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## Putting Out the Welcome Mat for Seniors: Legal Update

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Fair Housing Center of West Michigan  
April 27, 2017


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## Outline

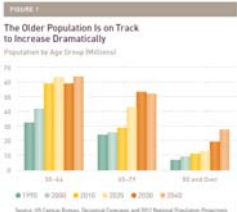
- Preliminary Questions:
  - What are significant issues facing seniors related to housing?
  - What are different types of senior housing?
  - What is the legal framework for fair housing?
- Update on recent fair housing act cases that are related to senior housing and disability issues
- Expanding protections for seniors in novel ways

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## Issues Facing Seniors

1. Senior citizens are becoming an increasingly larger part of the American population, a trend that is expected to continue over the next several decades

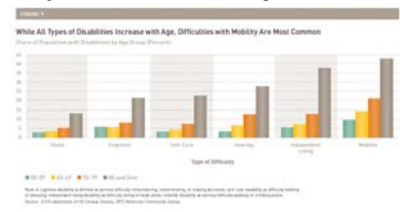


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## Issues Facing Seniors

2. As they age, senior citizens are more likely to develop a disability (nearly 70% of people who reach 65 will ultimately need some form of long term care)




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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.”

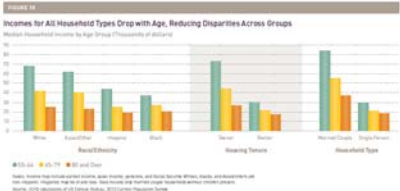


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## Issues Facing Seniors

3. Senior citizens are vulnerable to falling below the poverty line, especially in the wake of the recession (regardless of race, ethnicity, or marital status)



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## Conclusion

Housing for senior citizens needs to be:

- Plentiful
- Accessible
- Affordable

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## Types of Senior Housing

1. Age in Place: traditional rental or ownership
2. Other "Independent Living": provide no special medical or other supportive services
3. Assisted-Living Facilities: provide a variety of health-related and other personal-living services; subject to state licensing requirements; and offer only private (as compared to shared) occupancy units

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## Types of Senior Housing

4. Nursing Homes: provide skilled-nursing care of rehabilitation services for disabled, injured, or sick persons who require full-time medical services
5. Hospitals/Institutional Hospices: state-licensed facilities designed to provide medical care for individuals with acute medical needs

\* Continuing Care Retirement Communities (CCRCs): Offer independent living, assisted-living, and nursing-home care in one location

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## Types of Senior Housing

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## The Fair Housing Act

- 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
  - includes assisted living facilities, retirement communities, senior housing, group homes, nursing homes, residential long-term care, and continuing care retirement communities
  - does not apply to hospitals/hospices (but Title III of the ADA applies there!)

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## The Fair Housing Act

- Prevents discrimination in the sale, rental, and in housing practices, including advertising and statements
- Prevents discrimination on the basis of
  - **race**
  - **national origin**
  - **sex**
  - **religion**
  - **disability**
  - **family status\***

\* specific exemption for senior housing "intended for occupancy by at least one person 55 years of age or older per unit"

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## The Fair Housing Act

- Age is NOT a protected class under federal law.



- But it is a protected class under Michigan law!

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## Discrimination Includes . . .

- discriminatory **treatment** on the basis of a protected class
- any neutral **policy or practice** that has a disparate impact on individuals in a protected class
- discrimination based on disability also includes:
  - Refusing to permit **reasonable physical modifications** of certain premises
  - Refusing to make **reasonable accommodations** in housing rules and policies
  - Failing to include certain accessibility features in the **design and construction** of new multifamily dwellings

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## Discriminatory Treatment


- *Fair Housing Council of Greater San Antonio v. One Towers Park Lane Coop. Co. (W.D. Tex.)*



- CCRCs which include two types of housing
  - Independent living apartments and cottages
  - Assisted living and memory care apartments

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## Different Treatment Based on Disability

- Have a disability?
  - Must provide detailed information about medical conditions before approving applications
  - Have to live in assisted living section of complex
  - Can't eat in communal dining area
  - Must provide proof of insurance for your wheelchair or aids, recommending about \$100,000 in coverage

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## Disparate Impact: 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")
- Crime Free Multi-Housing Program




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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)

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## Disparate Impact

- **HUD Guidance on the Use of Criminal Records**
  - Because African-Americans and Hispanics are arrested, convicted, and incarcerated at rates that are disproportionate to their share of the population, making decisions based on criminal records may have a disparate impact on those groups.

Source: Bureau of Justice Statistics

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## Nursing Home Blanket Bans?

Science of criminality does not support having blanket bans for the elderly

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## Disability Discrimination: Design and Construction

- All buildings designed and constructed 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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## Disability Discrimination 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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### Disability Discrimination Reasonable Accommodations

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




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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
  - 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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### Other Interesting Cases Affecting Senior Housing

- *Independent Living Center of Southern California, et al. v. City of Los Angeles* (C.D. Cal.)
  - Increasing the stock of affordable, accessible housing
- *Saint-Jean, et al. v. Emigrant Mortgage Company, et al.* (E.D.N.Y.)
  - Making sure that vulnerable communities, including seniors, are not targeted with predatory lending products

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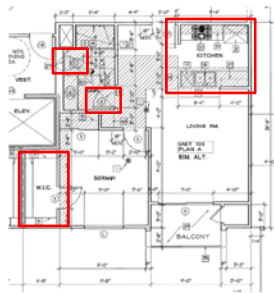
### City of Los Angeles

- City had a redevelopment agency that maintained a “portfolio” of affordable housing developments (a “program” under the ADA)
- The City and the redevelopment agency received financial assistance from Defendants to create and manage the “portfolio” of developments, including federal financial assistance (which triggers Section 504)
- Three organizations who had spent years trying to get the City of Los Angeles to recognize its obligations finally brought suit in 2012

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### Results of Discovery



Randomized plan reviews and randomized site inspections both revealed **100%** failure to comply with relevant federal and state accessibility standards

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**L.A. to spend more than \$200 million to settle suit on housing for disabled**

Los Angeles Mayor Eric Garcetti's budgeted \$200 million to settle a lawsuit filed by the Los Angeles Housing Center (LAHC) over the city's failure to provide accessible housing for disabled residents.

**more than \$200 million**

**4,000 units**

Under a deal approved Tuesday by the City Council, city officials will be required to ensure that accessible to people who use wheelchairs, have hearing impairments or live with other disabilities would result that paid by building additional apartments, redesigning existing ones or demolishing them to be already built on, in fact, accessible.

Michael Allen, a lawyer for three nonprofit groups that sued the city, called the agreement "the largest accessibility settlement ever reached involving affordable housing."

"It will need a strong, positive message to show all over the country that their housing programs need to be accessible," he said.

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## Next Steps?

- Section 504: Follow the money
  - Federal money used for housing?
  - HUD-subsidized housing?
  - \*Section 504 is not triggered by tax-credit funding.
- ADA: housing programs run by public entities
  - Should have policies and procedures in place
    - Prioritization of individuals with disabilities for highly accessible units
    - List of locations of highly accessible units
    - Appoint an ADA coordinator

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## Watching Out for Predatory Lending

- Reverse-redlining mortgage lending discrimination case against Emigrant Bank in New York
- Six Plaintiffs brought claims under the
  - Fair Housing Act (FHA)
  - Equal Credit Opportunities Act (ECOA)
  - Truth In Lending Act (TILA)
  - State and local laws
- Clear example of equity stripping

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## Emigrant's Predatory Scheme

- Refinance mortgage product called STAR NINA (no-income no-asset)
- 2 requirements for getting the loan
  - High equity in the home (usually 50% or more)
    - Because of the length of time it takes to build up this much equity, tended to be older individuals
  - Credit score below 600
- If borrowers missed even a single payment, Emigrant would institute an automatic 18% default interest rate
  - This default interest rate continued to accrue unless the borrower came current on their payments, including all penalties and fees

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## Why is this discriminatory?

- Regression and mapping analysis shows that STAR loans were made disproportionately in minority communities throughout NYC after controlling for relevant STAR program requirements

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## Emigrant's Targeting

- Emigrant marketed this program to African-American and Hispanic borrowers and borrowers living in African-American and Hispanic neighborhoods
- Flyers to brokers target borrowers with "scary credit," credit scores below 500

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**Emigrant Savings Bank Discriminated Against Minorities, Brooklyn Jury Says**

By ALAN FEUER JUNE 27, 2016


A federal jury in Brooklyn found on Monday that the Emigrant Savings Bank had discriminated against eight minority homeowners by purposefully marketing to them subprime mortgages with what were described as predatory interest rates of as much as 18 percent a year.

**Six of the plaintiffs were awarded a total of \$950,000 in damages**

Six of the plaintiffs were awarded a total of \$950,000 in damages in the case. Two others waived their claims after entering into a loan modification agreement with the bank. "Today's verdict was a victory for borrowers seeking redress for Emigrant's discriminatory and predatory lending practices," said Rachel Geballe, a lawyer for Brooklyn Legal Services, which represented the plaintiffs.

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Case 1:15-cv-01212-SJ-PLM Document 118 Filed 06/27/16 Page 3 of 3 PageID #: 20740

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JEAN ROBERT SAINT-JEAN,  
TEDDY SAINT-JEAN,  
FELIX SAINTIL, YANICK SAINTIL,  
RENEEY SMALL, JEANETTE  
SMALL, LINDA COMONDOROSI

FILED  
JUN 27 2016  
BROOKLYN OFFICE

(1) Have Plaintiffs proven by a preponderance of the evidence that Defendant Emigrant Bank violated the federal Fair Housing Act and Equal Credit Opportunity Act?  
Yes MM  
No         

(2) Have Plaintiffs proven by a preponderance of the evidence that Defendant Emigrant Bank violated the New York City Human Rights Law?  
Yes MM  
No         

(3) Have Plaintiffs proven by a preponderance of the evidence that Defendant Emigrant Mortgage Company violated the federal Fair Housing Act and Equal Credit Opportunity Act?  
Yes MM  
No         

CONTINUE TO THE NEXT PAGE COURT EXHIBIT 3

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**Next Steps**

- How can we build more affordable, accessible housing?
- How can we ensure that our communities are accessible to individuals with disabilities, including seniors with disabilities?
- How can we make sure that neutral policies don't have a disparate impact on protected classes of seniors?



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