



Module 3.1 Study Guide

HUD Housing Counselors Training



U.S. Department of Housing
and Urban Development

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MODULE 3.1 FAIR HOUSING/HISTORY AND OVERVIEW

MODULE INTRODUCTION

MODULE INTRODUCTION

It's essential for housing counselors to understand the basics of fair housing and know what is protected by the Fair Housing Act to inform and empower clients effectively.

In this module, you'll learn about the history of housing discrimination, critical provisions of the Fair Housing Act, and basic terms and concepts necessary for identifying potential violations of fair housing laws.

Before we begin, let's look at the module learning objectives.

LESSON OBJECTIVES

By the end of this module, you will be able to:

1. Understand the connection between the history of civil rights and discriminatory practices in the financial and housing industry, as well as the early role of the federal government and lending institutions.
2. Comprehend critical provisions of the Fair Housing Act and the impact of the law when discussing client rights under the Fair Housing Act.
3. Comprehend fair housing terms and concepts when discussing ways to identify and overcome housing and lending discrimination, including an understanding of the seven protected characteristics.
4. Identify which entities are subject to and which entities are exempt from compliance with fair housing laws.

FAIR HOUSING COUNSELING

FAIR HOUSING COUNSELING

As a housing counselor, Luis often informs his clients of their rights and communicates the fair housing obligations of landlords, sellers, brokers, or lenders. He also occasionally helps clients navigate situations that precede or may involve violations of federal fair housing laws based on the Fair Housing Act. Under the Fair Housing Act, discrimination in housing sales, rentals, and financing based on race, color, religion, national origin, sex, disability, or familial status, is unlawful.

Luis has been meeting with two clients, Shereen and Ibrahim, over the past year to help them work towards their housing goals. Review the notes below in Shereen and Ibrahim's file from their previous counseling sessions.

Shereen/Ibrahim

- They moved to the United States, so Ibrahim could attend a doctoral program
- Shereen does not work, but stays at home to care for their two young daughters
- They currently live in on-campus housing at Ibrahim's university
- They would like to move into a larger apartment off-campus as soon as Ibrahim begins his paid teaching fellowship through the doctoral program
- They want to purchase a home within five years of completing his degree



Clients, Shereen and Ibrahim

After Shereen and Ibrahim worked with Luis to set a budget and determine how much they could afford to pay for off-campus housing, they visited many apartment complexes and identified one that was an ideal fit for their budget and needs. However, when Ibrahim spoke to a classmate who lived in the complex, the classmate explained that he didn't think it would be the best fit. He explained that most of the residents attended the same Christian church congregation, and they often hosted church functions at the apartment complex. After hearing this, Ibrahim became concerned about his ability to rent an apartment in the area. He attends a Christian University in a predominantly Christian region, but he practices Islam.

Luis arranged to meet with Ibrahim and Shereen when they called him to express their concern about being able to rent an apartment in the area. Luis' goal in the session was to help Shereen and Ibrahim understand their rights under the Fair Housing Act. Let's observe their session.

EVIDENCE OF FAIR HOUSING VIOLATIONS

EVIDENCE OF FAIR HOUSING VIOLATIONS

IBRAHIM: Thanks for meeting with us, Luis. I was very discouraged after speaking with my classmate. Shereen and I are excited about the apartment complex we visited and were frustrated when we realized that our application may get denied because of our religious beliefs.

SHEREEN: Yes, and we are worried that we will also be denied at many other apartment complexes in the area because of our faith.

LUIS: I am glad that you mentioned this concern to me. It is possible that property owners could discriminate against you on the basis of your religion, but they will be in breach of federal law, as well as many state and local laws, if they do so.

SHEREEN: Really? There is a law that would protect us against such discrimination?

LUIS: Yes, and that is exactly what I want to talk to you about today. Current U.S. federal laws, as outlined in the Fair Housing Act, prohibit discrimination in most housing-related transactions based on certain protected characteristics, such as religion. There was a time when landlords could refuse to rent to individuals for any reason. However, several decades of legislative and public policy efforts focused on ending discrimination in our nation have resulted in a series of civil rights regulations, including the Fair Housing Act.

Luis' comments to the couple are based on his understanding of the history of legislative and public policy efforts focused on ending discrimination. Because it's important for housing counselors to have background knowledge on this topic, let's continue by looking at a timeline to understand historic legislative and public policy efforts.



A Counselor, Luis

HISTORY OF HOUSING DISCRIMINATION

HISTORY OF CIVIL RIGHTS AND HOUSING DISCRIMINATION

Mid 1800s

1866, The Civil Rights Act of 1866

Just one year after the end of the Civil War and the abolishment of slavery through the 13th Amendment, Congress passed the Civil Rights Act of 1866. This bill declared that “all persons born in the United States,” except Native Americans, were “hereby declared to be citizens of the United States.” It also granted all citizens full and equal rights “for the security of person and property... without distinction of race or color, or previous condition of slavery or involuntary servitude.” For the first time, all citizens held the same rights to use, purchase, lease, and



Civil Rights Bill of 1866

Late 1800s

1896, Plessy v. Ferguson

In the Supreme Court case Plessy v. Ferguson, “separate but equal” practices were declared legal. This decision justified all levels of government in providing segregated programs, services, and facilities, including segregated public accommodations and housing. Consequently, access to housing was not entirely fair and equitable well into the twentieth century.



Plessy v. Ferguson

Early 1900s

1933, Home Owners' Loan Corporation and Redlining

Congress created the Home Owners' Loan Corporation, or HOLC, as an effort to avoid mass foreclosure during the Great Depression. HOLC's mission was to refinance mortgages in default to help borrowers avoid foreclosure. HOLC developed a system of "residential security maps" to show which areas of a city were considered safe or risky for investment. HOLC conducted this assessment in 239 cities across the United States. These residential security maps outlined areas deemed safe for investment in blue. Typically, these encompassed predominantly White suburbs outside the city limits. These areas were perceived as desirable and stable for real estate investment.

Conversely, HOLC marked areas deemed risky for investment in red. These areas were typically urban communities with ethnically diverse populations. As a result, these neighborhoods were perceived as less stable for real estate investment.

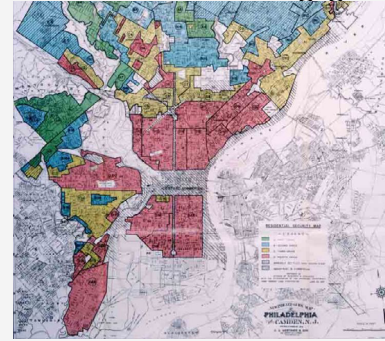
The practice of refusing to make loans or imposing unethical terms on loans made in the "red" districts became known as redlining.

Based on the precedent established in *Plessy v. Ferguson*, redlining on the basis of race, color, national origin, or other characteristics was considered legally permissible.

As a result of redlining practices, many middle-class, White citizens were offered loans that allowed them to relocate and obtain home ownership. Meanwhile, African Americans were prevented from accessing government-backed housing loans or were prey to exploitive loan terms. This had significant and lasting consequences for housing segregation and discriminatory lending practices in the United States.

Discriminatory **deed restrictions** also contributed to the segregated housing patterns of this era. Deed restrictions are legally enforceable terms that govern the use of real estate. Discriminatory language was often included, which denied specific groups of people the opportunity to use the real estate. Today, deed restrictions that impose unfair limitations based on any of the seven prohibited factors are illegal and unenforceable.

On a local municipal level, segregation through land use and zoning ordinances exacerbated the segregated housing patterns. This type of segregation occurred when local governments restricted the sale or lease of vacant land to certain groups of people, for the construction or location thereon of any such building, structure, or portion thereof. Local municipalities often made these land use or zoning decisions based on neighbors' fears that a dwelling would be co-occupied by individuals with certain characteristics.



Redlining Map (Philadelphia)

Redlining

The illegal practice of refusing to make residential loans or imposing unethical terms on any loans because of the predominant race, color, national origin, religion, sex, disability, or familial status of the residents of the neighborhood in which the property is located.

Deed Restrictions

Legally enforceable terms that govern the use of property. These terms are transferred with the property deed. Discriminatory deeds are illegal and unenforceable. Also known as a covenant, condition, restriction, or restrictive covenant.

Mid 1900s

1948, Shelly v. Kraemer

Discriminatory deed restrictions and covenants were deemed illegal and unenforceable based on the Supreme Court Shelly v. Kraemer ruling in 1948. The ruling stated that any restrictive clauses in property deeds that originally included discriminatory language became void and unenforceable. Today, efforts to enforce restrictive clauses in deeds violate the Fair Housing Act.

1954, Brown v. Board of Education

The Supreme Court decision based on the Brown v. Board of Education cases overturned the “separate but equal” policy established by the Plessy v. Ferguson decision. Therefore, the government could no longer legally support segregated programs, services, or facilities. Subsequently, a plethora of unlawful housing practice cases were brought to court, which eventually led to the 1968 Civil Rights Act.

1962, Executive Order 11063

President John F. Kennedy signed the Executive Order 11063. The order prohibited unlawful housing practices in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided federal funds.

1964, The Civil Rights Act of 1964

The Civil Rights Act of 1964 prohibited unlawful housing practices on the basis of race, color, or national origin in programs and activities that receive federal funding.

Example of an Unlawful Deed Restriction

In 2010, notice of an impending foreclosure on a property in Fairhaven, Massachusetts, was published in the New Bedford Standard-Times newspaper, as required by state law. The publication included unlawful language copied verbatim from the recorded deed, which included a covenant prohibiting the transfer of the property to “any person other than of the Caucasian race.” Though the recorded deed, written in the late 1940s to early 1950s, included the restrictive covenant, the covenant was unenforceable. The fair housing complaint was brought to the Massachusetts Commission Against Discrimination because any public notice that includes unlawful language regarding the sale or transfer of property violates current fair housing law.



Brown v. Board of Education



Civil Rights Act of 1964

KNOWLEDGE CHECK 1

Which describes the legally enforceable terms that govern the use of real estate?

- A. Residential security restrictions
- B. Deed restrictions
- C. Redlined maps
- D. Government-sponsored deeds

KNOWLEDGE CHECK 2

Which is the illegal practice of refusing to make residential loans or imposing unethical terms on any loans because of the predominant race, color, national origin, religion, sex, disability, or familial status of the residents?

- A. Securitizing
- B. Blockbusting
- C. Predatory lending
- D. Redlining

KNOWLEDGE CHECK 3

Following the assassination of Dr. Martin Luther King, Jr. , Congress passed what monumental piece of legislation, which prohibits unlawful housing practices in housing sales, rentals, and financing based on race, color, national origin, religion, (and as later amended) sex, disability, and familial status?

- A. Executive Order 11063
- B. Civil Rights Act of 1866
- C. Civil Rights Act of 1964
- D. Civil Rights Act of 1968

FAIR HOUSING OVERVIEW

ELIGIBILITY FOR FILING A FAIR HOUSING COMPLAINT

With the connection between today's fair housing laws and the history of civil rights in mind, let's return to Luis' session with Shereen and Ibrahim.

IBRAHIM: So, the fair housing laws sound good in theory, but what happens if the property owner is not aware of the law, or blatantly ignores it? What can we actually do about it?

LUIS: You can file a fair housing complaint to the Department of Housing and Urban Development. I'll tell you a bit more later about the process that occurs after a fair housing violation complaint is submitted.

SHEREEN: Who is eligible to file a fair housing complaint? I wonder if we are not considered eligible since we are not citizens.

LUIS: You are certainly eligible. According to law, all aggrieved persons have the right to file a fair housing complaint. The 1968 Civil Rights Act defines an aggrieved person as *any person* who claims to have been injured by a discriminatory housing practice on the basis of a protected characteristic like religion. The definition also includes anyone that *believes* that such person will be injured by a discriminatory housing practice that is about to occur. An aggrieved person can be a citizen or non-citizen. It could even be an organization or corporation, such as a homeowners association.

IBRAHIM: When you say "anyone that believes" does that imply that you don't actually need proof that a discriminatory action has or will occur?

LUIS: That is exactly right. Anyone has a standing to file a complaint if they have reason to believe that, were they to go forward with a real-estate transaction, they would be denied on the basis of a protected characteristic. It is a common misconception that the discriminatory action must have occurred, or significant proof must be provided, before a complaint can be submitted.

Another common misconception is that only those who have been discriminated against can submit a complaint as an "aggrieved person." The definition of an "aggrieved person" includes individuals who have not been discriminated against, but who have been "injured" in other ways by a discriminatory housing practice.

SHEREEN: I do not really understand what you mean by that. How could you be injured by unfair limitations if you are not the person being discriminated against?

LUIS: Well, a good example of this is *Trafficante versus Metropolitan Life Insurance*, a case brought before the U.S. Supreme Court in 1972. Two tenants of an apartment complex filed complaints with the Secretary of Housing and Urban Development alleging that their landlord racially discriminated against people of color, and thereby, the tenants lost the social benefits of living in an integrated community, missed business and professional advantages that would have accrued from living with members of minority groups and suffered from being “stigmatized” as residents of a “white ghetto.”

SHEREEN: That makes sense now. So, it sounds like race is a protected characteristic, just like religion. What are the other protected characteristics?

Luis answers Shereen’s question by outlining the seven prohibited bases of discrimination, also known as protected characteristics, and clarifying what they mean. Let’s take a look at the explanations that Luis provides for each protected characteristic.

SEVEN PROTECTED CHARACTERISTICS

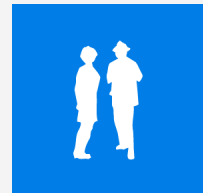
Race

While categories of race are typically self-identified and self-reported, they are outlined in the U.S. Census as follows: White, Black or African American, American Indian or Alaskan Native, Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Native Hawaiian, Guamanian, Chamorro, Samoan, and other Pacific Islander. Discrimination based on race can affect individuals of all racial backgrounds.



Color

Discrimination based on color means discrimination based on the lightness, darkness, or other color characteristics of the person. Although race and color overlap, they are not synonymous. Color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity.



National Origin

Unlawful housing practices based on national origin means unlawful treatment based on the country of an individual's birth or where their ancestors originated.



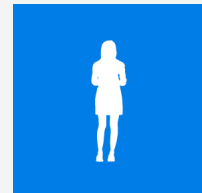
Religion

Imposing unfair limitations based on religion includes, but is not limited to, demonstrating a preference of churchgoers over non-churchgoers (or vice versa) or asking for the religious affiliation of applicants for rental properties, properties for sale, or homeowners insurance.



Sex

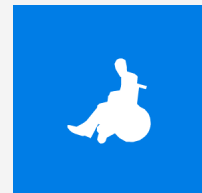
Sex judgment and sexual harassment occur when apartment managers, subdivision developers, and other housing suppliers lease, sell, and negotiate differently with individuals of different genders.



Disability

Imposing unfair limitations based on disability means judgement against:

- A person with a physical or mental impairment, which substantially limits one or more major life activities;
- A person with a record of such an impairment; or
- A person regarded as having such an impairment.



Being “regarded as having such an impairment” includes situations in which someone regards him or herself as disabled. An individual shall not be considered to have a disability solely because of a current illegal habit of, or addiction to, using a controlled substance. However, an individual in a treatment program for alcohol or drug use is considered disabled under the statute. Further details regarding the definition of disability are available in the resources.

Familial Status

Imposing unfair limitations based on familial status means discriminating against one or more individuals under the age of 18 years living with:

- A parent or another person having legal custody of such individual or individuals; or
- The designee of such parent or other person having such custody, with the written permission of such parent or other person.

Therefore, the definition of a “family” includes a single individual. The protections afforded against unlawful practices based on familial status apply to any pregnant person or person in the process of securing legal custody of any individual who is not yet 18 years old.



DEFINITIONS OF FAIR HOUSING TERMS AND CONCEPTS

PROXIES FOR PROTECTED CHARACTERISTICS

Let's return to the counseling session to learn a bit more about illegal bases of imposing unfair limitations.

SHEREEN: It seems to me like there are many more characteristics that should be illegal bases of imposing unfair limitations such as “apparel.” I have felt discriminated against in a variety of settings because of my headscarf.

LUIS: It's important to note that imposing unfair limitations against a person because of a characteristic that is not protected, for example apparel, may actually be illegal unfair treatment if that characteristic is closely linked to the protected characteristic, or acts as a proxy for the protected characteristic. So, excluding persons from housing opportunities because of their religious apparel, such as a headscarf, might be unequal derogatory treatment based on biases instead of merit because of its connection to the protected characteristic of religion.

KNOWLEDGE CHECK 4

The Fair Housing Act, as amended, protects how many characteristics?

- A. 5
- B. 7
- C. 8
- D. 10

KNOWLEDGE CHECK 5

Each situation below involves unlawful housing practices against a specific protected characteristic. Match each protected characteristic being discriminated against on the left with the appropriate example on the right.

- | | |
|--------------------|---|
| A. Familial Status | ___ 1. A landlord imposes a higher security deposit on a family with two children, even though the family otherwise meets the criteria for tenancy, income, and credit history. |
| B. Race | ___ 2. A lender only offers adjustable rate mortgages with steep interest rates to Afghanis, but this same lender offers more flexible financing to all other loan applicants. |
| C. Religion | ___ 3. A realtor shows an Asian Indian family housing only in Asian Indian neighborhoods and refuses to show the family houses in predominantly White neighborhoods. |
| D. Disability | ___ 4. A landlord charges a person that identifies as a female tenant applicant a higher security deposit than male applicants. |
| E. Sex | ___ 5. A property manager provides a rental unit of inferior quality to a man with a beard, which is kept to adhere to spiritual beliefs. |
| F. Color | ___ 6. An apartment imposes higher rent to individuals who describe themselves as having a debilitating paranoid personality disorder. |
| G. National Origin | ___ 7. A Chinese American individual with light skin fails to process an offer for the sale of a home to a Chinese American with a darker tone. |

FAIR HOUSING OVERVIEW

PROHIBITED PRACTICES IN SALE OR RENTAL OF HOUSING

Once Shereen and Ibrahim are familiar with the seven protected characteristics, Luis summarizes a few other critical provisions of the Fair Housing Act and the impact that these provisions have on their rights. These provisions include:

- General housing sales and rental practices that are prohibited by the Fair Housing Act when based on the seven protected characteristics.
- Additional prohibited housing sales and rental practices that protect individuals with physical or mental disabilities.
- Exceptions to the Fair Housing Act housing sales and rental laws.
- Residential real estate-related transactions, provision of brokerage services, and mortgage lending practices, as well as actions that involve coercion that are prohibited by the Fair Housing Act when based on the seven protected characteristics.

Although Luis summarizes these points for his clients, we will review them in detail. Let's first explore the housing sales and rental practices that are deemed unlawful when based on the seven protected characteristics.

Refusal to Rent, Sell, or Negotiate

Refusing to rent, sell, or negotiate the sale or rental of a dwelling is prohibited, and includes, but is not limited to, the following actions:

- Failing to accept a bona fide offer.
- Imposing different sales prices or rental charges.
- Using different qualification criteria or applications for sale or rental.
- Evicting tenants.

Setting Different Terms

Setting different terms, conditions, or privileges in services and facilities is prohibited, and includes, but is not limited to:

- Using different provisions in leases or contracts of sale.
- Failing to make, or delaying, maintenance or repairs.
- Failing to process an offer for the sale or rental of a dwelling.
- Failing to communicate an offer accurately.
- Denying or limiting services or facilities because a person failed or refused to provide sexual favors.

Production of Unfair Limitations Marketing

Producing unfair limitations in marketing is prohibited, and includes, but is not limited to participating in making, printing, or publishing any notice, statement, or advertisement that indicates preferences, or limitations, such as:

- Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons.
- Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities.
- Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for advertising.

False Representation the Availability of a Dwelling

Falsely representing the availability of a dwelling is prohibited and includes, but is not limited to:

- Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented.
- Representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of dwellings preclude the sale or rental of a dwelling to a person.
- Enforce covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person.
- Limiting information, by word or conduct, regarding suitably priced dwellings, available for inspection, sale, or rental.
- Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person.

Blockbusting Practices for Profit

Engaging in **blockbusting** practices for profit is prohibited, and includes, but is not limited to:

- Engaging in conduct which conveys to a person that a neighborhood is undergoing or about to undergo a change in demographics in order to encourage the person to offer a dwelling for sale or rental.

Blockbusting

To convince, or attempt to convince, a person to sell or rent a dwelling because of the entry, or prospective entry, into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, national origin, or with a disability.

- Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons with protected characteristics, can or will result in undesirable consequences for the area, such as lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services.

Participation in Other Discriminatory Actions

Other discriminatory actions that are prohibited include:

- Denying anyone access to, or membership in, a facility or service related to housing sales or rentals.
- Restricting or attempting to restrict the choices of a person so as to perpetuate segregated housing patterns.
- Engaging in conduct that is connected to making dwellings unavailable or denying dwellings to persons.
- Discouraging a person from purchasing or renting a dwelling by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling, community, neighborhood, or development.
- Communicating to any prospective purchaser that he or she would not be comfortable or compatible living near the existing residents of a community, neighborhood, or development.
- Assigning any person to a particular section of a community, neighborhood, development, or floor of a building.
- Discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory housing practice.
- Employing codes or other devices to segregate or reject applicants, purchasers, or renters.
- Refusing to take or to show listings of dwellings in certain areas.
- Refusing to deal with certain brokers or agents because one or more of their clients have a protected characteristic.
- Denying or delaying the processing of an application or refusing to approve such a person for occupancy in a cooperative or condominium dwelling.
- Refusing to provide municipal services or property or hazard insurance for dwellings.
- Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings.

Note: According to the Fair Housing Act, the term “to rent” includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises. The term “dwelling” refers to an occupancy where people live and does not include raw land or farmland.

KNOWLEDGE CHECK 6

Below is a list of scenarios. Place an “A” next to scenarios that correspond with Prohibited Practice and a “B” next to scenarios corresponding with Legal Practice.

- ___ 1. A real estate agent tends to steer prospective minority buyers to neighborhoods and communities where the residents are predominantly minorities.
- ___ 2. A landlord charges residents with children higher rents and security deposits than residents without children.
- ___ 3. A landlord denies residence to a family with young children after discovering that these prospective renters never paid their rent on time with past landlords.
- ___ 4. A real estate agent shows a prospective low-income buyer a home in a community where homes tend to be less expensive compared to the rest of the market.
- ___ 5. A property owner denied a request from a tenant with a mobility disability to obtain a reserved parking space that is in close proximity to the entrance to her townhome.

ADDITIONAL PROTECTIONS FOR INDIVIDUALS WITH DISABILITIES

The Fair Housing Act prohibits several additional practices related to housing sales and rentals in order to provide unique protections to individuals who have a physical or mental disability. Let’s learn about these prohibited practices.

Discrimination in Sale or Rental

It is prohibited to discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of:

- that buyer or renter;
- a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- any person associated with that buyer or renter.

Discrimination in Terms, Conditions, Privileges of Sale, Rental, Services, or Facilities

It is prohibited to discriminate against any person in terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

- that person; or
- a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- any person associated with that person.

Refusal to Permit Reasonable Modifications to Existing Premises

It is prohibited to refuse to permit, at the expense of the disabled person, **reasonable modifications** to an existing dwelling or common use area if the modification is necessary for a person with disabilities to use and enjoy a dwelling.

Typically, it is the responsibility of the renter to make and pay for the modifications. If reasonable, the landlord may require the renter to restore the premises to the condition that existed before the modification upon moving, reasonable wear and tear excepted.

Section 504 of the Rehabilitation Act of 1973 and its implementing regulations obligate housing providers that receive federal financial assistance to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden.

Refusal to Make Reasonable Accommodations

It is prohibited to refuse to make **reasonable accommodations** in rules, policies, practices, or services necessary for a person with disabilities to use and enjoy a dwelling.

Reasonable Modification

A structural modification that is made to allow persons with disabilities the full enjoyment of the housing and related facilities.

Reasonable Accommodation

A change in rules, policies, practices, or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space. A housing provider should do everything to assist a person with a disability, but is not required to make changes that would fundamentally alter the program or create an undue financial and administrative burden. Reasonable accommodations may be necessary at all stages of the housing process, including application, tenancy, or to prevent eviction.

Examples of reasonable accommodations include:

- Allowing a visually impaired tenant to keep a guide dog as an **assistance animal** in a building with a “no pets” policy.
- Honoring a request from a tenant with a mobility disability for a reserved space near her apartment (in an apartment complex that offers tenants unassigned parking) if necessary to assure access to her apartment.

Assistance Animal

An assistance animal is not considered a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability. For purposes of reasonable accommodation requests, the Fair Housing Act does not require an assistance animal to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Disregard of Design and Construction Requirements

Covered multifamily dwellings for first occupancy after March 13, 1991, must contain certain features to allow access by persons with disabilities, according to Fair Housing Act laws.

Covered multifamily dwellings include all buildings with an elevator that consist of four or more units and all ground-floor units in buildings that consist of four or more units but do not have an elevator. The required features are:

- Public use and common use areas must be accessible to and usable by persons with disabilities.
- Doors into and within the dwelling must be wide enough for passage by disabled persons in wheelchairs.
- All premises within the dwelling must have:
 - An accessible route into and through the dwelling.
 - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.
 - Reinforced bathroom walls to allow later installation of grab bars.
 - Usable kitchens and bathrooms such that people in wheelchairs can maneuver about the space.

These requirements for new buildings do not replace any more stringent standards in state or local law.

KNOWLEDGE CHECK 7

The following situation is an example of what type of change?

A property manager of an apartment complex that receives federal financial assistance installs a ramp so that a tenant in a wheelchair can easily access her first-floor apartment.

- A. Reasonable accommodation
- B. Accessibility modification
- C. Reasonable modification
- D. Accessibility accommodation

KNOWLEDGE CHECK 8

The following situation is an example of what type of change?

A housing provider has a policy of requiring tenants to come to the rental office to pay their rent. A tenant with a mental disability, who is afraid to leave her unit, is allowed to mail her rent payment.

- A. Reasonable accommodation
- B. Accessibility modification
- C. Reasonable modification
- D. Accessibility accommodation

LIMITED ENGLISH PROFICIENCY

Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English are considered to have Limited English Proficiency, or LEP. LEP persons are protected under Title VI of the Civil Rights Act of 1964. Providing housing counseling services in languages accessible to LEP persons in the community is one way housing counseling agencies can combat discrimination based on National Origin. The [Housing Counseling Limited English Proficiency \(LEP\) Toolkit](#) published by the Office of Housing Counseling (OHC) in March 2021 provides comprehensive guidance regarding the language accessibility obligations of housing counseling agencies.

FAIR HOUSING COMPLIANCE

FAIR HOUSING COMPLIANCE

Fair Housing Act compliance is monitored and enforced by HUD's Office of Fair Housing and Equal Opportunity, or FHEO, which aims to eliminate unlawful housing practices, promote economic opportunity, and achieve diverse, inclusive communities. FHEO conducts fair housing complaint investigations and compliance reviews, manages fair housing grants, and ensures that HUD programs are compliant with fair housing and equal opportunity laws.

In addition to the Fair Housing Act, FHEO also enforces the following laws:

- Title VI of the Civil Rights Act of 1964
- Section 109 of the Housing and Community Development Act of 1974
- Section 504 of the Rehabilitation Act of 1973
- Titles II and III of the Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Age Discrimination Act of 1975
- Title IX of the Education Amendments Act of 1972

EXEMPTIONS TO THE FAIR HOUSING ACT: HOUSING SALES AND RENTAL LAWS

Now that we have discussed general housing sales, rental, and construction practices that are prohibited by the Fair Housing Act when based on the seven protected characteristics, as well as additional practices that protect individuals with a physical or mental disability, let's review the exemptions to the Fair Housing Act.

The practices in housing sales and rental discussed to this point are not prohibited, or, in other words, they are exempt from compliance with the Fair Housing Act, when one or more of the following conditions exist:

1. Single-Family House Exemption, Section 803 (B)(1), applies when an owner:
 - Owns, sells, or rents the house;
 - Owns three or fewer single family homes at any one time;
 - Does not use the services or facilities of a real estate broker; and
 - Does not advertise in violation of Section 804(c) of the Fair Housing Act (discriminatory advertising practices).

In other words, an owner with four or more properties is no longer exempt.

2. “Mrs. Murphy” Exemption, Section 803(B)(2), applies if:
 - The house or living quarter units are occupied or intended to be occupied by no more than four families living independently and the owner maintains or occupies one of the living quarters. In other words, for *owner-occupied buildings*:
 - Owners with three or fewer rental units are exempt. (i.e., An owner lives in a four-unit building and rents the remaining three units.)
 - Owners with four or more rental units are not exempt. (i.e., An owner lives in a five-unit building and rents four units.)
 - Properties that qualify under this exemption are still prohibited from discriminatory advertising, and owners are liable for making a discriminatory statement, posting a discriminatory notice, or running a discriminatory advertisement.
 - To ensure compliance in your area, be sure check state and local laws and regulations, as they may impose additional limitations on this exemption or even eliminate it altogether.
3. Religious Organization Exemption, Section 807(A), outlines that religious organizations, associations, or societies can give preference to persons of the same religion if:
 - Housing is not operated for a commercial purpose;
 - Housing is made available only to persons of the same religion; and
 - The religion does not discriminate based on race, color, or national origin.
4. Private Club Exemption, Section 807(A), outlines that a private club can give preference to its members if:
 - It is in fact private and not open to the public;
 - It provides housing that is incidental to its primary purpose; and
 - Housing is not operated for a commercial purpose.
5. Housing for Older Persons Exemptions, Section 807(B), exempts housing providers from familial status prohibitions if the community meets any of the following criteria:
 - Housing provided under a state or federal program that the HUD Secretary determines is specifically designed and operated to assist elderly persons;
 - 100% of the community is 62 or older; or
 - 80% of the households have at least one resident who is 55 or older, **and** the community adheres to policies and procedures that demonstrate intent to house older persons and complies with rules for verification of occupancy.

It's important to remember that the Fair Housing Act does not protect age. However, age and disability may be connected. A person may have an age-related disability, which *would* be protected by the Fair Housing Act.

Let's now return to the counseling session where Luis clarifies an important concept regarding exceptions to Fair Housing Act laws.

DECISION TO FILE A COMPLAINT

IBRAHIM: I don't think we have enough information about any of the apartment complexes we visited to identify which of them are subject to and which are exempt from compliance with fair housing laws.

SHEREEN: He's right. We have very limited information about the entities that own and operate the properties that we visited. It is possible that the one we are most interested in is actually operated by or in conjunction with a church, and for that reason can indeed discriminate against us on the basis of religion.

LUIS: That is not a problem at all. You are not expected to establish the absence of an exception before filing a fair housing complaint to HUD. Once you file a complaint, HUD will investigate further to determine if the entity is exempt or otherwise. However, you will need to identify a specific individual against whom you will file that complaint. A complaint cannot be filed against a property, apartment complex, or other group, but rather must be filed against an individual.

Luis continues the session by sharing additional information about the process for filing a complaint, which we will cover in Module 3.2.

KNOWLEDGE CHECK 9

Below is a list of scenarios. Place an "A" next to scenarios that correspond with Prohibited Practice and a "B" next to scenarios corresponding with Legal Practice.

- ☐ 1. Refusing to rent, sell, or negotiate for housing when the owner of the housing is a private entity that owns six single-family houses
- ☐ 2. Restricting access to housing operated by a religious organization solely to its members.
- ☐ 3. Limiting information regarding suitably priced dwellings available for inspection, sale, or rental of an owner-occupied facility with fifteen individual family units
- ☐ 4. Failing to process an offer for the sale or rental of a dwelling that was promoted by a real estate agent
- ☐ 5. Refusing to rent a dwelling to a family with young kids in a community that the HUD Secretary has determined to be designated for elderly persons under a federal program

FAIR HOUSING OVERVIEW

PROHIBITED PRACTICES IN OTHER TRANSACTIONS AND SERVICES

Now that we've discussed the Fair Housing Act laws relating to housing sales and rental, let's continue by reviewing the prohibited actions that relate to residential real estate-related transactions, provision of brokerage services, or mortgage lending, as well as actions that involve coercion.

Unlawful Housing Practices in Residential Real Estate-Related Transactions

Imposing unfair limitations in residential real-estate related practices is prohibited and includes, but is not limited to:

- Unlawful housing practices in the selling, brokering, or appraising of residential real estate.
- Making real estate-related transactions unavailable.
- Discriminating in terms or conditions of real estate-related transactions.

According to the Fair Housing Act, a "real estate-related transaction" means any of the following:

- The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling.
- The making or purchasing of loans or providing other financial assistance secured by residential real estate.

Imposing Unfair Limitations in Provision of Brokerage Services

Denying any person access to or membership or participation in any multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling or renting dwellings is prohibited. Prohibited actions under this section include, but are not limited to:

- Setting different fees for access to or membership in a multiple listing service.
- Denying or limiting benefits accruing to members in a real estate brokers' organization.
- Imposing different standards or criteria for membership in a real estate sales or rental organization.
- Establishing geographic boundaries or office location or residence requirements for access to, or membership or participation in, any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings.
- Imposing unfair limitations against a person in the terms or conditions of such access, membership, or participation.

Unlawful Practices in Mortgage Lending

Unlawful practices in mortgage lending is prohibited and includes, but is not limited to:

- Refusing to make a mortgage loan.
- Refusing to provide information regarding loans.
- Imposing different terms or conditions on a loan (e.g., different interest rates, points, or fees).
- Imposing unfair limitations in appraising property.

Coercion/ Intimidation/ Threats/ Interference

It is illegal to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of fair housing rights, or with any person aiding others to exercise or enjoy fair housing rights.

In the next module, you will see the conclusion of Luis' housing counseling session with Shereen and Ibrahim and deepen your knowledge of fair housing regulations.

KNOWLEDGE CHECK 10

Which action in mortgage lending is allowed by the Fair Housing Act?

- A. Refusing to provide information regarding loans
- B. Imposing different terms or conditions on a loan based on family size
- C. Suggesting that a potential client review information about all different loan types
- D. Appraising property based on the race of the current owner

E. KNOWLEDGE CHECK 11

Below is a list of scenarios. Place an “A” next to scenarios that correspond with Prohibited Practice and a “B” next to scenarios corresponding with Legal Practice.

- ___ 1. A mortgage lender denies a home loan to an applicant with a disability because his credit score is too low and approves an applicant without a disability that has a higher credit score.
- ___ 2. A home insurance company offers a person that identifies as a female applicant, who needs flood insurance, a more expensive policy than a person identified as a male that does not required flood insurance.
- ___ 3. A home insurance company provides to person that identifies as female applicant with sub-standard policies that are not competitive with the market, while offering to a person identified as male, standard policies with competitive terms.
- ___ 4. A mortgage lender offers steeper interest rates and different terms and conditions to borrowers who are Native American than to those who are White.

SUMMARY

In this module, you learned to:

- 1. Understand the connection between the history of civil rights and discriminatory practices in the financial and housing industry, as well as the early role of the federal government and lending institutions.
- 2. Comprehend critical provisions of the Fair Housing Act and the impact of the law when discussing client rights under the Fair Housing Act.
- 3. Comprehend fair housing terms and concepts when discussing ways to identify and overcome violations of fair housing laws, including understanding of the seven protected characteristics.
- 4. Identify which entities are subject to and which entities are exempt from compliance with fair housing laws.

KNOWLEDGE CHECK ANSWER KEY

1. (B) Deed restrictions

Deed restrictions are the legally enforceable terms that govern the use of real estate. Deed restrictions that discriminate based on any of the seven prohibited bases for unlawful housing practices are illegal and unenforceable.

Incorrect answers: (A) Residential security restrictions, (C) Redlined maps, and (D) Government-sponsored deeds.

2. (D) Redlining

Redlining is the illegal practice of refusing to make residential loans or imposing unethical terms on any loans because of the predominant race, color, national origin, religion, sex, disability, or familial status of the area's residents.

Incorrect answers: (A) Securitizing, (B) Blockbusting, and (C) Predatory lending.

3. (D) Civil Rights Act of 1968

Following the assassination of Dr. Martin Luther King, Jr., Congress passed the Civil Rights Act of 1968, also known as the Fair Housing Act, which prohibits unlawful housing practices in housing sales, rentals, and financing based on race, color, national origin, religion, (and as later amended) sex, disability, and familial status.

Incorrect answers: (A) Executive Order 11063—President Kennedy signed Executive Order 11063 in 1962, prohibiting unlawful housing practices based on race, color, and national origin, in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds; (B) Civil Rights Act of 1866—The Civil Rights Act of 1866 declared that “all persons born in the United States,” except American Indians, were “hereby declared to be citizens of the United States.” It also granted all citizens full and equal rights “for the security of person and property . . . without distinction of race or color, or previous condition of slavery or involuntary servitude”; and (C) Civil Rights Act of 1964—The Civil Rights Act of 1964 prohibits unlawful housing practices on the basis of race, color, or national origin in programs and activities that receive federal funding.

4. (B) 7

The Fair Housing Act, as amended, protects seven characteristics: race, color, national origin, religion, sex, disability, and familial status.

(A) 5, (C) 8, and (D) 10

5. Correct matched items:

(A) Familial Status: 1. A landlord imposes a higher security deposit on a family with two children, even though the family otherwise meets the criteria for tenancy, income, and credit history.

(G) National Origin: 2. A lender only offers adjustable rate mortgages with steep interest rates to Afghans, but this same lender offers more flexible financing to all other loan applicants.

(B) Race: 3. A realtor shows an Asian Indian family housing only in Asian Indian neighborhoods and refuses to show the family houses in predominantly White neighborhoods.

(E) Sex: 4. A landlord charges prospective tenants who are identified as females a higher security deposit than those identified as male applicants.

(C) Religion: 5. A property manager provides a rental unit of inferior quality to a man with a beard, which he keeps to adhere to his spiritual beliefs.

(D) Disability: 6. An apartment imposes higher rent to individuals who describe themselves as having a debilitating paranoid personality disorder.

(F) Color: 7. A Chinese American individual with light skin fails to process an offer for the sale of a home to a Chinese American with a darker tone.

6. Correct matched items:

(A) Prohibited Practice	(B) Legal Practice
1. A real estate agent tends to steer prospective minority buyers to neighborhoods and communities where the residents are predominantly minorities—This is likely a prohibited practice. The agent is steering buyers to certain communities based upon their race or national origin, which is a protected characteristic.	3. A landlord denies residence to a family with young children after discovering that these prospective renters never paid their rent on time with past landlords—This is not a prohibited practice. If the prospective tenants have a history of late rental payments, the landlord can deny their application.

(A) Prohibited Practice	(B) Legal Practice
<p>2. A landlord charges residents with children higher rents and security deposits than residents without children. This practice is prohibited. The landlord is violating the Fair Housing Act's protection of familial status.</p>	<p>4. A real estate agent shows a prospective low-income buyer a home in a community where homes tend to be less expensive compared to the rest of the market—This is not a prohibited practice. The real estate agent is showing the prospective buyer homes that meet their budget. This is permissible as long as the agent's actions aren't based on race, color, national origin, religion, sex, disability, or familial status.</p>
<p>5. A property owner denied a request from a tenant with a mobility disability to obtain a reserved parking space that is in close proximity to the entrance to her townhome—This is likely an unlawful practice. It is prohibited to refuse to make reasonable accommodations necessary for a person with disabilities to use and enjoy a dwelling.</p>	

7. (C) Reasonable modification

Here, the property manager has made what is called a reasonable modification. Typically, it is the responsibility of the renter to make and pay for the modifications. However, housing providers that receive federal financial assistance must make and pay for structural changes to their facilities.

Incorrect answers: (A) Reasonable accommodation, (B) Accessibility modification, and (D) Accessibility accommodation—In this case, the property manager has made what is called a reasonable modification. The ramp is a structural change that allows the tenant to easily access her apartment. Reasonable modifications involve a change in a building's structure.

8. (A) Reasonable accommodation

Here, the housing provider has made what is called a reasonable accommodation by changing the rental payment policy for this one resident, given her mental disability.

Incorrect answers: (B) Accessibility modification, (C) Reasonable modification, and (D) Accessibility accommodation—Here, the housing provider has made what is called a reasonable accommodation by changing the rental payment policy for this one resident, given her mental disability. A reasonable accommodation involves a change in rules, policies, practices, or services to accommodate a person with a disability.

9. Correct matched items:

(A) Prohibited Practice	(B) Legal Practice
1. Refusing to rent, sell, or negotiate for housing when the owner of the housing is a private entity that owns six single-family houses—According to the Fair Housing Act, it is prohibited to rent, sell, or negotiate the sale or rental of a dwelling based on protected characteristics. Since the private entity owns more than three single-family houses, it is subject to compliance with fair housing laws.	2. Restricting access to housing operated by a religious organization solely to its members. The Fair Housing Act restrictions do not apply to circumstances in which housing is operated by, or in conjunction with, a religious organization, association, society, or nonprofit organization.

(A) Prohibited Practice	(B) Legal Practice
<p>3. Limiting information regarding suitably priced dwellings available for inspection, sale, or rental of an owner-occupied facility with fifteen individual family units—According to the Fair Housing Act, it is prohibited to falsely represent the availability of a dwelling, through actions such as limiting information, by word or conduct, regarding suitably priced dwellings, available for inspection, sale, or rental. Since the owner-occupied facility has rooms and units that are occupied by more than four families living independently of each other, it is subject to compliance with fair housing laws.</p>	<p>5. Refusing to rent a dwelling to a family with young kids in a community that the HUD Secretary has determined to be designated for elderly persons under a federal program—Housing providers for older persons may be exempt from the familial status provisions of the Fair Housing Act, if the HUD Secretary has determined the housing is designed for and occupied by elderly persons under a federal, state, or local government program.</p>
<p>4. Failing to process an offer for the sale or rental of a dwelling that was promoted by a real estate agent—Fair Housing Act prohibits setting different terms, conditions, or privileges in services and facilities through actions such as failing to process an offer for the sale or rental of a dwelling. Since a real estate agent promotes the dwelling on behalf of a homeowner, they are subject to compliance with fair housing laws.</p>	

10. (C) Suggesting that a potential client review information about all different loan types.

The Fair Housing Act does not prohibit a lender from showing potential clients information about different loan types.

Incorrect answers: (A) Refusing to provide information regarding loans, (B) Imposing different terms or conditions on a loan, and (D) Discriminating in appraising

property—The Fair Housing Act prohibits the following: Refusing to make a loan; refusing to provide information regarding loans; imposing different terms or conditions on a loan; and discriminating in appraising property.

11. Correct matched items:

(A) Prohibited Practice	(B) Legal Practice
<p>3. A home insurance company provides to applicants identified as female, with sub-standard policies that are not competitive with the market while offering to applicants identified and male, standard policies with competitive terms. This is a prohibited practice. The home insurance company cannot set different terms and conditions based on race, color, national origin, religion, sex, disability, or familial status.</p>	<p>1. A mortgage lender denies a home loan to an applicant with a disability because his credit score is too low and approves an applicant without a disability that has a higher credit score— This is a legal practice. If an applicant needs additional insurance for flood coverage, the policy will likely be more expensive. It is not an unlawful practice to charge more for additional coverage, as long as the charge is not based on race, color, national origin, religion, sex, disability, or familial status.</p>
<p>4. A mortgage lender offers steeper interest rates and different terms and conditions to borrowers who are Native American than to those who are White. This is likely a prohibited practice. The lender cannot set different rates, terms, and conditions based on race.</p>	<p>2. A home insurance company offers a person that identifies as a female, a more expensive policy than to a person identified as a male that does not required flood insurance. This practice is legal. If an applicant needs additional insurance for flood coverage, the policy will likely be more expensive. It is not unlawful to charge more for additional coverage as long as the charge has not basis in race, color, national origin, religion, sex, disability, or familial status.</p>

RESOURCES

CFR 2011, TITLE 24, VOLUME 1, SECTION 100.201

www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=2b148de25077248874b62c2fd7b5638a;rgn=div5;view=text;node=24%3A1.2.1.1.1;idno=24;cc=ecfr#se24.1.100_1201

EQUAL ACCESS TO HOUSING IN HUD PROGRAMS REGARDLESS OF SEXUAL ORIENTATION OR GENDER IDENTITY

<https://www.federalregister.gov/documents/2012/02/03/2012-2343/equal-access-to-housing-in-hud-programs-regardless-of-sexual-orientation-or-gender-identity>

EXAMPLES OF RESIDENTIAL SECURITY MAPS—1

jscholarship.library.jhu.edu/handle/1774.2/32621

EXAMPLES OF RESIDENTIAL SECURITY MAPS—2

societyhealth.vcu.edu/media/society-health/pdf/PMReport_Baltimore.pdf

(see page 23)

FEDERAL REGISTER RULES AND REGULATIONS

<https://www.govinfo.gov/content/pkg/FR-2016-09-21/pdf/2016-22589.pdf>

HUD FHEO

www.hud.gov/program_offices/fair_housing_equal_opp

HUD FHEO: FAIR HOUSING AND RELATED LAWS

www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law

HUD FHEO: FILE A COMPLAINT

www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint

HUD'S HISTORY OF FAIR HOUSING

www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo/history

HUD HOUSING COUNSELING LEP TOOLKIT

files.hudexchange.info/resources/documents/Housing-Counseling-Limited-English-Proficiency-Toolkit.pdf

HUD LEP FAQ

www.hud.gov/program_offices/fair_housing_equal_opp/promotingfh/lep-faq

HUD TRANSLATED MATERIALS

www.hud.gov/program_offices/fair_housing_equal_opp/17lep

LEP.GOV

www.lep.gov/

LEP.GOV HOUSING

www.lep.gov/housing

THE FAIR HOUSING ACT

<https://www.justice.gov/crt/fair-housing-act-1>

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Redlining Map (Philadelphia): United States Federal Government (http://cml.upenn.edu/redlining/HOLC_1937.html) [Public domain], via Wikimedia Commons. Accessed November 11, 2014. commons.wikimedia.org/wiki/File%3AHolc_redlining_1937.jpeg

JOINT POLICY STATEMENT ON DISCRIMINATORY LENDING

www.govinfo.gov/content/pkg/FR-1994-04-15/html/94-9214.htm