

Diversity in Cooperative Housing  
Presented by Randall A. Pentiuk & Jayson J. Hall  
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“Diversity: We take the good with the bad”

- I. Diversity as a concept is a very broad and sometimes ambiguous topic

- A. Definition of diversity: different; dissimilar; varied
    - 1. There are endless types of diversity
      - a. Racial diversity
      - b. Cultural diversity
      - c. Economic diversity
      - d. Conditional diversity (disabilities, life experiences, etc)
  - B. Is diversity desirable?
    - 1. University of Michigan Law School case: Supreme court said there are benefits to a diverse student body, and for that reason, the University could take race into consideration in the admission process.
- II. Discrimination and Diversity-cation (not really a word, but hey, it rhymes)
- A. It is impossible to discuss diversity in housing without discussing discrimination
    - 1. The Fair Housing Amendment Act (FHAA) is the federal law governing housing discrimination issues.
    - 2. The 7 deadly sins under the FHAA: discrimination (treating people differently) is prohibited if done on the basis of:
      - a. Race
      - b. Color
      - c. Religion
      - d. Sex
      - e. Familial Status (having children, being married)
      - f. National Origin
      - g. Disability
    - 3. It is settled law that the FHAA applies to transactions involving cooperative memberships and cooperative operation.

- B. Under the FHAA, it is unlawful . . .
1. To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
  2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
    - a. Note: cooperatives present more privileges than most housing situations, such as voting rights, and self-governance.
  3. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
  4. To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
  5. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.
  6. The FHAA sets forth specifics for disability issues.
    - a. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of handicap of . . .
      1. That buyer or renter,
      2. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or
      3. Any person associate with that buyer or renter.
    - b. It is also unlawful to discriminate against any person in their terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling,

because of a handicap of . . .

1. That person, or
2. A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or
3. Any person associated with that person

c. With regard to disabilities, “discrimination” includes

1. A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted, and
2. A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

C. The mechanics of a Fair Housing claim

1. Types of claims

- a. Disparate treatment: this is an act which, on its face, treats individuals or groups differently based upon one the protected characteristics (race, color, etc.)
- b. Disparate impact: this is an act which, while neutral on its face, tends to affect persons in protected classes differently.
- c. Sex discrimination claims under the FHAA can be in the form of hostile environment or quid pro quo.
- d. Disability discrimination can also be in the form of a “failure to make a reasonable accommodation” claim.

2. Burden shifting (who has to prove what)

- a. The claimant must first show that the action complained of constitutes disparate treatment, or has a disparate impact.
- b. Burden then shifts to housing provider to establish a justification for the action.
  - 1. The justification must serve, in theory and practice, legitimate, bona fide interest of the housing provider, and the housing provider must show that no alternative course of action could be adopted that would enable that interest to be served with less discriminatory impact.
- c. Burden then shifts back to claimant to show the justification is pretextual.

III. Now that you are armed with basic knowledge of discrimination law, lets explore some examples

A. Group work on diversity fact scenarios, followed by discussion.