

Overview of Fair Housing Laws

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I. Fair Housing Laws

Fair housing laws in the United States proscribe discrimination based on protected status, which from a federal perspective includes race, color, religion, sex, national origin, family status (presence of children under the age of 18), or disability (physical and/or mental). Many state or local governments also have fair housing laws that include additional protected classes, including but not limited to, age, sexual orientation, marital status, military status, occupation, gender status, sources of income, personal appearance, and citizenship status. Fair housing is an absolute right throughout the United States. Federal, state, and local laws provide a method for enforcement of this right. Fair housing laws apply to various types of housing, including private housing, multifamily buildings, condominiums, shelters, nursing homes, and university housing; and apply to both the rental and sale of housing and the provision of mortgage loans.

Housing discrimination includes not only denial of dwelling units but also withholding or misrepresenting information about the availability of housing; setting higher standards of creditworthiness; or quoting different prices, terms, or conditions for financing or insurance for protected classes. Under fair housing laws, various types of differential treatment of a protected class are prohibited; in some instances, actions that do not have

a discriminatory intent but have a discriminatory impact may also violate fair housing laws.

In addition to the Fair Housing Act, which is the main focus of this book, it is worth noting that various other federal laws exist to protect against housing discrimination, including the following.

A. Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973¹ (Section 504) prohibits discrimination in any program or activity receiving federal financial assistance based on disability. An individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities. Physical or mental impairment may include conditions such as visual or hearing impairment, mobility impairment, HIV infection, mental retardation, drug addiction (except current illegal use of or addiction to drugs), or mental illness. Major life activities may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. Section 504 also protects persons who have a record of such impairment, or are regarded as having such an impairment. Recipients of U.S. Department of Housing and Urban Development (HUD) fund, must ensure that a minimum of 5 percent of the units in a new or substantially rehabilitated project meet federal accessibility standards, which HUD has interpreted to constitute either the Uniform Federal Accessibility Standards (UFAS) or the 2010 ADA Standards for Accessible Design (2010 Standards), as modified by HUD.² Recipients must use the selected standard consistently throughout a project.

B. Architectural Barriers Act of 1968

The Architectural Barriers Act of 1968³ requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds be accessible to and usable by disabled persons. The law applies to federal

1. 29 U.S.C. § 701 *et seq.*

2. As HUD is the only federal agency that has not adopted the 2010 ADA Standards, it is anticipated that HUD may, in the future, do so. In the meantime, HUD issued a notice that allows for use of the standards, with modifications.

3. 44 U.S.C. § 701 *et seq.*

buildings, including post offices, Social Security offices, federal courthouses and prisons, and national parks. It also covers non-federal facilities built or altered with federal funds, such as public housing units and mass transit systems.

C. Titles II and III of the Americans with Disabilities Act of 1990

Title II of the Americans with Disabilities Act of 1990⁴ (ADA) prohibits discrimination in programs, services, and activities provided or made available by public entities based on disability. These provisions apply regardless of the entity's size or the receipt of federal funding. The definition of a public entity includes any state or local government; any agency, department, or other instrumentality of the same; and any commuter authority and the National Railroad Passenger Corporation. Under Title II, public entities must make reasonable modifications to their policies, practices, and procedures where necessary to avoid discrimination. They must also ensure that their buildings are accessible to persons with disabilities in accordance with ADA standards. Compliance is not required where a public entity can show that such actions would fundamentally alter the nature of the service, program, or activity being provided, or would result in an undue financial or administrative burden. Title III of the ADA applies to private entities that own, operate, lease, or lease to places of public accommodation. Although the requirements are more limited, the places of public accommodation need to be accessible to persons with disabilities and reasonable modifications to policies and practices must be made to enable equal access to persons with disabilities, unless the modification would fundamentally alter the program or service being provided.

D. Age Discrimination Act of 1975

The Age Discrimination Act of 1975⁵ prohibits discrimination in programs or activities receiving federal financial assistance based on age. However, the Act permits the use of age distinctions in programs where such practice is necessary to the normal operation or achievement of any statutory

4. 42 U.S.C. § 12101 *et seq.*

5. 42 U.S.C. § 6101 *et seq.*