



Unit

# 9

## Fair Housing

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### In This Unit

Civil Rights Acts of 1866 and 1968 • Florida Fair Housing Act (Chapter 760, F.S.) • Local fair housing acts

### Learning Objectives

**When you have completed this unit, you will be able to accomplish the following.**

- Discuss the history of the Civil Rights Act of 1866 and the Civil Rights Act of 1968, including the Fair Housing Act.
- List the classes of people who are covered by the Fair Housing Act and describe the practices prohibited by the Fair Housing Act.
- Describe the provisions of the Florida Fair Housing Act and local fair housing acts.

#### **CIVIL RIGHTS ACTS OF 1866 AND 1968**

The Civil Rights Act of 1866 was passed just after the Civil War to prohibit discrimination based on race. For many years, the law was not widely enforced, but in 1968 the U.S. Supreme Court upheld the law in the case of *Jones v. Mayer*. Subsequent court actions requiring compliance with the law have been numerous and successful.

The Civil Rights Act of 1968 included Title VIII: the Fair Housing Act. The act has been amended several times to protect against discrimination in housing, and now covers race, color, religion, sex, national origin, handicap, and familial status (presence of children or pregnant women).

## IN PRACTICE

### Protect yourself and your customers by knowing the law

Your license, self-esteem, and your wallet depend on your following every requirement of the law. It won't help to say you didn't know you couldn't do that, or that you were only trying to help. Be sure to discuss the law with your buyers and sellers, showing them language in the contract. Get your seller's written consent to abide by the law, and walk away from the listing if you become aware of illegal discrimination. Be certain to treat every buyer with equal service; don't require one person to be preapproved before you show a house if you don't have that policy for everyone.

## Who is Covered by the Act?

The law applies to:

- persons who own four or more homes;
- multifamily properties (except properties with fewer than four units, one of which is occupied by the owner);
- residential property when the owner, during the immediate past two-year period, sells two or more houses in which the owner was not a resident; and
- transactions in which a broker is involved.

While it appears that a private owner may, in certain circumstances, discriminate under the 1968 Act, under certain circumstances, the 1866 Act clearly prohibits racial discrimination.

**Race and color.** Real estate advertisements should not indicate the racial makeup of a neighborhood. An ad that says “Excellent area with many Asian families” is a clear violation. Sales associates may never steer buying prospects into a neighborhood based on the buyer's description of racial or ethnic characteristics.

**Religion.** Licensees should not advertise that a home is near St. Thomas Catholic Church or that the neighborhood is within walking distance of Temple Israel Day School. A broker's ad that says “Looking for good Christian family to rent one side of duplex” also violates the law.



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**Sex.** Advertisements for single-family dwellings or apartments may not describe a preference or limitation based on sex. “Single female roommate wanted” is allowed as an exception for shared living advertising. On January 20, 2021, a presidential executive order extended these protections to include sexual orientation and gender identity.

**National origin.** Steering a Cuban family into a neighborhood because they want to live in a Spanish-speaking area is a violation. Advertising for “English-speaking tenant only” is a limitation and is illegal.

**Handicap.** Licensees who advertise “not wheelchair accessible” violate the law. However, it is acceptable to advertise that a residence is “handicapped accessible” or that it has a “wheelchair ramp for accessibility.”

**Familial status.** Families with children or pregnant women are protected under the law. Advertisements that limit the number or ages of children violate the law. Rental agents often ask whether they must accept college students as tenants. The answer is no—college students are not a protected class.

## Prohibited Actions

The following actions by covered owners or brokers are specifically prohibited if they discriminate against a protected person (see Figure 9.1):

- *Steering* by using language in real estate ads or in showing properties in such a way that homebuyers are either encouraged or discouraged from certain neighborhoods based on the racial or ethnic character of the neighborhood
- *Blockbusting* a neighborhood by attempting to frighten a homeowner into selling by spreading information that persons who have different racial or ethnic characteristics are moving into the neighborhood
- *Redlining* by lenders who have different conditions and terms for loans made in certain areas
- *Refusing* to rent to, sell to, or negotiate with a party
- *Quoting* different terms or conditions for buying or renting
- *Making* a false statement about the availability of housing
- *Denying* membership in any real estate service
- *Making* discriminatory statements about the availability of housing

**FIGURE 9.1 ■ Fair Housing Act Restrictions**

Prohibited Action	Example of Violation
Refusing to sell, rent, or negotiate the sale or rental of housing	John is the property manager of an apartment building with 125 units. When a minority family asks to look at some of the apartments, he tells them to go away.
Changing the terms or conditions or services for different individuals as a method of screening	Linda is the owner of a 20-unit apartment building. She is very religious, and when a non-Christian family asks to look at a \$300 apartment, she tells them that the \$300 price is a discount for Christians and their rent would be \$340.
Advertising any discriminatory preference or limitation in housing or making any inquiry or reference that is discriminatory in nature	Broker Bill places the following advertisement in the <i>Miami Herald</i> : "Just listed! Beautiful 3-bedroom home with Spanish barrel-tile roof. Perfect for Cuban families!" Developer Jean has an ad that says: "Be a happy homeowner in Bellair Gardens." The ad has a photo of several African-American families.
Falsely representing that a property is not for sale or rent	Mildred, a person with disabilities, looks at a single-family home and is told that the home is no longer available. The next day, Mildred sees the home advertised and a "for rent" sign in front of the house.
Profiting by inducing property owners to sell or rent based on the prospective entry into the neighborhood of persons of a protected class	Sales Associate Josie sends a newsletter to homeowners in a predominantly white neighborhood. The newsletter features Josie's real estate achievements and a request to call her to list property. On the cover of the newsletter is a photo showing several racial minorities. The title of the newsletter is "The Changing Face of Sunland Station."
Altering the terms or conditions of a home loan or denying a loan, as a means of discrimination	A lender requires that Mary, a divorced mother of three children, pay for a credit report and have her father cosign her application. A male friend who worked with her and had lower income than she did and also poor credit told her that he was not required to do either of those things.
Denying membership or participation in a multiple listing service, a real estate organization, or another facility related to the sale or rental of housing as a means of discrimination	The Orange County Realty Council meets weekly to market available properties. The Council has restricted membership to Caucasian males, rejecting applications from women and African Americans.



**Steering.** One of the most common violations involves steering. Some licensees who never intended to discriminate are guilty of steering, but at the end of the day the result is the same, regardless of intent. For example, if a buyer is shown homes in neighborhoods that are predominantly the same as his protected class when other, more diverse neighborhoods have homes that are available, that could be construed as discrimination.

**Testers.** Testers are used to ensure compliance with the law. Typically, two couples will visit the same sales associate in a real estate office at different times. The first will be a minority couple who will ask to see a typical house (three bedrooms, two baths, etc.). The second couple will later visit and describe a similar house. If the houses shown are in different neighborhoods with different racial characteristics, the inference will be that illegal discrimination has occurred. Licensees should be certain that they do not illegally discriminate in the showing process!

### IN PRACTICE

#### Are you unintentionally violating the law?

To avoid a charge of discrimination, monitor yourself. Ask yourself as you set up the list of homes to show, "Would I show the same homes if my prospective buyers were of a different race?" If the answer is "no," you have cause for concern. If a buyer selects the neighborhoods by name, no problem. If you suggest neighborhoods, be sure you are not adding or deleting areas based on racial or ethnic bias.

Licensees should not advertise properties in a minority area in publications aimed at specific minority groups, unless the licensee advertises nonminority properties in the same publication.

### IN PRACTICE

#### Don't engage in discriminatory behavior with a buyer

If a buyer asks you about the ethnic characteristics of a neighborhood, don't get involved in the conversation. This response is likely to keep you out of trouble: "I appreciate having the opportunity to work with you in finding a home. The law and our company's policy do not allow me to show you homes based on the racial, religious, or ethnic characteristics of a neighborhood. So I won't be able to place any such restrictions on showings or information about the availability of homes for sale or for rent."

## Unintentional Discrimination—Disparate Impact

In his Pulitzer Prize-winning book, *Evicted: Poverty and Profit in the American City*,<sup>1</sup> Matt Desmond tells the story of eight families on the edge. These families pay rents that are more than half their wages. Some of the tenants have criminal histories, including drug offenses. A sickness in the family, a cut in working hours, or a dip in the economy may result in eviction. Evictions of families with children are common because of higher expenses.

The eviction itself may make it more difficult for the family to find new housing. Landlords often refuse to rent to applicants who have histories of eviction or who have criminal records. While this practice may not be intentionally discriminatory,

1. Matt Desmond, *Evicted: Poverty and Profit in the American City* (The Crown Publishing Group, 2016).

it may have a discriminatory effect. That discriminatory effect is called *disparate impact* or unintentional discrimination.

The Department of Housing and Urban Development (HUD) has long interpreted the Fair Housing Act to prohibit practices with an unjustified discriminatory effect, regardless of whether there was an intent to discriminate. A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

Ron Hurtibise, a journalist for the South Florida Sun Sentinel, reported that a law firm has recently sued more than 100 Florida landlords for violations of the Fair Housing Act. The plaintiff is the Florida Fair Housing Alliance (FFHA), a for-profit firm run by a convicted felon. The firm hires testers to ask the question, “Do you rent to convicted felons?” According to FFHA, the wrong answer is no. That policy, according to FFHA, creates a disparate impact, violating HUD’s guidance (which is not specifically covered in the law). According to the article, FFHA requests a payment to avoid an expensive trial in federal court. An attorney who represented two landlords said they paid FFHA anywhere from \$2,000 to \$6,500 to settle.<sup>2</sup>

## IN PRACTICE

Landlords who wish to avoid lawsuits should review the eight tenant screening recommendations from the National Association of REALTORS®:

1. Apply your policies and procedures uniformly with every applicant.
2. On rental application forms, avoid specific questions about spouses or children, as well as other protected characteristics under the Fair Housing Act.
3. Use a colorblind screening process completely independent of race, religion, or other potentially discriminatory factors.
4. *Don’t* automatically reject an applicant with a criminal record; instead, you should perform a case-by-case evaluation.
5. Stay abreast of new developments affecting screening.
6. Keep all documentation for up to 10 years, including rental applications, signed releases, tenant screening reports, and any other data or documents collected during the screening process—even if you don’t rent to the applicant.
7. Send a declination letter with all the federally required language when rejecting a potential tenant, specifying the reasons for rejecting a rental application, such as income, employment, or credit history.
8. Find an attorney who can periodically review your rental application form to make sure it complies with the latest antidiscrimination requirements.

2. Ron Hurtibise, “Convicted Felon says he’s fighting unfair housing. Landlords say he’s in it for the money.” South Florida Sun Sentinel, October 1, 2020.

**“Adults only” designations.** “Adults only” designations are prohibited by the familial status provision, with one exception: communities with the status of “housing for older persons.” Requirements for such a community are as follows (either number 1 or number 2, not both):

1. The housing must be specifically designed and operated to assist elderly persons and is intended for, and solely occupied by, persons 62 years of age or older.
2. The housing is intended and operated for occupancy by persons 55 years of age or older who meet the following requirements:
  - At least 80% of the occupied units are occupied by at least one person 55 years of age or older.
  - The facility or community publishes and adheres to policies and procedures that demonstrate its intent to in fact be a provider of housing for older persons.
  - The facility or community complies with rules established by HUD for verification of occupancy.

**Other requirements.** Managers of apartment properties may not assign families with children or any other protected class to segregated areas. Owners may set reasonable rules for maximum occupancy in apartment buildings. Owners and licensees should obtain legal advice before establishing such rules.

**Put up a poster.** Brokers must post the Fair Housing Poster in all offices. Failure to do so shifts the burden of proof in discrimination actions to the broker. It is the broker’s responsibility to provide training and supervision to ensure compliance with the law.

To report violations of the Fair Housing Act, contact:  
 Office of Fair Housing and Equal Opportunity,  
 U.S. Department of Housing and Urban Development (HUD),  
 Room 5204  
 Washington, D.C. 20410-2000  
 Toll-free hotline: 1-800-669-9777  
 TDD: 1-800-927-9275

**Complaint process.** Persons have one year to file a complaint with the U.S. Department of Housing and Urban Development (HUD). The complaint should include:

- the complainant’s name and address,
- the name and address of the person or company that is the subject of the complaint,
- the address or other identification of the housing involved,
- a short description of the facts that caused the complainant to believe the complainant’s rights were violated, and
- the dates of the alleged violation.

HUD will notify the complaining party when it receives the complaint. Normally, HUD also will:

- notify the alleged violator of the complaint and permit the person to submit an answer,
- investigate the complaint and determine whether there is a reasonable cause to believe the Fair Housing Act has been violated, and
- notify the complainant if it cannot complete an investigation within 100 days of receiving the complaint.

For more information, visit the following website:

- HUD’s office of Fair Housing and Equal Opportunity: [http://hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp](http://hud.gov/program_offices/fair_housing_equal_opp)



## FLORIDA FAIR HOUSING ACT (CHAPTER 760, F.S.)

The Florida Fair Housing Act is modeled after the federal Fair Housing Act and prohibits discrimination based on race, color, religion, sex, national origin, familial status, or handicap. The principal reason that Florida has its own fair housing law is that suing in a state court gives victims of discrimination another, perhaps easier, remedy than trying to bring a federal case.

### Discrimination in the Sale or Rental of Housing

Chapter 760.23, F.S., prohibits discrimination against a person protected under this section in the sale or rental of housing. Specifically, the following actions are unlawful:

- To refuse to sell or rent, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling
- To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith
- To publish any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination
- To represent that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available
- To induce or attempt to induce, for profit, any person to sell or rent any dwelling by a representation regarding the entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, handicap, familial status, or religion

## LOCAL FAIR HOUSING ACTS

Many cities and counties in Florida have passed local fair housing acts. These acts mirror the federal Fair Housing Act but cover classes that are not included in the federal or state housing acts, such as age, marital status, and sexual orientation. Licensees must be aware of the requirements of these acts to ensure that they are in compliance.

### Practice Questions

1. A community can qualify for the status of "housing for older persons" if the property is specifically designed and operated to assist elderly persons and is intended for, and solely occupied by, persons 62 years of age or older.
  - a. True
  - b. False
2. A landlord of an apartment complex may not refuse to rent to a family because the family has children.
  - a. True
  - b. False

## Case Study

### AN OWNER DISCRIMINATES BASED ON RACE

● **Facts:** The complainant, a black man, saw a house with a For Rent sign. He asked the two women on the porch if the house was still for rent. The older white female introduced herself as the owner and said it was not yet rented, but the lady she was with had first choice. The complainant left.

Later the complainant spoke to his supervisor at work, a white female, who offered to call the respondent. First the complainant called, got her voice mail, and left a message. His supervisor called immediately afterward and started to leave a message, but was interrupted when the respondent answered the phone. The complainant's supervisor told the respondent she was inquiring about the rental for a friend.

The respondent asked, "What color is he, black or white?" The supervisor responded that it was illegal to ask such a question. The respondent stated that she did not want a black person renting the house.

Finally, the respondent agreed to talk with the complainant by phone, and the supervisor listened in on an extension. The respondent then asked a long series of questions, including who the complainant intended to vote for in the upcoming presidential election. After many requests, the respondent agreed to show the property the next day at 5 pm.

The complainant met the respondent, who said she required a down payment that included the application fee in cash, but refused to give a receipt. The complainant said he needed a receipt, but the respondent said he would have to have more trust. The respondent also stated that she would need \$35 for an extensive background check and could find out information that "only the FBI would have."

● **Practice Questions:**

3. What is the violation here, if any?
  - a. There has been no clear violation of the law.
  - b. The respondent violated the law by discriminating based on race.
  - c. The respondent is technically guilty of a minor infraction.
  - d. The supervisor should be disciplined for listening to a phone call without making all parties aware.
4. What is the MOST likely determination by the federal administrative law judge?
  - a. To award damages and fine the respondent for the violation
  - b. To revoke the real estate license of the respondent
  - c. To dismiss the case with prejudice
  - d. To suspend the real estate license of the respondent

● **What Really Happened?** The administrative law judge found that the respondent had violated the Fair Housing Act, discriminating based on race. The administrative law judge (ALJ) awarded the complainant damages including compensation for damages sustained and for emotional distress, embarrassment, humiliation, inconvenience, and the loss of housing opportunity. The ALJ also awarded a civil penalty in the amount of \$11,000 against the respondent.