

Fair Housing & State Courts:

An Overview for State Court Judges & Staff

Fair Housing Overview

The Fair Housing Act is a federal law that prohibits discrimination in housing and residential real estate-related transactions, including renting or buying a home or applying for a mortgage. It covers most housing in the United States, whether private, public, or subsidized.

Check with your state/local fair housing organizations (see below), and list any additional protections that apply here:

The Fair Housing Act prohibits discrimination because of:

- Race
- Religion
- Disability
- Color
- National Origin
- Sex (including sexual orientation and gender identify)
- Familial Status (including minor children, pregnancy, and legal custody)

Fair Housing Violations

Some examples of actions that may violate the Fair Housing Act when taken because of race, color, religion, sex, familial status, national origin, or disability are:

- **Refusal to rent or sell, or otherwise making housing unavailable:** Refusing to rent a property or consider an application to rent or buy, or evicting a tenant.
- **Discriminatory terms or conditions of housing:** Imposing different conditions, restrictions, privileges, or fees, or providing different services or facilities connected with housing.
- **Discriminatory statements or advertisements:** Making or publishing statements with respect to housing that indicate a preference, limitation, or discrimination.
- **Interference:** Interfering with, or retaliating on account of a person's exercise or enjoyment of fair housing rights, including filing a fair housing complaint.
- **Harassment, including sexual harassment:** Creating a hostile housing environment through severe or pervasive harassment, or conditioning housing-related decisions on submission to, or rejection of, sexual advances.

Fair Housing as a Defense to Eviction

A variety of fair housing issues may arise in the eviction context. For example, the Fair Housing Act prohibits housing providers from evicting a tenant because the tenant had a baby, requested a reasonable accommodation (see *Fair Housing & Disability*), or refused the landlord's sexual advances. A tenant alleging a violation of fair housing rights may be able to:

- (1) assert an affirmative defense or file a counterclaim in an eviction case in state court;
- (2) file an administrative complaint with HUD or a state or local fair housing agency; and/or
- (3) file a civil action in state or federal court.

Fair Housing & Disability

The Fair Housing Act prohibits housing-related discrimination because of disability. Under the Fair Housing Act, a person with a disability includes anyone who has, has a record of having, or is regarded as having a physical or mental impairment that substantially limits one or more major life activities. While many disabilities are readily observable, others are not obvious. The Fair Housing Act requires housing providers to make reasonable accommodations and to allow reasonable modifications that may be necessary to afford a person with a disability an equal opportunity to use and enjoy the housing, including public and common use spaces.

- **Reasonable Accommodation:** A change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a property. The housing provider is generally responsible for any costs associated with the accommodation.
- **Reasonable Modification:** A structural change made to a property that may be necessary to afford a person with a disability full enjoyment of the premises. The tenant is generally responsible for the cost of the modification and must get prior approval from the housing provider.

Refusing to grant a reasonable accommodation or modification, or retaliating against (or evicting) a tenant because the tenant has requested one, violate the Fair Housing Act.

Fair Housing Enforcement

Remedies: Depending on the forum, available remedies for Fair Housing Act violations may include actual damages, punitive damages, attorney's fees, injunctive or equitable relief, and civil penalties.

Administrative Complaints: Administrative complaints under the Fair Housing Act may be filed with HUD or with a state or local agency certified through HUD's [Fair Housing Assistance Program \(FHAP\)](#).

- **HUD:** 800-669-9777
www.hud.gov/fairhousing/fileacomplaint

- **State/Local Fair Housing Agencies:**

State/Federal Court Actions: Civil Fair Housing Act complaints may be filed in state or federal court. A plaintiff does not need to file an administrative complaint first.

State/Local Fair Housing Organizations: State or local organizations participating in HUD's [Fair Housing Initiatives Program \(FHIP\)](#) can assist people who experience housing discrimination. They may help resolve issues, conduct investigations/testing, or provide information and training.

Additional Fair Housing Resources

- Department of Housing & Urban Development: www.hud.gov/fairhousing
- Department of Justice: www.justice.gov/crt/housing-and-civil-enforcement-section
- National Center for State Courts: ncsc.org/eviction

