a person (such as an applicant or potential client) because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act.
 - This is a violation of 24. C.F.R.(c)(5). Possible penalty includes a fine of not more than \$1,000 and/or a year in prison per U.S.C. § 3631.
2. Coercing or convincing a person or agent (such as a member of the firm's staff or a colleague), whether orally or in writing, to modify, deny, limit or refuse an applicant certain benefits related to the sale or rental of a housing unit because of that applicant's membership in a federally protected class.
 - This is a violation of 24 C.F.R. § 100.400(c) (1). Possible penalties include the aforementioned fine and prison term, but if bodily injury occurs then the possible fines increase to not more than \$10,000 and/or ten years in prison.
3. Threatening an employee or agent with dismissal or "adverse employment action" for any effort to assist an applicant seeking access to the sale or the rental of a dwelling or real estate-related transaction because of the applicant's membership in a protected class.
 - This is a violation of 24 C.F.R. §100.400(c)(3). In a civil suit, damages could be compensatory and/or punitive.
4. **An example of how a seemingly innocent exchange can expose a broker and his firm to liability:**

In 2010, a single mother with three children attempted to rent a home in Las Vegas. After mentioning her children to the real estate broker during the application process, the broker allegedly responded "wow, that is a lot of kids," and then immediately moved to make the unit unavailable to this particular family. Despite being an interested and capable renter of the dwelling, the mother's application was denied. In their suit, the government claims that the real estate broker and the owners of the property in question allegedly "refused to rent after the making of a bona fide offer, or refused to negotiate for the rental of, or otherwise made unavailable or denied, a dwelling to [the mother and three children family], because of familial status in violation of" the Fair Housing Act.

- This is a violation of the Fair Housing laws because the family was refused access to renting a dwelling solely (allegedly) because of the number of children in the family. This is obviously illegal, particularly given the comments made by the real estate broker.
- Take-away from this real life example: First, discrimination is illegal. Second, as a broker, never comment on a client's membership in a protected class, particularly to the client his or herself.

V. EXCEPTIONS

Not surprisingly, any decision made to deny, limit or modify the availability or applicant's access to renting or purchasing a unit or dwelling because of that applicant's membership in any protected class will nearly always present an issue.

However, there is one notable, pertinent exception. According to the Housing for Older Persons Act, which amended the Fair Housing Act, a community, group of units, or building may market itself as available solely for those of an older age range – typically 55 years old and older. Most of these communities impose limits such that anyone, or any member of a family, that is below a certain age, cannot enjoy housing in that community. If these communities are properly registered and maintain a certain threshold amount of “older persons,” then a refusal to rent or sell a unit to a person who falls below the age limit will not constitute a violation of the Fair Housing laws.

VI. SUGGESTIONS FOR BROKERS & SALESPERSONS

Real estate brokers and salespersons should take the following steps to insulate themselves and their firms from suits arising from a violation of the Fair Housing laws:

- Standardize procedures for qualifying clients.
- Maintain accurate records by utilizing an equal service report form.
- Make a wide range of properties available to all clients in each price range to maximize choice and avoid steering/redlining
- Train all staff in fair housing laws, regulations and practices
- Advertise in a way consistent with the federal rules and regulations
- For all promotional materials that are mailed/emailed/otherwise distributed, use an equal housing opportunity logo or statement
- Avoid discussion of any topic related to any of the protected classes with anyone, including clients, staff and colleagues
- If in doubt, always contact a lawyer.