

HOUSING JUSTICE

National Housing Law Project

Newsletter April 2009

Fair Housing Month

The Fair Housing Act, a landmark piece of civil rights legislation, was signed into law on April 11, 1968. To commemorate this bill, April is celebrated as National Fair Housing Month. The current statute makes it illegal to discriminate against people on the basis of race, color, religion, sex, familial status, disability, or national origin in the housing and rental market. In honor of Fair Housing Month, this newsletter will explain how fair housing laws can help ensure housing rights for victims of domestic violence.

Fair Housing Basics

Fair housing laws prohibit discrimination on the basis of membership in a protected group. Federal fair housing law arises out of Title VIII of the Civil Rights Act of 1968 and the Fair Housing Amendments Act – together, these are called the Fair Housing Act (FHA).¹ Specifically, the Fair Housing Act makes it unlawful to discriminate on the basis of race, color, religion, sex, familial status, disability, or national origin.

Prohibited Discrimination

The Fair Housing Act prohibits two types of discrimination: intentional discrimination and disparate impact. A housing provider intentionally discriminates when she treats people differently explicitly because of their membership in the protected group. Disparate impact discrimination occurs when a policy is neutral on its face, but has a disproportionate impact on a protected group.

Intentional discrimination, in the housing context, may exist in many forms. First, communications that indicate a preference as to a protected group are prohibited. Second, refusal to rent or provide a

1. 42 U.S.C. §§ 3601 *et seq.*

housing benefit because of membership in a protected class is prohibited. Third, a housing provider may not discourage access to the unit or housing benefit. This discouragement may include different treatment in the application process, steering to a certain part of the complex or city, and misrepresentations as to availability of a unit. Fourth, a housing provider cannot offer different terms in agreements, rules, or policies.² Finally, a housing provider is prohibited from harassing or evicting tenants because of their membership in a protected class.

Disparate impact discrimination involves any case in which a policy is neutral on its face, but has a disproportionate impact on a protected group. This form of discrimination will be discussed in more detail in the Domestic Violence and Fair Housing portion of this newsletter.

Coverage

The FHA covers all dwellings, with a few exceptions. A dwelling includes any place that a person lives, including public housing, homeless shelters, hotels, nursing homes, and more. The FHA excludes owner-occupied homes, dwellings with four or fewer units, one of which is owner-occupied, single family homes if the owner does not own more than 3 at one time, certain religious housing, certain housing run by private clubs for their members, and certain housing targeted at senior and disabled populations.

In addition to covering a broad group of dwellings, the FHA covers many points of the housing relationship and process. These points include advertising, application, screening, occupancy, and eviction/termination. Thus, the coverage of the FHA is broad, both in the dwellings covered, and the points at which its protections apply.

2 Unless as a reasonable accommodation for a person with a disability.

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Domestic Violence and Fair Housing

Domestic violence survivors who do not live in subsidized housing and therefore are not covered by the Violence Against Women Act (VAWA) may still be protected by fair housing laws. Advocates have used the two theories of fair housing, intentional discrimination and disparate impact, to challenge policies unfair to women who are domestic violence survivors.

“[W]omen are five to eight times more likely than men to be victimized by an intimate partner. . .”

State and Local Fair Housing Law

Advocates should note that state and local fair housing law may provide broader and more comprehensive coverage than the federal fair housing law. Thus, advocates representing survivors should determine if their state or local law does cover domestic violence.

Disparate Impact

Disparate impact theory has been used to challenge policies that have the effect of treating women more harshly. Some cases have challenged “zero tolerance for violence” policies that mandate eviction for entire households when a violent act is committed at the unit. It has been argued that such policies have a disparate impact on women, who constitute the majority of domestic violence victims.

Statistics

In order to make a case that the Fair Housing Act protects survivors of domestic violence, one must establish a clear linkage between the domestic violence and membership in a protected class – sex. To establish the linkage, statistical data is crucial. The data must demonstrate that domestic violence is clearly related to the sex of the survivor.

The following statistics help demonstrate the relationship between domestic violence and a person’s sex, for the purposes of the FHA:

- The U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women. See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner*

Violence, 1993-2001 at 1 (Feb. 2003).

- Although women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women. Greenfield, L.A., et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends*, U.S. Dept. of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).
- Women constitute 78% percent of all stalking victims. Patricia Tjaden & Nancy Thoennes, Nat’l Inst. of Just. & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the National Violence Against Women Survey* at 2 (April 1998).

Disparate Impact Cases

The following are some cases that have been filed on behalf of domestic violence survivors, based on the disparate impact theory of fair housing:

- **Lewis v. N. End Vill. et al.**, 07cv10757 (E.D. Mich. 2008): Plaintiff’s ex-boyfriend kicked in door at her apartment, a low-income housing tax credit property. Although Plaintiff had a restraining order, she was evicted for violating the lease, which stated that she was liable for damage resulting from “lack of proper supervision” of her “guests.” Plaintiff argued that the policy of interpreting the word “guest” to include those who enter a property in violation of a restraining order had a disparate impact on women. Case settled. Settlement and pleadings are available at www.aclu.org/fairhousingforwomen
- **Warren v. Ypsilanti Housing Commission**, 02cv40034 (E.D. Mich. 2002): Plaintiff’s ex-boyfriend assaulted her at her public housing unit. The PHA sought to evict the Plaintiff, citing a “one-strike” rule in its lease permitting it to evict a tenant if there was any violence in the tenant’s apartment. Plaintiff argued that because the majority of domestic violence victims are women, the policy of evicting victims based on violence against them constituted sex discrimination in violation of state and federal fair housing laws. The case settled, and the PHA agreed to end its application of the one-strike rule to domestic violence victims. For pleadings, see www.aclu.org/fairhousingforwomen

aclu.org/fairhousingforwomen

- **Alvera v. Creekside Village Apartments, HUD ALJ No. 10-99-0538-8 (2001) (Oregon):** Management company sought to evict a tenant under a “zero tolerance for violence” policy because her husband had assaulted her. HUD found that policy of evicting innocent victims of domestic violence because of that violence has a disproportionate impact on women, and found reasonable cause to believe that plaintiff had been discriminated against because of her sex. Case documents are available at www.aclu.org/fairhousingforwomen

Disparate Treatment Claims

Claims of intentional sex discrimination (also called disparate treatment) have been raised in cases where housing providers treat female tenants differently from similarly situated male tenants. This theory has also been used to challenge actions that were taken based on gender-based stereotypes about battered women.

The following are some examples of disparate treatment claims:

- **Robinson v. Cincinnati Hous. Auth., 2008 WL 1924255 (S.D. Ohio 2008):** Plaintiff requested a transfer to another public housing unit after she was attacked in her home. The PHA denied her request, stating that its policy did not provide for domestic violence transfers. Plaintiff alleged that by refusing to grant her occupancy rights granted to other tenants based on the acts of her abuser, the PHA intentionally discriminated against her on the basis of sex. The court denied her motion for a temporary restraining order and preliminary injunction, and the case is pending.
- **Blackwell v. H.A. Housing LP, 05cv1255 (D. Colo. 2005):** Project-based Section 8 complex denied Plaintiff’s request to transfer to another unit after she was attacked in her apartment by her ex-boyfriend. Plaintiff alleged intentional and disparate impact discrimination on the basis of sex in violation of state and federal fair housing laws. Case settled, with the defendant agreeing to implement a domestic violence policy. Case documents available at www.legalmomentum.org.
- **Bouley v. Young-Sabourin, 394 F. Supp. 2d 675 (D. Vt. 2005):** Plaintiff was evicted after her husband assaulted her. The landlord stated

that plaintiff did not act like a “real” domestic violence victim, and that plaintiff was likely responsible for the violence. Plaintiff alleged that the landlord evicted her because she was a victim of domestic violence, and that this constituted sex discrimination in violation of the Fair Housing Act. The landlord’s motion for summary judgment was denied, and the case settled. Case documents are available at www.aclu.org/fairhousingforwomen.

Conclusion

For cases where VAWA does not provide protection for the housing rights of survivors, the Fair Housing Act may prohibit discriminatory policies a housing provider has in place.

TRAINING

Housing Rights of Survivors with Disabilities

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THURSDAY MAY 14

1 p.m. to 2:30 p.m. Eastern Standard Time

Register at

<https://www1.gotomeeting.com/register/800574113>

For technical assistance, requests for trainings or materials, or further questions, please contact:

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