



HARASSMENT, INTIMIDATION, RETALIATION, AND RELATED FORMS OF DISCRIMINATION

January 22, 2016

The Fair Housing Act

- Prohibits any and/or all harassment discrimination based on the seven protected classes
- Applies In virtually all housing-related activities

Regulatory Provisions of the Act – Section 818, 42 U.S.C. 3617

- It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of [any of the protected classes]

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of [any protected classes] persons, or of visitors or associates of such persons.

24 CFR 100.400 (b), (c) (1) and (2)

Regulatory Provisions of the Act, Continued

- It shall be unlawful, because of ...sex...to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.
 - Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors
24 CFR 100.65 (a) (5)

Regulatory Provisions of the Act, Continued

- It shall be unlawful to
 - > Discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of race, color, religion, sex, handicap, familial status, or national origin.
 - > Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin. 24 CFR 100.50(b)(2) and (3)

Basics

- Sexual harassment includes all forms of harassment “because of sex”
- Harassment of women by men, of men by women, by men of men and by women of women
- Includes harassment of a sexual nature related to gender identity (actual or perceived gender-related characteristics)
- Includes harassment of a sexual nature because someone is transgender

Basics

- Someone who is injured because another acquiesced to sexual harassment also has standing.
 - > E.g. someone passed over on the waiting list because someone got admitted earlier because of acquiescence to harassment

Who May Be a Respondent [List Without Limitations]

Duty to obey the law is “non delegable”

- Perpetrator
- Owner/manager
- Employer
- Condominium Association

Adding Complainants

- ◉ Family members (aggrieved persons)
- ◉ Spouse or partner particularly
- ◉ Witnesses who become complainants

Sexual Harassment Claims

- Case law based on Title VII principles
- Two types of claims under existing law
 - > Quid pro quo - involves employee/owner/agent, someone with power over a term or condition of housing
 - > Hostile environment-may involve employee/owner/agent or may involve a neighbor or visitor

Quid Pro Quo, Cont'd

- The housing provider either implicitly or explicitly conditions terms, conditions or privileges of housing on submission to requests for sexual favors
- Elements:
 - > Victim is member of a protected class
 - > Victim was subject to an unwelcome demand or request for sexual favors
 - > The unwelcome demand or request was based on sex/gender
 - > The victim was deprived of a term, condition or privilege of housing

Defense to Quid Pro Quo Form of Harassment

- Housing provider articulates one or more legitimate non discriminatory reasons for adverse effect on housing

REBUTTAL:

There is an opportunity to refute the defense by showing that it is pretextual

Hostile Environment

- A hostile environment is created by unwelcome sexual conduct that is pervasive OR severe
 - > Conduct was unwelcome
 - > Conduct was based on the sex of the complainant/plaintiff
 - > Conduct was sufficiently severe or pervasive to alter the conditions of housing
 - > Landlord knew or should have known of the harassment and failed to take appropriate action

Number of Incidents

- ◎ One or multiple incidents?
 - > Alternative views:
 - The required showing of the severity or seriousness of harassment varies inversely with the pervasiveness or severity of the conduct.
 - A single incident may constitute harassment if sufficient severe
 - But in most cases we consider the totality of the circumstances

Who Are Respondents?

- ⦿ The harasser
 - > Neighbor
 - > Employee
 - > Agent
- ⦿ The corporate entity if the entity knew or should have known of the harassment and failed to take PROMPT AND EFFECTIVE REMEDIAL ACTION

Defenses

- ◉ Defense of the perpetrator
 - > Relative credibility
 - > Witnesses and any independent corroboration
- ◉ Was corporate respondent aware of harassment-when and how
 - > Collect any policies or past responses to other similar complaints or other types of complaints (like reports of crimes) NOTE: even if Respondent never investigates any complaint, they can still be liable here)
 - > What action was taken?
 - > Was it immediate?
 - > Was it effective?

Possible Pitfalls

- ⊙ Practical
 - > Credibility of complainant
 - > Frailty of complainant
 - > Failure of proof in general
 - > Proof that legitimate non discriminatory reasons are pretextual

Damages

- ◉ Compensatory damages for mental distress, embarrassment and humiliation
 - > Damage awards and settlements have been significant
- ◉ Victims funds
- ◉ Punitive damages/civil penalty

Special Issues with HUD-Funded Programs

- Headquarters notifies program areas of charges
- Add case to civil rights threshold list
- Recent notification to a PHA sued by DOJ involving sexual harassment by PIH
- Challenges to certifications of compliance with the Fair Housing Act when case is charged or when DOJ sues
- Potential program sanctions

Case List

- Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986) (employment)
- Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998) (employment)
- Harris v. Forklist Systems, Inc., 510 U.S. 17 (1993) (employment)
- National Railroad Passenger Corp. V. Morgan, (2002) (employment)

Case list, Cont'd

- Shellhammer v. Llewellyn, Fair Housing Fair Lending Rep., para 15742 (W.D. Ohio 1983) aff'd 770 F. 2nd 167 (6th Cir. 1985) (unpublished)
- Dicenso v. Cisneros, 96 F. 3rd 1004 (7th Cir. 1996), review of HUD ALJ decision
- Krueger v. Cuomo, 115 F. 3rd 487 (7th Cir. 1997), review of HUD ALJ decision
- Honce v. Vigil, (1 F.3rd 1085 (10th Cir. 1993)
- Henson v. City of Dundee, 682 F. 2d 897(11th Cir. 1982)

Case List, Cont'd

- Grieger v. Sheets. 689 F. Supp. 835 (N.D. IL 1988)
- New York ex rel. Abrams. V. Merlino, 694 SF. Supp. 1101 (S.D. NY 1988)
- Williams v. Poretzky Mgmt., 995 F. Supp. 490 (D. MD 1996)
- Reeves v. Carrollsburg Condominium Unit Owners Ass'n., 1997 U.S. Dist. LEXIS 21762, No. CIV.A. 96-2495 RMU, 1997 WL 1877201, *7 (Dec. 18, 1997 D.D.C.)
- Rich v. Lubin, 2004 U.S. Dist LEXIS 9091 (S.D. NY 2004)
- Beliveau v. Caras et al., 873 F. Supp. 1393 (C.D. CA 1995)

Case List, Cont'd

- HUD v. Kogut, HUDALJ 09-93-1245-1 (April 17, 1995)
- Beliveau v. Caras, 873 F. Supp. 1393, 1397 (C.D. Cal. 1995)
- Williams v. Poretsky Management, 955 F. Supp. 490 (D. Md. 1996)
- New York ex rel. Abrams v. Merlino, 694 F. Supp 1101 (S.D.N.Y. 1988)