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Fair Housing, Fair Lending—How Fair Is It?

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It has been 37 years since Congress enacted the Fair Housing Act (Title VIII of the Civil Rights Act of 1968—for a complete copy of the Act and its amendments, see <http://www.usdoj.gov/crt/housing/title8.htm>), which was made to create “the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” Martin takes a look at the Act from a modern perspective to determine how well it has lived up to its name.

By Donald J. Martin, SCRP, RAA, GAA

Fair housing provides the equal opportunity for families or individuals to buy, rent, or reside in any housing for which they qualify financially, in the neighborhood of their choice. Every person has the right to fair housing regardless of race, color, religion, national origin, ancestry, gender, disability, familial status, or any other inherent characteristic.

A disabled person is defined as one who has a physical or mental impairment that substantially limits a major life activity, has a record of such impairment, and is regarded as having such impairment. Denying a disabled person's request for housing because modifications are necessary to provide full enjoyment of housing for the disabled person is unlawful discrimination. It is also unlawful to refuse to make reasonable accommodations, rules, policies, practices, and services for disabled persons. Conformity to accessibility guidelines is required in all construction or renovation of real property, such as a real estate property, occurring after January 1, 1992. Discrimination is prohibited in the sale of rental or real property, advertising for housing leases, subleases, loans, appraisals, insurance, and zoning.

Types of Discrimination

The following outline discrimination as defined by the Fair Housing Act:

- refusal to show, rent, lease, or transfer housing;
- unequal terms, conditions, or privileges imposed in housing;
- unequal services or facilities in housing;
- discriminatory advertising for housing;
- discrimination in housing based on the association of a member of a protected class;
- harassment, intimidation, or interference with anyone exercising fair housing rights;
- denying availability of housing;
- imposing more restrictive occupancy standards than those of local city housing ordinances;
- “block busting,” which is the act of promoting the listing or sale of real estate property in a discriminatory manner, such as inducing residents to sell because of different racial or ethnic groups moving into the area;
- redlining; which according to “Real Estate Appraisal Terminology,” revised edition 1984, Society of Real Estate Appraisers, by Byrl N. Boyce, Ph.D., SRPA, is “the reluctance of lenders, investors, or insurers to make loans, invest, or issue insurance on usual terms in a particular geographic area because of some feature or characteristic in the area which is perceived as adversely affecting the utility or security and hence the value of individual parcels of property in the area.”

An example would be imposing a minimum gross living area as a requirement for a loan, which might be found to be typical in a particular geographic area, but not others, or refusing to lend on homes with only space heaters;

- refusal to make loans or home insurance in an equitable manner in areas with low property value; and
- steering “a prospective renter or buyer away from desired property on the basis of his or her race, color, religion, national origin, ancestry, gender, disability or familial status.”

Ensuring Compliance

While we all have heard about Fair Housing and how to prevent discrimination in each of our respective occupations, it is still worth revisiting to consider whether our practices and policies are compliant. For example, if a temporary housing arrangement is offered to the transferee, are there restrictions on the number of occupants either in the relocation policy or in the temporary housing facility providing the accommodation? Is the restriction more restrictive than that of the local city housing ordinance? While the policy of a restriction on the number of occupants may seem to make good business sense, it may be a violation of both federal and state laws under the Fair Housing Act.

Appraisers must understand what requirements affect them as a result of the Fair Housing Act and how they are restricted. Appraisers are restricted in both the development and reporting of an appraisal in which they must comply with the Fair Housing Act. The Conduct section of the Ethics Rule in the 2005 version of USPAP (Uniform Standards of Professional Appraisal Practice) seeks to guide appraisers in what they should or should not rely on. The Conduct section of the Ethics Rule states, “an appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. An appraiser must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

“An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.”

If You Suspect Discrimination:

Take action if you think you have been discriminated against.

- Complain to the lender. Sometimes you can persuade the lender to reconsider your application.
- Check with your state Attorney General’s office to see if the creditor violated state laws. Many states have their own equal credit opportunity laws.
- Contact a local private fair housing group and report violations to the appropriate government agency. If your mortgage application is denied, the lender must give you the name and address of the agency to contact.
- Consider suing the lender in federal district court. If you win, you can recover your actual damages and be awarded punitive damages if the court finds that the lender’s conduct was willful. You also may recover reasonable lawyers’ fees and court costs. You also might consider joining with others to file a class action suit.

A number of federal agencies share enforcement responsibility for the ECOA and the FHA. Determining which agency to contact depends, in part, on the type of financial institution you dealt with.

For ECOA violations involving mortgage and consumer finance companies:

Federal Trade Commission
Consumer Response Center
Washington, DC 20580
+1 202 326 2222, TDD: +1 866 653 4261

While the FTC generally does not intervene in individual disputes, the information you provide may indicate a pattern of violations requiring action by the Commission.

The Center also can provide you with a copy of Best Sellers, a complete list of FTC consumer and business publications. Or you can visit www.ftc.gov.

For violations of the FHA:

Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban
Development (HUD), Room 5204
Washington, DC 20410-2000
+1 800 424 8590; TDD: +1 800 543 8294

You have one year to file a complaint with HUD, but you should file as soon after the violation as possible. Your complaint to HUD should include:

- your name and address;
- the name and address of the person or company who is the subject of the complaint;

- the address or other identification of the housing involved;
- a short description of the facts that caused you to believe your rights were violated; and
- the dates of the alleged violation.

HUD will notify you when it receives your complaint. Normally, HUD will also:

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

For violations of the ECOA and the FHA:

For nationally-chartered banks:

Comptroller of the Currency
Compliance Management
Mail Stop 7-5
Washington, DC 20219

For state-chartered banks insured by the Federal Deposit Insurance Corporation, but not members of the Federal Reserve System:

Federal Deposit Insurance Corporation
Consumer Affairs Division
Washington, DC 20429

For federally-chartered or federally-insured savings and loans:

Office of Thrift Supervision
Consumer Affairs Program
Washington, DC 20552

For federally-chartered credit unions:

National Credit Union Administration
Consumer Affairs Division
Washington, DC 20456

For state member banks of the Federal Reserve System:

Consumer and Community Affairs
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551

For discrimination complaints against all kinds of creditors:

Department of Justice
Civil Rights Division
Washington, DC 20530

Here are a few sample questions from an ethics class I taught several years ago for students studying to become a licensed appraisers:

1. Which of the following can the appraiser use or rely on when developing an appraisal and considering neighborhood trends?

- Race or color of the residents in a neighborhood.
- Age of the residents in a neighborhood.
- Receipt of Public Assistance Income to residents in a neighborhood.
- Number of homes competing for sale in a neighborhood.

The correct answer is, of course, d. And while most students answered the question correctly, surprisingly, some answered b or c.

2. Which ethics rule requires the appraiser not to use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value?

- Confidentiality
- Conduct

- c. Competency
- d. Departure

You should be becoming a USPAP expert by now, so you already should know that the correct answer is b.

It does not seem too tough to get this right, but for years a major lender had misinterpreted the age requirement, where appraisers cannot discriminate based on the age of the occupants in a home or neighborhood to mean the age of the home. The age of the home is not a protected classification. However, the appraiser must, in relation to the age of the home, consider such things as the condition of the home, effective age of the home, and the effect on highest and best use of the real estate.

The legitimate consideration of age in relation to the home is explained in Standards Rule 1-3 of the 2005 USPAP. Page 19 tells us that an appraiser must “identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends; and develop an opinion of the highest and best use of the real estate. These requirements subject to the departure rule require that an appraiser must avoid making an unsupported assumption or premise about market area trends, effective age, and remaining life. An appraiser must analyze the relevant legal, physical, and economic factors to the extent necessary to support the appraisers highest and best use conclusion(s).”

Further Explanation

While there are various references to Fair Housing considerations in the 2005 edition of USPAP, one of the more helpful references (note that although this is in the USPAP manual, it is considered to be for purposes of advice and is not technically part of USPAP) is an opinion provided by the ASB (Appraisal Standards Board) in Advisory Opinion 16, which is specifically on the subject of Fair Housing Laws and Appraisal Report Content. “Fair housing law(s) preclude the use of certain specific information or supported conclusions related to protected group(s) in some assignments. Accordingly, an appraiser should be knowledgeable about the laws that affect the subject property of an assignment. Laws and public policy on fair lending and fair housing (such as the Fair Housing Act; the Equal Credit Opportunity Act ECOA, and the laws and public policy of applicable federal, state, and local jurisdictions) continue to evolve. Further, appraisers must continue to provide appraisals that do not discriminate or contribute to discrimination. The conduct section of the Ethics Rule states, in part, “an appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.

“In some cases, even supported conclusions in assignments relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or group homogeneity cannot be used because they are precluded by applicable law.”

Real Life

While many different aspects of the fair housing laws have been explored, there are changes being considered and they may be different in certain areas of the United States. For example: the current definition of a family—for housing purposes—is two or more people living together, related by blood, marriage, or adoption. What if the definition of family was to change and meant to apply to any group of people living together? The Fayetteville Housing Authority Board in Fayetteville, AR, is considering just such a change. As recent as February 2005, the board had proposed to expand the definition of a family to include any group of people living together.

In a story from the *Detroit Free Press* from February 23, 2005, the following situation was related: “All Joyce Grad wanted from her Royal Oak cooperative apartment board was a waiver of its no-pet policy so she could buy a dog to help her cope with debilitating depression. What she got instead was a cold rejection. But last week, a federal court jury in Detroit sided with the 55-year-old disabled registered nurse in a decision that could solidify the right of mentally ill people to obtain exceptions to no-pet policies in apartment, condominium, and cooperative housing complexes. The verdict, which awarded \$14,209 in actual damages and \$300,000 in punitive damages to Grad, is believed to be the first federal jury verdict to recognize mental illness as a disability under the federal Fair Housing Act. It also may be the first federal verdict that, in effect, recognizes the contention that dogs are good for one’s mental health.”

Another story, this one from the February 9, 2005 edition of *HUD NEWS*, contained the following: “The U.S. Department of Housing and Urban Development charged Perma-Bilt Corporation, a Nevada-based corporation, and its vice president of sales and marketing, Ruth Ochoa, with violating the Fair Housing Act by discriminating against Terrell and Candra Evans and their children because of the children’s disabilities. HUD’s investigation revealed that the Evans family children suffer from severe respiratory ailments including asthma and are hypersensitive to mold. The

Evans discussed their concerns about their children and mold with a Perma-Bilt sales agent before entering into a purchase agreement for a five-bedroom home to be built in Las Vegas.”

The Evans found what they believed to be a small amount of mold on two studs and wanted it tested during the construction of the home, and wanted it remedied if the mold was discovered to be harmful. The builder refused.

With stories like these coming from around the country, all people involved in the housing industry need to consider the extent to which they make decisions that impact the rights of others in regard to the Fair Housing Act and other laws on the books today.

If, after a review of policies of your organization and the Fair Housing Laws, you still are not sure whether you are in compliance, consider contacting some of the agencies that consider discrimination complaints. The requirements may not seem fair, but fairness is measured relative to the existing laws, although some cases—as illustrated above—may even be an expansion of them.

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