Hey Hun! Just how bad do you want that heat fixed?

Sexual Harassment in Residential Housing
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Poll

- I don’t practice housing-related law so even though it is valuable information, it won’t really apply to my area of the law.

- True

- False
What is Meant by the Term “Discrimination” Under the Fair Housing Act?

It is a difference in treatment BECAUSE OF Membership in a protected class.
What are the protected classes?

The Fair Housing Act of 1968 identified 4 Protected Classes:

1. Race
2. Color
3. Religion
4. National Origin

In 1974, the Act was amended to add:

5. Sex

In 1988, the Act was amended to add:

6. Familial Status
7. Handicap (generally referred to disability)
Poll

- When you think about housing discrimination, what protected class comes to mind?
  - Race
  - Color
  - Religion
  - National Origin
  - Sex
  - Familial Status
  - Disability
Who Must Comply?

- Housing Providers
  - Subsidized
  - Non-Subsidized
- Management Companies
- Home Owners’ Associations
- Owners
Dwelling: What qualifies?

- Private and Subsidized Properties
  - Single Family Dwellings
  - Duplexes
  - Multi-family Buildings
  - Mobile Home Parks
  - Migrant Housing
  - Temporary Shelters
  - Group Homes
  - Assisted Living/Nursing Homes
  - College Dorms

Where I Live
Poll

Marvin is homeless and living in his car. His car is inoperable so he can’t move it every 72 hours in compliance with a city ordinance. One day when he comes back to his car after working all day, he discovers that his car has been towed. He wants to file a fair housing complaint because his home was towed away. Unfortunately, it’s a car, not a dwelling and he was violating a city ordinance regarding city streets. There’s nothing he can do.

True

False
The Multiple Faces of Sex Discrimination

There are several categories

- Based on Sex:
  - Women who are victims of domestic violence fall into this category
  - Tenants who don’t fall into the gender norms (LGBT)

- Quid Pro Quo
  - This for that
  - Only takes one incident

- Hostile Environment
  - Usually more than one incident
  - Severe and Pervasive
SEX DISCRIMINATION
DOMESTIC VIOLENCE

▪ Discrimination against survivors of domestic violence has been held to be a violation of the Fair Housing Act because of its disparate impact on women.

▪ Congress has responded by providing enhanced protections in certain kinds of subsidized housing through the Violence Against Women Act. (VAWA) 42 U.S.C. § 41411
  ▪ VAWA’s regulations do not clearly state where to file a complaint if the housing provider fails to comply.
  ▪ You would file a violation of VAWA in the same manner as you would with a private landlord (HUD Complaint or lawsuit)

▪ Private landlords ARE prohibited from negative actions taken against women who are victims of domestic violence under the Fair Housing Act.
SEX DISCRIMINATION
VAWA or FAIR HOUSING?

**VAWA**
- Applies in most situations where subsidy is involved.
- With Section 8 – applies to the PHA or THDA, but not the landlord.
- Sets out specific prohibitions.
- Also sets out specific actions that subsidized properties are required to take.
- No information on what to do about violations.

**FAIR HOUSING ACT**
- Applies to all housing providers.
- Sets out specific prohibitions.
- Provides for a private right of action.
Poll

Sexual Orientation is not a protected class under the federal law so unless your state has added it, same sex couples and transgender persons are not protected.

True
False
Trending: Same Sex Couples

- If the couple is a same sex couple whose partners are female, the same analogy used for women in heterosexual relationships would apply.
  - The analysis of the disparate impact theory would be the same.
  - The law and statistics state that women are much more likely to be victims of domestic violence.
    - The statistics focus on the victim, not the abuser.
    - Be clear in your analysis to focus on the domestic violence and not the sexual orientation of the victim. Don’t get drug off into the weeds.

- If the couple is a same sex couple whose partners are male, the statistics will not help.
  - Only workable if you can show the intent to discriminate was because the victim is male.
  - The landlord thinks the victim should “man up” and handle it.
Trending: Sexual Orientation

- **Quid Pro Quo and Hostile Environment Harassment and liability for Discriminatory Housing Practices under the Fair Housing Act**
  - Addresses all forms of harassment
  - Neighbor on Neighbor harassment added

- In 2013, HUD passed an Equal Access to Housing Regulation (24 C.F.R. § 5.105(a)(2)) clarifying that HUD’s core housing programs are open to all eligible persons, regardless of “actual or perceived sexual orientation, gender identity, or marital status”.
  - Illegal for HUD recipients or sub-recipients to inquire into the gender identity or sexual orientation of an applicant or resident.

- HUD will also accept and investigate complaints against private landlords where sexual orientation, gender identity, or gender expression are at issue to see if they are covered under “sex”.
  - The resident doesn’t fit into the landlord’s stereotypical attitude of how that gender should dress/act.
  - The landlord assumes that because the person is gay, they must be HIV+ or have AIDS.
Sexual Harassment

▪ Quid Pro Quo
▪ Hostile Environment

In recent years, HUD expanded the regulations to include harassment in all of the protected classes!
(a) General. Quid pro quo and hostile environment harassment because of race, color, religion, sex, familial status, national origin or handicap may violate sections of 42 U.S.C. §§3604, 3605, 3606, 0r 3617 of the Act, depending on the conduct. The same conduct may violate one or more of these provisions.
Quid Pro Quo

- Unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a term of condition relating to:
  - The sale, rental or availability of a dwelling;
  - the terms, conditions, or privileges of sale or rental or the provision of services or facilities in connection therewith;
  - or the availability, terms, or conditions of a residential real estate-related transaction.

- Unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand.
Hostile Environment

Unwelcome conduct that is sufficiently severe or pervasive as to interfere with:

▪ The availability, sale, rental, or use or enjoyment of a dwelling;
▪ the terms, conditions, or privileges of the sale or rental,
▪ or the provision or enjoyment of services or facilities in connection therewith;
▪ of the availability, terms, or conditions of a residential real estate-related transaction.

▪ Does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.
Hostile Environment

- (i) Totality of the circumstances. Whether hostile environment harassment exists depends upon the totality of the circumstances.

- (A) Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to,
  - the nature of the conduct,
  - the context in which the incident(s) occurred,
  - the severity, scope, frequency, duration, and location of the conduct and
  - the relationships of the persons involved.
Liability 24 C.F.R. §100.7

- Direct Liability for
  - Their own actions
  - Failure to take action to correct a discriminatory practice

- Vicarious liability
  - Applies to agent or employee regardless of whether the person knew or should have known of the conduct
Cases

  - Upholding sexual harassment complaint under §§ 3604(a), (b), (c), and 3617

- Honce v. Vigil, 1 F.3d 1085 (10th Cir. 1993)
  - No liability of landlord for threats to evict tenant who refused social invitations

- Shelhammer v. Lewallen, 1 Fair Housing-Fair Lending Rptr. ¶ 15,472 (HUD ALJ 1983)
  aff’d without opinion, 770 F.2d 167 (6th Cir. 1985)

  - How much is enough to be pervasive
United States v. Wygul

- 2016 WL 4126583
- 2016 U.S. Dist. LEXIS 100922

This case began as a complaint with HUD. It took several years to go through the investigation process; but finally HUD made a cause finding.

Kayla chose to elect to federal court. At that point, DOJ intervened so the case became US v Wygul.

I represented Kayla in a Motion to Intervene
How to take Action

▪ Unlike Employment Law – you do not have to exhaust the administrative process before filing a lawsuit

▪ File a Complaint with HUD – 1 year from the date of the last act

▪ File a Lawsuit in Federal Court – 2 years from the date of the last act

▪ Check your state laws if you have an equivalent state law – may differ from federal statute of limitations
Contact Information

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▪ Department of Housing and Urban Development

▪ www.hud.gov

▪ File a Complaint online
  https://portalapps.hud.gov/FHEO903/Form903/Form903Start.action

Contact your local office
  https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint#