

FAIR HOUSING AND AFFIRMATIVELY FURTHERING FAIR HOUSING

Presented by
Fair Housing
of Marin

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AGENDA

- **History of Social Engineering/Segregation**
- **Federal & State Fair Housing Laws**
- **The Duty to AFFH and HUD's new rule**
- **Administrative Complaints & Lawsuits**

FAIR HOUSING OF MARIN

- Mission Statement: To ensure equal housing opportunity and to educate the community on the value of diversity in our neighborhoods

FAIR HOUSING OF MARIN

■ Services:

■ *For individuals:*

- Information & education
- Intake, counseling, investigation & referral of discrimination complaints
- Foreclosure prevention counseling

■ *For the housing industry:*

- Information & education, including specialized training

■ *For the community:*

- Educational human rights programs, including Storyteller program & poster contest
- Systemic audits to determine compliance with fair housing laws
- Advocacy for integrated, accessible, and affordable housing for all

SOCIAL ENGINEERING AND SEGREGATION

- FDR – Under New Deal, federal government started subsidizing Whites to move into suburbs.
- Levittown, New York – homes sold to Whites for \$8K (\$125K today), while the AAs stayed in the apartments in inner city; 50 years later, homes selling for \$500,000;
- no longer accessible for working class families
- FHA passed in 1968 gave AAs right to buy into Levittown, but no economic means to do so
- White families gained equity appreciation \$350 - \$400K: used it send kids to college, bequeathed to children/grandchildren
- Today nationwide AA family wealth 5% of White family wealth
- Difference entirely attributable to federal housing policy to suburbanize Whites/ keep AAs in central cities

SOCIAL ENGINEERING AND SEGREGATION

- From 1930s through 1960s, people of color denied access to low-cost affordable home loans
- Banks and insurance companies continued policies of “redlining” neighborhoods of color, effectively denying loans or insurance for homes in those neighborhoods
- Prior to the economic recession of 2008, mortgage lenders targeted communities of color with unaffordable subprime loans (“reverse redlining”). Mortgage crisis impacted communities of color most – homes foreclosed upon, credit scores ruined, families displaced, borrowers lost down payment and equity.
- 2008-present: communities of color impacted further through bank failure to maintain and market bank-owned properties.

SOCIAL ENGINEERING AND SEGREGATION

- Marin County's history:
- Significant number of African-Americans moved with others to the area during WWII to work in the shipyards
- After WWII, whites moved to other areas but African-Americans were not able to do so because of *restrictive covenants* which kept African-Americans segregated in Marin City.
- Patterns of segregation exist today.

WHAT IS FAIR HOUSING?

- The ability of people of similar income levels to have available to them the same housing choices, regardless of personal characteristics such as race or national origin.

MOST COMMON TYPES OF DISCRIMINATION

- **Statistics from the U.S. Department of Housing & Urban Development (HUD):**
 - **53% Disability**
 - **28% Race**
 - **14% Familial Status**
 - **12% National Origin**
 - **12% Sex (Gender/Gender Identity)**

FEDERAL FAIR HOUSING LAWS

- **Civil Rights Act of 1866**
- **Fair Housing Act & Fair Housing Amendments Act (“FHA”)**
- **Section 504 of the Rehabilitation Act of 1973 (“Section 504”)**
- **Title II and III of the Americans with Disabilities Act (“ADA”)**

CALIFORNIA STATE FAIR HOUSING LAWS

- California Fair Employment & Housing Act (FEHA)
- Unruh Act

CIVIL RIGHTS ACT OF 1866

- “All citizens shall have the same rights as white citizens to purchase, lease, or sell real property”
- Originally applied to race discrimination, courts subsequently included national origin
- No exemptions
- Enforcement by private lawsuit in federal court
- 3 year Statute of Limitations

See 42 U.S.C. §§ 1981-1982.

FAIR HOUSING ACT

- Title VIII of the Civil Rights Act of 1968, commonly known as the Fair Housing Act. 42 U.S.C. §§ 3601-3620, 24 CFR Part 100
- Prohibits discrimination in the sale, rental, or financing of housing based on:
 - Race
 - Color
 - National Origin
 - Religion
 - Sex/Gender

FAIR HOUSING AMENDMENTS ACT

- FHA amended in 1988 to add prohibitions against discrimination based on:
 - **Familial Status**
 - Presence of minor children in the home
 - Includes protections for pregnant women, foster families, and grandparents
 - **Disability**
 - Includes mental and physical disabilities

CALIFORNIA FAIR HOUSING LAWS

Federal Fair Housing Act Protected Classes:	California Fair Employment & Housing Act Adds:
Race	Marital Status
Color	Sexual Orientation
Religion	Ancestry
National Origin	Source of Income
Sex	Gender Identity/Expression
Familial Status	
Disability	<i>Unruh Act: Arbitrary Characteristics (Age, Occupation, Etc.)</i>

TYPES OF HOUSING COVERED

- Dwelling unit: *occupied or designed as a residence. See 42 U.S.C. § 3607(b)(1).*
- Most single-family homes and multi-family apartments
- Mobile home parks and RV parks
- Condominiums, timeshares, co-ops
- Nursing homes, shelters, group homes, residential care facilities

EXEMPTIONS

Federal FHA:

**Non-profit religious, fraternal, or charitable association housing used for the organization and operated for a non-commercial purpose
(*exempt from religious discrimination prohibition only*)**

California FEHA:

**Non-profit religious, fraternal, or charitable association housing used by the organization and operated for a non-commercial purpose
(*exempt from religious discrimination prohibition only*)**

EXEMPTIONS

Federal FHA:

Post-secondary educational institutions providing separate housing for male & female students (*exempt from gender discrimination prohibition only*)

Bona fide senior housing (*exempt from familial status discrimination prohibition only*)

California FEHA:

Post-secondary educational institutions providing separate housing for male & female students (*exempt from gender discrimination prohibition only*)

Bona fide senior housing (*exempt from familial status discrimination prohibition only*)

EXEMPTIONS

Federal FHA:

Owner-occupied housing of 4 or fewer units, and do not advertise or make discriminatory statements

Single-family home, sold or rented by owner, who owns no more than 3 houses at a time, and does not use the services of a real estate agent or broker

California FEHA:

Owner-occupied, single-family units, that rent to only one other person, and do not advertise or make discriminatory statements

n/a

EXEMPTIONS

- Senior housing must be specifically designed for seniors and:
 - All units are occupied by seniors age 62 or older, OR
 - 80% of units are occupied by at least one person age 55 or older

AND

- Facility publishes and adheres to policies and procedures that demonstrate an intent to provide senior housing

RESPONSIBLE PARTIES

- Property owners (individual & corporate)
- Property managers
- Maintenance & administrative staff
- Real estate agents & brokers
- Lenders
- Insurers & appraisers
- Homeowner/condominium associations
- Property management companies
- Architects, builders, developers, and engineers
- Municipalities

THEORIES OF LIABILITY

Intentional Discrimination

- Disparate treatment based on membership in protected class, even if Defendant not motivated by personal prejudice or racial animus
 - Shown by DIRECT or CIRCUMSTANTIAL evidence

THEORIES OF LIABILITY

Disparate Impact

- Specific policy, practice, or procedure has significantly greater discriminatory impact on members of a protected class
 - Policy is facially neutral and neutrally applied, but results in disproportionate denial of housing opportunities to people in protected classes
 - Supreme Court Decision 6/15 – reaffirming use of disparate impact under FHA
 - Broad language recognizing history of FHA/importance of FHA to decreasing segregation and expansive construction of FHA

PROHIBITED ACTIVITIES



DISCRIMINATION IS RARELY THIS OBVIOUS, BUT IT'S JUST AS REAL. AND JUST AS ILLEGAL.

If the landlord gives you the runaround or says:

"We don't take kids."

"The apartment you asked about on the phone has been rented."

"We only take people who speak English clearly."

"We don't take teenagers."

"The ad was wrong – the rent is really \$50 more."

"I can't assign you a handicap parking space."

THAT COULD BE HOUSING DISCRIMINATION.

The only way to stop housing discrimination is to report it, so we can investigate it.

Visit www.hud.gov/fairhousing or call HUD's Housing Discrimination Hotline

1-800-669-9777 (voice) **1-800-927-9275** (TTY)



The federal Fair Housing Act prohibits discrimination because of race, color, religion, national origin, sex, family status or disability.

NFHA
National Fair Housing Alliance

PROHIBITED ACTIVITIES

- Refusal to rent, sell, or negotiate
- Different terms, conditions, privileges, or provision of services or facilities
 - Example: Charging a tenant with children a higher security deposit than a tenant without children
 - Failing to promptly respond to maintenance requests from non English-speaking tenants
- Making false representations
 - Example: Telling a Black applicant that an advertised unit is no longer available, when it is in fact available

PROHIBITED ACTIVITIES

- Refusal to make necessary reasonable accommodation or modification
 - RA: Change in a housing provider's rules, policies, practices, or services, necessary to afford a person with a disability Equal opportunity to use and enjoy a dwelling
 - RM: Physical modification of an existing structure
- Harassment/Retaliation
 - Prohibits harassment or retaliation against a person for exercising or encouraging another person to exercise fair housing rights
 - Includes threats, coercion, intimidation, and interference

PROHIBITED ACTIVITIES

- Statements or advertisements indicating a preference, limitation, or discrimination based on membership in a protected class
 - Unlawful to make, print or publish, or cause to be made, printed or published, a discriminatory notice, statement, or advertisement with respect to the sale or rental of housing, that indicates a preference, limitation, or discrimination
 - No exemptions
 - Property owners, real estate professionals, and newspapers liable

PROHIBITED ACTIVITIES

- Prohibited Advertising: indicates preference, limitation, or discrimination based on membership in protected class
 - Words & phrases
 - “No kids”
 - “Good Christian family wanted”
 - Symbols & illustrations
 - Human models

BEST PRACTICE TIPS: ADVERTISING

- Describe unit, NOT tenant
 - Location
 - Amenities
 - Rental terms and conditions
- Provide information on tenant qualification criteria
- Avoid references to protected classes

PROHIBITED ACTIVITIES

■ Steering

- Restricting or attempting to restrict a person's housing choices, by words or conduct, in connection with seeking, negotiating for, buying, or renting a dwelling
 - Limits housing choice
 - Perpetuates racially-segregated housing patterns
 - Discourages or obstructs racially-integrated housing patterns in an interracial neighborhood

PROHIBITED ACTIVITIES

■ Blockbusting

- Persuading, for profit, an owner to sell or rent their house because of the entry or prospective entry of persons of a particular race, color, religion, national origin, gender, disability, or familial status into the neighborhood
- Preys on homeowners' fears that property values will drop if neighboring homeowners are people of color
- Prevalent in 1940s & 1950s

PROHIBITED ACTIVITIES

■ Lending Discrimination

- Denying or offering less desirable lending terms or conditions for residential real estate transactions
- Includes sales, leasing, financing, and insurance
- Home Mortgage Disclosure Act (“HMDA”) requires lending institutions to make public the number and dollar amount of home loans by applicants’ race, sex, and income

OTHER FEDERAL REQUIREMENTS: AFFIRMATIVELY FURTHERING FAIR HOUSING (“AFFH”)

- Fair Housing Act requires HUD to “administer the programs and activities relating to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act.” 42 U.S.C. § 3608(e)(5)
- Upon receipt of federal housing assistance funding, grantees certify that is affirmatively furthering fair housing (“AFFH”)
- Federal funding includes:
 - Community Development Block Grants (CDBG), HOME, Emergency Shelter Grants, Housing Opportunities for Persons with Aids (HOPWA) grantees
 - Public Housing Authorities
- AFFH obligation extends to ALL housing-related endeavors in grantee’s jurisdiction, regardless of source of funding for those activities

AFFH

- AFFH means “taking proactive measures beyond simply combatting discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act”
 - Counteract forces that created or perpetuate housing segregation by (1) identifying impediments to housing choice AND (2) taking proactive steps to mitigate those impediments

AFFH

**Duty to Affirmatively Further Fair Housing (AFFH):
*must take proactive steps to:***

- Address significant disparities in access to community assets
- Overcome segregated living patterns
- Promote integrated communities
- End racially/ethnically concentrated areas of poverty
- Foster and maintain compliance with civil rights and fair housing laws

HUD ISSUES NEW AFFH RULE

AFFH Final Rule Issued in July 2015; effective 8/17/15

- Amends HUD regulations to create new fair housing analysis framework
- HUD's website:
http://www.huduser.org/portal/affht_pt.html
- Replaces Analysis of Impediments with the Assessment of Fair Housing (AFH) – structured process with HUD review

HUD ISSUES NEW AFFH RULE (CONT.)

- Encourages more meaningful and effective fair housing through the provision of data – includes data on education, transportation, employment, and environmental health
- Incorporates fair housing planning into broader planning processes (e.g., PHA Plan, Consolidated Plan)
- Takes a regional approach to fair housing issues
- Encourages community participation

AFFH

- **Examples of barriers to housing choice:**
 - **Occupancy limits**
 - **Restrictive zoning**
 - **Lack of fair housing complaint process**
 - **Lack of affirmative marketing for public housing or housing subsidies**

AFFH

- **Examples of barriers to housing choice (cont.):**
 - **Residency preferences for affordable housing developments**
 - **Siting affordable housing developments in already impacted neighborhoods which promote segregation**
 - **Accommodating community opposition to affordable housing based on unsubstantiated fears about “neighborhood character,” detrimental effect on schools, decreased property values, crime**

AFFH: AFFIRMATIVE MARKETING

Affirmative Marketing: targeted information about program opportunities to groups of people otherwise least likely to apply for those opportunities

- “Least likely to apply” means identifiable presence in market area, but members not likely to apply without targeted outreach

AFFH: AFFIRMATIVE MARKETING

- Types of data presented
- Methods for outreach
- Timing
- Evaluating effectiveness
- Other considerations

AFFH: AFFIRMATIVE MARKETING

Components:

- (1) Identification
- (2) Policy
- (3) Training
- (4) Marketing & Outreach
- (5) Data Collection/Reporting
- (6) Compliance Assessment
- (7) Recordkeeping

AFFH

- **Provide material for Limited English Proficiency (“LEP”) persons**
 - **Programs receiving federal funding must provide meaningful access to LEP persons**
 - **Obligated to conduct analysis, develop Language Access Plan, provide appropriate language assistance**
 - **Must consider (1) number of LEP persons served, (2) frequency with which LEP persons utilize program, (3) nature/importance of program, (4) costs to grantee**
 - **Language assistance can include oral interpretation, written translation, telephone service lines interpreter**

AFFH

- Make vital documents available to LEP persons
 - Provide timely interpretation
 - Any document critical for ensuring meaningful access to grantee's major programs
 - Lack of timely or accurate access to document has significant consequence for LEP person
- For written translation: translate vital documents if language group is >5% of eligible population and >50 persons, or if >1000 eligible persons in population served
- For oral interpretation: provide reasonable, timely assistance, free of charge, for any LEP person

AFFH

- Publicize fair housing information
- Work with advocates for integration to increase diversity of neighborhoods
- Undertake enforcement actions
- Proactively support creation of affordable housing
- Promote racial & ethnic diversity
- Amend zoning ordinances

AFFH

- Consequences for failure to AFFH:
 - Court decisions reversing actions of grantee
 - Loss of federal funding
 - Other monetary penalties

Examples:

U.S. v. Westchester County, NY

Kennedy v. City of Zanesville

HUD complaints (Texas)

AFFORDABLE HOUSING

- What is the overlap between Fair Housing and Affordable Housing?
 - **Development of affordable housing throughout a community broadens the availability of housing opportunities for all members of the community – and, most significantly, low- and middle-income racial and ethnic minorities, people with disabilities, families with children, and female-headed households – people protected by FH laws.**

AFFORDABLE HOUSING

- What is the overlap between Fair Housing and Affordable Housing?
- **Where affordable housing is built:** Is affordable housing slated to be built in neighborhoods of color around Marin City and in the Canal or is it spread around the county?
- **Who has access to it:** Once it's built, are there preferences for teachers, or fire fighters, or police to live there? Or exclusively for people who work or reside in that town/city? And by doing so, are classes of people protected by fair housing law excluded?

AFFORDABLE HOUSING

- What is the overlap between Fair Housing and Affordable Housing?
- **Access to affordable housing can expand housing choice and offer improved opportunities for better education, employment, transportation, and public health**
- **Broadening opportunities and housing choices for all people, regardless of their race, national origin, or protected-class status is part of AFFH**

RESOURCES

- Fair Housing of Marin: www.fairhousingmarin.com
- U.S. Department of Housing and Urban Development (HUD): www.hud.gov
- California Department of Fair Employment and Housing (DFEH): www.dfeh.ca.gov
- Fair Housing Act: www.justice.gov/usao/eousa/foia_reading_room/usam/title8/title8.htm
- Americans with Disabilities Act: www.ada.gov
- HUD Annual Report on Fair Housing: <http://portal.hud.gov/hudportal/documents/huddoc?id=ANNUALREPORT2010.PDF>

RESOURCES

- Code of Federal Regulations, 24 C.F.R. 100 et seq, Discriminatory Conduct Under the Fair Housing Act
- Reasonable Accommodations Under the FHA, Joint Memo by HUD and DOJ:
www.hud.gov/offices/ftheo/library/huddojstatement.pdf
- Reasonable Modifications Under the FHA, Joint Memo by HUD and DOJ:
www.hud.gov/offices/ftheo/disabilities/reasonable_modifications_mar08.pdf
- Uniform Federal Accessibility Standards:
www.access-board.gov/ufas
- Fair Housing Accessibility First: www.fairhousingfirst.org