

FAIR HOUSING; IT'S THE LAW

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FAIR HOUSING ACT

- Fair Housing Act
 - Federal Law
 - Passed in 1968
 - 42 U.S.C . Sec. 3601, et seq.

FAIR HOUSING ACT

- PURPOSE

- Prohibits discrimination in the **sale** or **rental** of housing and in housing-related lending activities on the basis of:

- Race
 - Color
 - Religion
 - National Origin
 - Sex
 - Disability
 - Familial Status

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- What actions can be considered Housing Discrimination?
 - Any actions, decisions or omissions, which restrict...or have the effect of restricting housing choices...For members of the protected classes identified.
 - INCOME is not a protected class.

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- What is a Disability?
 - A person who has a physical or mental impairment that substantially limits one or more major life functions.
 - Major Life Functions include: walking, seeing, hearing, speaking, breathing, learning, working, caring for your daily needs.
 - Disability FHA claims are the HOT TOPIC in this area

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- What is Familial Status?
 - Someone with one or more children under the age of 18.
 - A pregnant woman.
 - Someone who has custody or guardianship of a child under the age of 18.
 - Someone in the process of adopting a child under the age of 18.
 - Foster parents.

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- What sorts of things are not Protected Classes under the FHA?
 - Marital Status
 - Income or Source of Income
 - Sexual Orientation
 - Criminal History
 - Users of Illegal Substances

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- Types of Housing Excluded by FHA
 - Owner occupied building with up to four units
 - A home rented or sold by the owner, as long as the owner does not own more than 3 homes or use a real estate agent or has not sold a home in the last 24 months
 - A housing development operated by an organization or a club
 - A housing development for older adults

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- Limited Exception

- Renting out a room in your house, but you must actually live in the house for this exception to apply.
- Example – A woman wants to rent a room in her house can advertise for females only.

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- Examples of Illegal Activity
 - Refusal to rent or sell a house to protected class
 - Tell protected class housing is not available when it is
 - Deny housing to a person with children housing
 - Show housing to protected class members in certain neighborhoods only
 - Advertise housing to only certain groups
 - Refuse housing based on a disability

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- Examples of Illegal Activity
 - Impose different terms or conditions on a protected class
 - Ask about a disability

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- Non-Discriminating Standards are Allowable
 - Can establish standards but must apply the equally
 - Examples
 - Establish an income range
 - Credit Checks
 - References
 - Criminal Background Check

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- Discrimination Can Be Shown By
 - Discriminatory Intent – did the Action have a discriminatory intent?
 - Direct Proof – Be careful of Code Words
 - Discriminatory Effect – did the Action result in a discriminatory effect?
 - Disparate Impact on a Protected Class

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- Discriminatory Intent
 - Courts have noted that explicit statements of racial motivation are rare so this can be proved by circumstantial evidence.
 - The Courts will look at:
 - Discriminatory or segregative effect
 - Historical Background
 - Sequence of Events leading up to the Decision
 - Any Departures from Normal or Substantive Criteria

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- What does the FHA mean for cities like Huntsville ?
 - First, Huntsville, like many other municipalities receives government funding from USDHUD (United States Department of Housing and Urban Development) and many programs implemented by or overseen by HUD – Community Development Block Grants and HOME Investment Partnership Program

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- Federal funding continued
 - Participation in Federal Grant Programs places certain burdens and responsibilities on the recipient to:
 - Undertake Fair Housing Planning
 - Affirmatively Further Fair Housing (AFFH)
 - In most grant requests the applicant must CERTIFY that it is affirmatively furthering fair housing

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- AFFH
 - What it means
 - City must conduct an analysis to identify impediments to fair housing choice within the jurisdiction
 - City must take appropriate actions to overcome the effects of impediments identified
 - City must maintain records reflecting the analysis and the actions taken in response

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- Municipal Decisions and the FHA
 - FHA prohibits the refusal to sell, rent...**or otherwise make unavailable or deny**, a dwelling based on the protected factors
 - “Otherwise make unavailable or deny” has been read very broadly to apply to many municipal functions such as appraising property, assessing property for taxes, and zoning and other regulatory functions that relate to housing

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- *Town of Huntington Beach v. Huntington Beach, NAACP*, 488 U.S. 15 (1988) – Town violated FHA when it restricted development of multi-family housing to largely minority area.
- *Brandt v. Village of Chebanese*, 82 F.3d 172 (7th Cir. 1996) – Town did not violate FHA if it had a non-discriminatory reason – increase in flooding – for refusing re-zoning

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- What Can Happen?
 - Cities can be subjected to claims for damages, fines, Court-ordered expenditures, and even paying the other side's attorney's fees in litigation
 - Cities can face actions by HUD or Department of Justice in addition to private actions

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- What to Do
 - Stay CONSISTENT in decision making; Try to avoid treating one group or area one way and another group or area another way
 - Document decision-making to show non-discriminatory grounds. Decision was Fair and based on reasonable/rational grounds

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- Ultimate Goal of the City is to develop a good plan for Fair Housing and to communicate and work with its residents to educate them regarding the FHA and to monitor and enforce Fair Housing in the City