**Statutes of Interest**

**Equal Credit Opportunity Act**

The ECOA prohibits discrimination in the lending process based on race, color, religion, national origin, sex, marital status, age, or the receipt of public assistance.

**Americans with Disabilities Act**

While not a housing or credit law, the ADA still has an impact on the real estate industry. The ADA requires reasonable accommodations in employment and access to goods, services, and public buildings.

**Housings for Older Persons Act**

HOPA exempts property designated as housing for older persons from the familial status provisions of the Fair Housing Act. HOPA requires that at least 80 percent of occupied units have one person age 55 or older living there.

**Title VIII of the Civil Rights Act of 1968**

Title VIII of the Civil Rights Act of 1968, which is most commonly referred to as the Fair Housing Act was adopted in 1968. The Fair Housing Act makes certain actions illegal when they are perpetuated against a person who is a member of a ‘protected class’ or has a basis upon which to make a complaint.

The Fair Housing Act as originally adopted had four basis or ‘protected classes’ they were:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Housing and Community Development Act of 1974:** added sex to the list of protected basis.

**Fair Housing Amendments Act of 1988:** added familial status and disability to protected basis.

In its totality, the Fair Housing Act makes it illegal to discriminate on one of those basis in the sale, rental, and financing of dwellings and in other housing related transactions. These seven categories create the basis (or bases) for alleging a violation of the Fair Housing Act. These are also frequently referred to as “protected classes.”

Housing and Urban Development has provided guidance on the enforcement of the Fair Housing Act and the role of the federal government in promoting fair housing. Some rules, regulations and guidance of note is:

2012: *Equal access to housing in HUD programs regardless of sexual orientation or gender identity.* (rule)

2013: *Implementation of the Fair Housing Act’s Discriminatory Effects Standard* (rule)

2016: *Reducing racial disparities in housing opportunities (*guidance)

2016: *Limited English Proficiency* (guidance)

2020: FHEO 2020-01 on Support Animals (guidance)

2021: *Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies (issued by President Biden)*

The **National Association of REALTORS® Code of Ethics** provides in Article 10:

*REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.* (Amended 1/14)

**What does the Fair Housing Act do?**

Under the Fair Housing Act, it is against the law to:

• Refuse to rent or sell housing

• Refuse to negotiate for housing

• Make housing unavailable or deny that housing is available

• Set different terms, conditions or privileges for the sale or rental of housing

• Advertise in a discriminatory way

• Blockbust — persuade owners to sell or rent by telling them that minority groups are moving into the neighborhood

• Deny or make different terms or conditions for a mortgage, home loan, home insurance, or other real estate related transaction

• Threaten, coerce or intimidate anyone exercising a fair housing right or assisting others in exercising those rights

What housing is covered?

All single family homes are covered by the act when they are owned by private persons and a real estate broker is used, and all single family homes owned by corporations or partnerships regardless of whether a broker is used. All multifamily dwellings are covered by the Act, including townhouse and condominium communities.

**Exemptions**

“**Mrs. Murphy Exemption**” If the dwelling has four or less units and the owner lives in one of the units, the transaction is exempt from the Fair Housing Act. If a real estate agent is sued, the exemption does not exist. The Civil Rights Act of 1866 makes it illegal to discriminate based on race and would apply to the transaction.

The second exemption is for **qualified senior housing** which is exempt only from the Familial Status provision of the act. To be a qualified senior community, the community must meet the following standards: Either 100% of the community is 62 or older, or 80% of the households have at least one resident 55 or older.

**Religious organizations and private clubs** also have an exemption.

None of this housing is exempt from section 804(c) of the Fair Housing Act which states that you cannot make, print or publish a discriminatory statement. Any exempt housing that violates 804(c) has lost that exemption and can be held liable under the act.

**Refusal**

*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.*

What constitutes refusal?

What is a dwelling under the Fair Housing Act?

Do you believe a peer-to-peer or short term rental arrangement would be considered a dwelling and covered under the Fair Housing Act?

**Terms**

“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”

What type of situation arises to a violation of this section?

**Advertising**

*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.*

[**https://www.hud.gov/sites/dfiles/Main/documents/HUD\_v\_Facebook.pdf**](https://www.hud.gov/sites/dfiles/Main/documents/HUD_v_Facebook.pdf)

What constitutes advertising?

What types of words and phrases should be avoided in advertising?

How do I assist my client in avoiding discriminatory advertising in their use of social media during the process of selling their home?

**Availability**

*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 unit is in fact so available*.

Does your office have a policy on how “no-show” status is relayed to customers?

Do you have a “Miss America” response ready for questions concerning writing love letters or the like?

**Reasonable Accommodations and Reasonable Modifications**

What is the difference between a reasonable accommodation and a reasonable modification?

Who is responsible for the financial costs associated with accommodations and modifications?

[**https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf**](https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf)