The Major Federal Fair Housing Law

Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act (24 CFR 100)
- Passed in 1968; Amended in 1988
- **Protected Groups**
  - Race
  - Color
  - Religion
  - National Origin
  - Sex
  - People with Disabilities
  - Families with Children
The Fair Housing Act

Prohibits discrimination in all aspects of residential real estate related transactions including but not limited to:

- Making loans to buy, build or repair a dwelling
- Purchase real estate loans
- Selling, brokering and appraising real estate
- Selling or renting a dwelling
Equal Credit Opportunity Act

Both the Fair Housing Act (FHA) and Equal Credit Opportunity Act (ECOA) apply to mortgage lending.

- Covers all credit transactions to individuals, small businesses, corporations, partnerships and trusts
- Mortgage lending transactions are covered under both the FHA and the ECOA.
THE ECOA

Prohibits discrimination based on:
- Race or color
- Religion
- National Origin
- Sex
- Marital Status
- Age (provided the applicant has the capacity to contract)
- Receipt of public assistance income
- The applicant’s exercise of rights under the Consumer Credit Protection Act
Under the FHA and/or ECOA

A lender may NOT, because of a prohibited factor:

- Fail to provide information or services, or provide different information or services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards
- Discourage or selectively encourage applicants with respect to inquiries about or applications for credit
FHA/ECOA, cont.

- Refuse to extend credit or use different standards in determining whether to extend credit
- Vary the terms of credit offered, including the amount, interest rate, term or type of loan
- Use different standards to evaluate collateral
- Treat a borrower differently in servicing a loan or invoking default remedies
- Use different standards in pooling or packaging a loan in the secondary market

*Based on membership in a protected class!*
Essence of Fair Housing

Housing Transaction

+ 

Difference (availability/terms/conditions/location)

or Denied (because of Race, Color, Religion, Sex, National Origin, Disability or Family Status)

= 

Housing Discrimination
Additional Illinois Law

**Illinois Human Rights Act** *(775 ILCS 5/3-101)*

– Covers Most Housing in Illinois, adds to the Federal protected classes:
  - Ancestry
  - Age (40+)
  - Marital Status
  - Sexual Orientation
  - Order of Protection Status
  - Unfavorable Military Discharge
  - Military Status
Overt Evidence of Disparate Treatment

There is overt evidence of discrimination when a lender openly discriminates on a prohibited basis, even if expressed but not acted upon.

- Example: A lender offered a credit card with a $750 limit for people 21-30 and $1500 limit for people over 30.

- Example: "We prefer not to lend to Native Americans, but the law says we cannot discriminate and we have to comply with the law."
**Comparative Evidence of Disparate Treatment**

*Disparate Treatment* occurs when a lender treats a credit applicant differently based upon a prohibited factor.

- Example: A non-minority applicant with a credit issue is allowed to explain the credit issue and is then granted credit,
- while a minority applicant similarly situated is denied a loan without the opportunity to explain the issue.
Evidence of Disparate Impact

- **Disparate Impact** occurs when a lender applies a neutral policy or practice to all applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis.

  - Example: A lender has a long-standing $60,000 minimum loan policy. This policy is shown to disproportionately exclude minority applicants because of their income levels or the value of the homes which they are seeking to purchase.
Disparate Impact

A lending policy can be shown to have a discriminatory **disparate impact** regardless of intent to discriminate.

- Lenders have been required by the court to reconsider lending policies in light of disparate impact.
- Lenders have been required to enlarge service area boundaries in light of disparate impact, and redlining.
Redlining

A form of illegal *disparate treatment* in which the lender provides unequal access to credit because of:

- The characteristics of the residents of the area in which the credit applicant resides, will reside, or
- The location in which the residential property to be mortgaged is located.

Redlining violates both the FHA and the ECOA.

Applies to appraisal, homeowners and renters insurance, loss mitigation, private mortgage insurance.
Are you being steered?
Steering is the restriction of a person’s choices in housing by words or conduct.

- It includes discouraging a person from looking at, buying, or renting a house because of their status in a protected class or because of the protected class status of people in a community or a neighborhood.
- It is also described as directing a person to or away from a particular area, building or neighborhood based on that person’s race, etc., or based on the racial or ethnic composition of an area, building or neighborhood. 24 CFR 100.70 (c)
Racial geographic steering (based largely on comments or actions by real estate agents) takes place in both the sales and rental markets nationally and increased in the sales market by 7.5%.
How Often Does Discrimination Occur?

HUD’s Housing Discrimination Study 2000 found:

In the real estate sales market, whites received consistently favored treatment over:

Blacks 17% of the time
Hispanics 20% of the time.
Asian Americans 20% of the time

(Current data shows no change in these percentages)
Patterns of Discrimination

- Outright denial of services to protected class buyers.
  - Example: Refusal to return messages, or hanging up on relay calls
- Deliberate misinformation.
  - Example: Telling black applicants that they will only qualify for an FHA loan while telling similarly qualified white applicants that they qualify for a range of loans.
- Offering significant financial incentives to whites alone.
  - Example: Lower reserve or credit requirements
- Steering based on racial composition of schools.
- Steering based on race or national origin of buyer or racial composition of neighborhood
  - “You wouldn’t be happy here”.
What to Look for When Counseling Homebuyers

- Are clients (particularly LEP) using the same real estate agent, lender, etc.?
- Are purchases “clustering”?
- Does the agent appear at counseling appointments and make discouraging remarks?
- Does the client feel pressured to make a quick decision?
- Is the client relying on the real estate agent or loan officer to make decisions for them?
- Are buyers being charged higher fees for reasons that do not seem market related?
What to Look For, cont.

- Are buyers on maternity leave being told they must return to work before qualifying for a mortgage?
- Are clients being offered FHA loans when they could qualify for something better?
- Is a loan-ready client having difficulty getting approved for financing?
- Is the client being steered toward “rent to own”?
- Are clients’ calls being returned?
- Does the purchase seem to make sense?
- Is there a language barrier between the client and the real estate agent, lender, home inspector, and no corresponding arrangement for translation?
Clients with Disabilities

Are buyers with disabilities being told:

- “You must have employment income”
- “You must have a letter from your doctor stating that your disability will be ongoing”
- “You have to pay higher HOA fees to modify your entrance”
- “The community pool is not accessible”
- “Parking spaces are assigned and are not modifiable”
Customer Service

- Are buyers being given information about the full range of their options, or does it appear that some buyers are and some are not?
- Are buyers being shown the full range of communities within their affordability and amenity requests?
Clients are also protected under the FHA and ECOA while in loss mitigation

- Origination may have been in violation of these acts
- Servicer cannot block loss mitigation negotiations by refusing to provide translation or accept a relay call by a deaf/hard of hearing person by alleging they can’t speak to a third party
- Persons with disabilities cannot be asked to provide proof of disability or continuation of benefits
Loss Mitigation

- Excess foreclosure fees and costs have resulted in actions by states, cities, and private parties.
- Servicers may cause a modification default to place a borrower into a less advantageous product.
- Denial of a workout application where the borrower is qualified is a red flag.
Counselors are Protected

Counselors, rental agents, real estate agents and loan officers are protected under the Fair Housing Act from:

- Retaliation
- Intimidation
- Coercion

By real estate agents, lenders, servicers or your employer.
Third Parties can be Harmed

A counselor, counseling agency, real estate agent, loan officer, fair housing center or tester can be a plaintiff in a fair housing case by virtue of frustration of mission. This means that if the act of discrimination prevented you or your agency from fulfilling your mission, you have been harmed by the act and can be a party to an action or settlement.
Affirmative Furthering Fair Housing

HUD’s proposed rule (final expected October 2014)

- Covers local governments and states that receive CDBG, HOME, ESG and HOPWA funds

- Seeks to improve integrated living patterns and overcome historic patterns of segregation.
- Seeks to reduce racial and ethnic concentrations of poverty.
- Seeks to reduce disparities by protected class to access to education, transportation, employment and health.
- Seeks to respond to disproportionate housing needs by protected class.
Funders will require new data to support use of CDBG, HOME, etc.

Agencies will need to evaluate whether programs are having a discriminatory effect.

Agencies will need to review service area, outreach, program effectiveness in light of AFFH.

Agency partners may require training and evaluation to be on board with your mission.
Renters are protected under the Fair Housing Act of 1968 (Amended 1988)

- Federal Protected Classes
  - Race
  - Color
  - Religion
  - National Origin
  - Sex
  - Disability
  - Families with Children
Fair and Equitable Treatment

- Rental housing providers must treat tenants and applicants equally
  - In availability of housing
  - In information provided
  - In lease requirements
  - In response to requests for maintenance
  - In access to amenities
  - In requirements for application fees
Rental Discrimination

Discrimination in rental housing still occurs. HUD’s 2010 Report on the State of Fair Housing shows:

- 58% of complaints were due to discriminatory terms, conditions, privileges, services or facilities.
- 21% were due to failure to make a reasonable accommodation for disability.
- 26% were outright refusal to rent.
- 15% were intimidation, harassment, threats, interference or retaliation.

*These numbers have increased over time, rather than decreasing*
Reasonable Accommodation

Failure to make a reasonable accommodation for renters with disabilities is the fastest growing category of housing discrimination complaint.

- Landlords must make reasonable accommodation for renters with disabilities, unless this would create a documentable undue business hardship, if the accommodation is necessary for the reasonable enjoyment of the unit.
- Applies to accommodations to the application process as well.
- Includes accommodation to allow the use of common areas.
- Includes accepting calls placed by a relay agency on behalf of a deaf or hard of hearing applicant or tenant.
Reasonable Accommodation

- Includes physical modifications to the apartment or common areas, such as grab bars, ramps, widened doors, lowered sinks, door bell signalers, etc.
  - Costs are paid by the tenant (by the landlord in federally subsidized units). Landlord may stipulate that the unit be returned to its original condition upon move-out.

- Includes fulfilling the request to relocate to a different unit, such as from a third floor walkup to the first floor.

- Includes allowing service animals or live-in caretaker.
Landlords *cannot* demand medical records, or statements from doctors or sources of disability income detailing a person’s disability, or require a statement of time limit for a disability or for the duration of disability income.

Landlords *can* request a medical note stating that a support animal or live-in caretaker is needed *to address the disability for which the accommodation is being requested.*
Subsidized Housing

- In **Cook County**, landlords cannot refuse to accept Section 8 vouchers.
- In other counties, the landlords have the option to refuse to accept Section 8 vouchers, but they must be consistent. *If vouchers are accepted in one building, they must be accepted in all buildings the landlord owns regardless of location.*
- Landlords must abide by the Violence Against Women and Department of Justice Reauthorization Act of 2005
  - Provides that being a victim of domestic violence, dating violence or stalking is not a basis of denial of assistance or admission to public or Section 8 project-based or tenant-based housing.
  - Prohibits termination of assistance or eviction based upon stated behaviors engaged in by a member of the household or guest if the tenant or immediate family member is the victim.
  - Does not cover victims of domestic violence in applying for or residing in non-publicly subsidized housing.
What Happens in the Rental Market?

- Rental agents provide different information about pricing and availability.
- **Landlords set aside buildings (steering)**
  - “This is the voucher building.” “This is the building for families.” “Our Section 8 building is in a neighborhood where you would feel more comfortable.”
- Landlords ask for a larger security deposit, higher application fees, credit check fees, etc. based upon a protected class.
  - “Teenagers (or service animals) do a lot of damage.”
- **Landlords restrict use of common areas.**
  - “You can’t use the pool because you’re in a wheelchair.”
- **Rental agents hang up on deaf or hard of hearing applicants calling through a relay service, or don’t return calls to applicants who “sound black”**.
- **Tenants experience harassment, retaliation, intimidation or threats due to race, disability, source of income, etc.**
How to Counsel on Fair Housing Issues

- Provide clients with the summary of Fair Housing Laws
- Be able to describe “steering” and other patterns of discrimination
- Provide HOPE brochures to clients
- Refer clients to HOPE for further discussion if the situation warrants
- Display HUD Fair Housing Poster
What can HOPE Do?

The Intake Specialist will listen to the clients’ story and help make a determination about whether housing or lending discrimination has occurred, and will explain the clients’ options for pursuing a remedy.

The client will make the decision about what remedies to pursue.

HOPE can provide training to your lending and real estate partners on their rights and responsibilities under FHA and ECOA.
How to Refer

If your home seeker appears to have an issue that would invite deeper scrutiny, refer them to:

- HOPE Fair Housing Center
- 630-690-6500 x 113
- 245 W. Roosevelt Road, Bldg. 15, Suite 107
- West Chicago, IL 60185
Questions?

Please don’t hesitate to call
– 630-690-6500 x113
– Or on the web www.hopefair.org