Walking a Tight Rope: Harmonizing Code Enforcement and the Fair Housing Act

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Fair Housing Act

- Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601, *et seq*).
  - Passed by Congress – April 10, 1968
  - Signed by President Johnson – April 11, 1968
  - Amended in 1974 and 1988.
  - Prohibits discrimination in the sale or rental of housing
  - Purpose is to provide, within constitutional limitations, for fair housing throughout the United States.

It is unlawful to

- Refuse to rent or sell or to otherwise make unavailable.
- Impose discriminatory terms/conditions/privileges of sale or rental of a dwelling, or in the provision of services.
- Misrepresent that a dwelling is not available for inspection, sale, or rental when the dwelling is in fact so available.
- Impose discriminatory terms in real estate-related transactions.

It is also unlawful to

- Induce a person to sell/rent because of the types of individuals that may enter the neighborhood.
  - “Blockbusting”
- Make, print, or publish (or cause to be made, printed, or published)
  - a notice, statement, or advertisement that
  - indicates any preference, limitation, or discrimination
  - based on race, color, national origin, religion, sex, familial status, or disability.

Protected Classes

- Race
- Color: skin tone or color
- National Origin: country of birth or country of ancestors
- Familial Status: one or more individuals under the age of 18 living with a parent or guardian
  - Also includes someone who is pregnant or about to obtain custody of a minor

Protected Classes

- Religion
- Sex
- Disability: a physical or mental impairment which substantially limits one or more major life activities
  - Includes being regarded as having a disability and non-disabled persons who are associated with a disabled individual.
  - Note: individuals recovering from addiction are considered disabled under the FHA.

Prohibitions Specific to the Disabled

- Refuse to grant a reasonable accommodation.
  - Change or exception to a rule or policy
  - Only unreasonable if the change/exception
    - Creates an undue financial/administrative burden OR
    - Fundamentally alters the nature of the provider's operations.
- Refuse to grant a reasonable modification.
  - Modification of the dwelling paid for by the occupant.
- Fail to comply with certain design and construction requirements.
  - Multifamily dwellings first occupied after March 1991

Retaliation (Civil Liability)

- Prohibits coercion, intimidation, threats, or interference against
  - any person that exercises or enjoys their rights under the FHA or
  - an individual that aids or encourages another to exercise or enjoy his or her rights under the FHA.
- Elements:
  - complainant engaged in protected activity;
  - respondent subjected complainant to an adverse action; and
  - there is a causal link exists between the protected activity and the adverse action.
- Walker v. City of Lakewood, 272 F.3d 1114 (9th Cir. 2001).

Theories of Discrimination

- Intentional Discrimination
- Discriminatory Impact
  - Inclusive Communities Project, Inc. v. Texas Dept. of Housing and Community Affairs, 135 S.Ct. 2507 (2015).
  - Gallagher v. Magner, 619 F.3d 823 (8th Cir. 2010).
- Failure to Reasonably Accommodate

Enforcement

- HUD is the enforcement agency
  - Administrative enforcement – must file complaint within 1 year
- Litigation by the Department of Justice
- Private cause of action – must file lawsuit within 2 years (the administrative process tolls the 2 year time period).
- Penalties
  - Actual and punitive damages
  - Injunctive relief
  - Litigation: Court may allow the prevailing party, other than the federal government, reasonable attorney's fees and costs
  - DOJ litigation: Civil penalties.

Allegations Against a City

- Discriminatory practices, policies, or regulations.
- Fail to make a reasonable accommodation.
- Aggressive/Selective code enforcement.

Cases – Appellate

- City of Edmonds v. Oxford House, 514 U.S. 725 (1995).
  - Applicability of FHA to zoning regulations.
- Groome Resources Ltd., L.L.C. v. Parish of Jefferson, 234 F.3d 192 (5th Cir. 2000)
  - Reasonable Accommodation
- Howard v. City of Beavercreek, 276 F.3d 802 (6th Cir. 2002).
  - Reasonable Accommodation
- Tsombanidis v. West Haven Fire Department, 352 F.3rd 565 (2nd Cir. 2003).
  - Intentional Discrimination
  - Reasonable Accommodation

Cases – Appellate

- McGary v. City of Portland, 386 F.3d 1259 (9th Cir. 2004).
  - Reasonable Accommodation
- Cox v. City of Dallas, 430 F.3d 734 (5th Cir. 2005).
  - Intentional Discrimination
- Schwarz v. City of Treasure Island, 544 F.3d. 1201 (11th Cir. 2008).
  - Reasonable Accommodation
- City of Fort Lauderdale v. Scott, 551 Fed.Appx. 972 (11th Cir. 2014).
  - Intentional Discrimination
  - Discriminatory Impact

Cases – District Court

- United States v. Village of Marshall, 787 F.Supp. 872 (W.D. Wisconsin 1991).
  - Reasonable Accommodation
- Trovato v. City of Manchester, 992 F.Supp. 493 (D. New Hampshire 1997).
  - Reasonable Accommodation
- Community Housing Trust v. Dept. of Consumer and Regulatory Affairs, 257 F.Supp.2d 208 (D.C. Cir. 2003).
  - Intentional Discrimination

Cases – District Court

- AHF Community Development v. City of Dallas, 633 F.Supp.2d 287 (N.D. Texas 2009).
  - Intentional Discrimination

- Oxford House, Inc. v. City of Baton Rouge, 932 F.Supp.2d 683 (M.D. Louisiana 2013).
  - Reasonable accommodation
  - Intentional discrimination
  - Retaliation