

# The Fair Housing Act and Your Coop

Could Your Membership Policies Get You in Trouble?



## Protected Classes

- Federally Protected Classes (others may be protected locally):

**Race, Color, Nationality, Gender, Family Status, Disability, Religion**

- There are some special cases: retirement homes can exclude children, and student housing can be single sex.
- Some states and cities also protect sexual orientation, occupation, gender identity, or other groups.

## A few things first...

- I am not a lawyer.
- You are encouraged to find workshops on the Fair Housing Act in your community
- Fair Housing compliance requires a different way of thinking about membership, but not a loss of community
- Much of our time today will be for Q&A

## What is Discrimination?

- Refuse to rent/sell housing, or to negotiate for housing
- Make housing unavailable or deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting)
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

## Origins of the FHA

- The Fair Housing Act was a major part of the Civil Rights Act of 1968.
- Minorities were excluded from housing, and even liberal neighborhoods would have NIMBY attitudes keeping them segregated.
- Civil rights leaders saw that if homes and neighborhoods remained segregated, minorities would remain oppressed and communities would never really integrate

## What is NOT discrimination?

- Refusing housing to someone who cannot meet legal membership requirements, or uphold their contract
- Evicting a member based on not fulfilling their contract
- Evicting a member for violating agreed upon policies
- Evicting a member who presents a clear threat to themselves or others

## Violations

- Violations can come with actual and punitive damages, paid by the coop or individual directors responsible
- Damages can be financial or related to policy and procedure
- Both membership policies and advertising have to comply with FHA

## Limiting and Discouraging

- You cannot advertise in a way that indicates a limitation or preference based on a protected class.
- You cannot make any statement that indicates a limitation or preference based on a protected class.
- You cannot threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.

## Non-obvious Violations

Refusing housing to someone based on their membership in a protected class is not the only kind of housing discrimination.

- Offering housing on different terms to different people (larger deposits, for example)
- Offering only certain units or rooms to different people
- Using language or imagery in ads or tours that would discourage someone from moving in or applying

## Disabilities and the FHA

- Who counts as having a disability?
  - If you have a physical or mental disability that substantially limits one or more major life activities,
  - Have a record of such a disability or,
  - Are regarded as having such a disability
- Disabilities include:
  - Hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation

## Steering

Steering would mean guiding residents to specific locations based on a protected class, such as:

- Making families with children live in one area
- Forcing disabled persons to live in a certain area
- Only showing certain units to an applicant

## Protections and Accommodations

- You cannot refuse to let members make reasonable modifications to their rooms or common areas, at their own expense, to use the housing.
- You may require the member to agree to restore the property to its original condition when they move
- You may not refuse to make reasonable accommodations in rules, policies, or practices for the disabled person to use the housing.

## Reasonable Accommodation

- Service animals and companion animals are not pets.
- A building with a "no pets" policy must allow a visually impaired tenant to keep a guide dog, and cannot charge a pet deposit.
- A coop that offers members parking should honor a request from a mobility-impaired member for a reserved space near her apartment to assure access.
- However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

## No, really. My coop is exempt, right?

- If your coop is not incorporated,
- If the owner of your home lives there,
- If your coop is fewer than 4 units,
- If your coop never advertises,
- If you do not take public funding or tax status,
- Your coop may fall into an exemption

## Exemptions to FHA

- Exemptions were inserted to get the bill passed, because support for civil rights was soft at the time
- FHA Exemptions:
  - Owner-occupied buildings with less than four units
  - Single Family homes not using a broker or advertising
  - Retirement Communities (can exclude families with children)
  - "Lodging," or temporary housing operated by private clubs which limit occupancy to being a part of membership

## So coops are exempt, right?

- NO! Courts have found that coops are not "private clubs" in the context of FHA
- Coops are permanent, not temporary housing
- Coops are open membership by definition, and not private clubs
- **Even exempt housing cannot use discriminatory advertising or make statements to limit someone moving in**