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Fair Housing Training


Holland, Michigan
June 21, 2017

Laura Arandes
Relman, Dane & Colfax PLLC
1225 19th Street, NW, Suite 600
Washington, DC 20036-2456
(202) 728-1888 tel
larandes@relmanlaw.com



Outline

- What are the Fair Housing laws?
- Who does the Fair Housing Act protect?
- Who can sue and be sued under the Fair Housing Act?
- Where does the Fair Housing Act apply?
- What conduct does the Fair Housing Act cover?
 - **Detour: Service and Assistance Animals**
- How can you prove a violation?
 - **Detour: Criminal Record Bans**
- What relief is available?
- Other emerging issues



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What are the Fair Housing Laws?

- Fair Housing Act (FHA)
- Civil Rights Acts of 1866 and 1870
- Federal Funding
 - Section 504 of the Rehabilitation Act
 - Title VI of the Civil Rights Act of 1964
 - Architectural Barriers Act of 1968
 - Age Discrimination Act of 1975
 - Title IX of the Education Amendments Act of 1972
- Title II of the Americans with Disabilities Act (public entities)
- Equal Credit Opportunity Act
- State and Local Laws, including:
 - Elliott-Larsen Civil Rights Act!


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Who Does the FHA Protect?

- Prevents discrimination on the basis of
 - **race**
 - **national origin**
 - **sex**
 - **religion**
 - **disability**
 - **family status***



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Additional Protected Classes

- Under the Elliott-Larsen Civil Rights Act, it is also prohibited to discriminate on the basis of
 - **age**
 - **height**
 - **weight**
 - **marital status**

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Who Can Bring an FHA Claim?

- Any person who is "aggrieved" by a discriminatory housing practice

<ul style="list-style-type: none"> ▪ Applicants ▪ Residents ▪ Whites ▪ Neighborhood Residents ▪ Neighborhood Organizations ▪ Fair Housing Agencies 	<ul style="list-style-type: none"> ▪ Visitors ▪ Resident Managers who hear discriminatory statements or are asked to discriminate ▪ Testers ▪ Cities
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Who Can an FHA Claim Be Brought Against?

- Any person or entity who engages in, directs, or is responsible for a discriminatory housing practice
 - Housing Providers
 - Lender
 - Municipalities (and related instrumentalities)
 - Realtors/ Brokers/ Agents
 - City Council
 - Insurance Companies
 - Homeowner's Association
 - Advertisers
 - Condominium Association
 - Secondary Financial Market
 - Neighbors


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Where Does the FHA Apply?


- Applies to "**dwelling**s": "any building, structure, or any portion thereof which is occupied as, or designed or intended for occupancy as a residence" by any individual or family
 - Look at:
 - Whether the property is intended or designed for occupants who intend to remain for any significant period of time
 - Would those occupants view the property as a place to return to during that period

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What Conduct is Covered?

- **Refusal** to rent or sell
 - Failure to accept or consider an offer
 - Refusing to sell or negotiate
 - Imposing different sales or rental prices
 - Using different qualification criteria or applications
- Offering **differing** terms and conditions or privileges
 - Using different leasing or contract provisions
 - Failing or delaying to make repairs or maintain property
 - Failing to process an offer or order
 - Limiting the use of services or facilities or privileges


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What Conduct is Covered?

- **Steering**: Discouraging someone from inspecting, purchasing, or renting a dwelling. This could include:
 - exaggerating drawbacks or not informing someone of desirable features of a dwelling, neighborhood, or community
 - telling someone they're not compatible with existing residents
 - assigning someone to a particular section or floor
- **Advertising**: Making, printing, or publishing any notice, statement, or advertisement which indicates preference, limitation, or discrimination (written or oral)


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What Conduct is Covered?

- **Zoning and Land-Use Issues**: Passing overly-restrictive or discriminatory codes
 - Spatial requirements
 - Definitions of "family"
 - Certification or hearing requirements
 - Neighbor notification requirements
 - Health and safety rules
 - Restrictive covenants
 - Special use permits

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Buckeye Community Hope Foundation v. Village of Tinley Park

- Buckeye Community Hope Foundation, an affordable housing developer, wanted to build The Reserve, a 47-unit apartment development in the Village of Tinley Park
- Village planning staff approved
- A local news report was published stating that the development would serve low-income tenants
- Tinley Park residents launched an opposition campaign

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Buckeye Community Hope Foundation v. Village of Tinley Park

- The planning commission tabled the vote
- Seven of the nine commissioners resigned, and the Village suspended the Village's planning director



- Case filed in April 2016 in Chicago
- Settled in April 2017 for 2.45 million

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What Conduct is Covered?

- Discrimination in real-estate related transactions, including loans or financial assistance for purchasing, improving, maintaining, or constructing a dwelling



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What Conduct is Covered?

- Three Special Types of Discrimination on the Basis of **Disability**:
 - Failure to Provide a Reasonable Modification
 - Failure to Provide a Reasonable Accommodation
 - Failure to Design and Construct New Multifamily Dwellings to Be Accessible to People With Disabilities


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What is a Disability?

An individual with a "disability" is defined as someone who has "a physical or mental impairment which substantially limits one or more of such person's major life activities, a record of having such an impairment, [or is] being regarded as having such an impairment."



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Reasonable Modifications

- Structural change made to existing premises (at resident's cost*)



*Unless the housing provider received federal funds and is subject to Section 504

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Elements

- The complainant, or a person associated with the complainant, has a disability
- The respondent knew or should have known that the person was disabled
- The complainant requested a structural modification (at own expense)
 - Respondent can request an oral or written description of the requested modification
- Modification is necessary to afford the complainant an equal opportunity to use and enjoy the dwelling
- The respondent denied or conditioned the modification

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Defenses

- Counter any specific element.
- Defense if modification will not be performed in a "workmanlike" fashion
- Defense if relevant, all applicable permits cannot be obtained



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Restoration?

- Only have to restore modification in market rate housing (Section 504 does not require or authorize restoration)
- Only applies to modifications to the interior of a unit
- Landlord may condition approval on an agreement to restore the unit to its original condition
- Landlord may require payment into escrow of a fee for restoration

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Reasonable Accommodations

- Change, exception, or adjustment to rule, policy, or practice (any cost paid by management)





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Elements

- The complainant, or a person associated with the complainant, has a disability
- The respondent knew or should have known that the person was disabled
- The complainant needs a reasonable accommodation in order to use and enjoy the housing
- The respondent knew of the need for the accommodation
- The accommodation was denied, or delayed unreasonably, or conditioned by payment of a fee or other requirement


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Defenses

- Counter any specific element
- Show that:
 - requested accommodation presents an undue financial and administrative hardship
 - accommodation amounts to a fundamental alteration of the program
- **BUT** these two defenses only apply if housing provider responds to request identifying which of these defenses applies, and engages in an “interactive process” to examine other accommodations that may not be so burdensome


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The Key is Reasonableness

- Those seeking an accommodation/modification:
 - Helpful to make in writing
 - Check to see if provider has preference regarding manner in which request is made
 - Be prepared to explain nexus between disability and request

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The Key is Reasonableness

- Those responding to a request:
 - Respect privacy
 - Only information needed is to verify that individual has disability, and that modification or accommodation is needed for that disability
 - Any information gathered must be kept confidential
 - Respond in a timely manner with an “interactive process”
 - Not enough to put someone on a list for an accessible unit!
 - Often those lists are very long
 - May not responsive to the request/need

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Assistance Animals

- Under the FHA, people can request reasonable accommodations for any animal, including an emotional support animal





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Types of Assistance Animals

- **Service Animals (dogs)**
 - Under the ADA, only dogs are recognized
 - They are individually trained to perform specific tasks for a person with a disability
 - They are guaranteed access to public spaces
- **Emotional Support Animals**
 - Any animal
 - Do not need to be individually trained or certified or perform specific physical tasks
 - No public access rights


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How to Respond?

- Same as any other reasonable accommodation request!
- Can consider:
 - Does the person seeking to use and live with the animal have a disability?
 - Does the person making the request have a disability-related need for an assistance animal
 - *i.e.*, does the animal work, provide assistance, perform tasks or services, or otherwise provide a benefit to the person with a disability?
- Can ask individuals who have disabilities that are not readily apparent to submit reliable documentation of disability and need

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How to Respond?

- Request can be denied if:
 - Either no disability or no disability-related need
 - The animal poses a direct threat to the health and safety of others
 - Breed, size, and weight limitations may not be applied!
 - The animal would cause substantial physical damage to the property of others
- **Can not** require applicants/residents to pay a deposit for an assistance animal (even if other tenants are charged)
 - **But can** require a tenant to cover the costs of repairs for damages caused by the animal

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Assistance Animals

- HUD Notice on Assistive Animals and Reasonable Accommodations
 - http://portal.hud.gov/hudportal/HUD?src=/press/press_releases/media_advisories/2013/HUDNo.13-060A



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Design and Construction

- All buildings designed and constructed for first occupancy after 1991 are supposed to be **accessible to and usable by people with disabilities**
 - Accessible building entrance on an accessible route
 - Accessible common and public use areas
 - Usable doors
 - Accessible route into and through the dwelling unit
 - Light switches, electrical outlets, thermostats and other environmental controls in accessible locations
 - Reinforced walls in bathrooms for installation of grab bars
 - Usable kitchens and bathrooms

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Design and Construction




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Outline

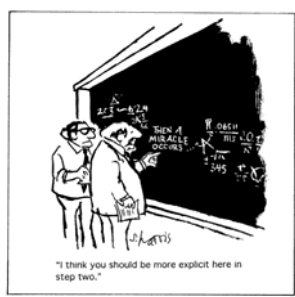
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How Can You Prove a Violation?



"I think you should be more explicit here in step two."

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Intentional Discrimination

- **Intentional Discrimination:** discriminatory treatment on the basis of a protected class
 - Direct Evidence (“Smoking Gun”)
 - Circumstantial Evidence
 - Historical Practices
 - Statistical Evidence
 - Anecdotal Evidence
 - Comparative Evidence
 - Similarly Situated Individuals not in Protected Group
 - Testing

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Disparate Impact

- **Disparate Impact** claim is proven by showing:
 - Facially Neutral Policy, Practice, or Guideline
 - Uniformly Applied
 - Substantially Disparate Impact
 - On Protected Class
- Defendant can rebut that claim by showing:
 - Policy, Practice, or Guideline is Necessary to Conduct Business
 - No Less Restrictive Alternatives Available

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Disparate Impact

- Very controversial for a long time!
- In 2016, Supreme Court upheld application and HUD published final rule
- Has been used in a number of contexts, including:
 - Section 8
 - Income Requirements
 - Credit Requirements
 - Insurance


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Criminal Records Bans

- Housing providers throughout the country have put “bans” in place that prevent anyone with any criminal record from living in their apartment complexes (“blanket ban”)



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Incarceration and Reentry Statistics

- By 2014: 2.3 million people under state or federal detention
- Each year, over 680,000 prisoners are released from prisons
 - Roughly 95% of inmates will eventually be released
- 30% of the U.S. adult population has a criminal record (including arrests and convictions)
- Re-entry population is disproportionately African-American men (incarceration rate almost 7x that of white men)

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HUD Guidance

- EEOC Guidance issued in April 2012.
- In April 2016, HUD finally issued guidance on the issue.
 - For HUD programs
 - PIH Notice 2015-19 November 2, 2015
http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-140
 - FAQs <http://1.usa.gov/1ZRBdf1>
 - For Fair Housing Act <http://1.usa.gov/1TwM6m5>

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Implication of Blanket Ban

- Implication of blanket ban for Fortune's clients:
 - Stanley Richards, Fortune's Senior Vice President, was released from prison over 20 years ago. He has since implemented supportive re-entry programs, and currently oversees Fortune's Housing programs.
 - The Honorable Walter Strauss served two prison sentences, but following his release, he received a bachelor's and a law degree. He became a Manhattan Housing Court Judge.
- Neither of these men would have been eligible for housing at Sandcastle

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Disparate Impact of Sandcastle's Policy

- Taking into account minimum-income requirement, records ban has adverse impact on people of color in NYC
 - 12.2% of African-American men and 18% of Hispanic men who live in the City satisfy Sandcastle's income threshold but are nonetheless disqualified from living there because of the criminal records ban
 - This is in contrast to only 4.1% of white men who live in the City and satisfy the income requirement but are disqualified by the ban

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Intent Inferred from Sandcastle's Policy

- The disparate impact of Sandcastle's blanket ban is so large and foreseeable – and its overbreadth so unnecessary – that Sandcastle's intent to discriminate against African Americans and Hispanics can be inferred
- Sandcastle intentionally implemented the policy for the express purpose of decreasing the number of persons of color at their property


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What Relief is Available?

- Compensatory Damages (no caps)
 - Tangible Economic Losses
 - Intangible Harms
- Punitive Damages (no caps)
- Attorney's Fees
- Litigation Costs/Expenses
- Injunctive Relief
- Affirmative Relief

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1/26/2011



Emerging Issue: Limited-English Proficiency

- Title VI of the 1964 Civil Rights Act covers discrimination against persons who don't read or speak English well.
- There is a sound argument that discrimination that is language-based violates the Fair Housing Act
 - Discrimination based on language spoken or read=national origin discrimination
 - Discrimination based on language has a discriminatory impact based on national origin

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Emerging Issue: Hearing Disabilities



- Access issues for persons who are deaf and hard of hearing
 - Differential treatment in rental
 - Absence of sign language interpreters, *Young v. D.C. Housing Authority* (D.D.C. 2014)

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Emerging Issue: Harassment in Housing

- Cases involving harassment based on sex in housing
 - Hearing officer for a Housing Authority charged for sexually harassing two women who had pending matters before him
 - Two employees of a Section 8 program sexually harassed a number of Section 8 applicants and tenants (\$2.7 million settlement)


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Conclusions

- Fair Housing Laws are implicated whenever you have conduct that implicates the rights of a protected class member related to where they can live or the terms on which they can live somewhere
- The Fair Housing Act is a powerful statute, and it's wise to try to stay ahead of the game!



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Questions?



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