15 Civil Rights and Fair Housing | Module Review

Module Outline

This module is divided into seven units and a module quiz:

Unit 1: Civil Rights Overview
Unit 2: Fair Housing Act: Protected Classes
Unit 3: Fair Housing Act: Prohibited Acts
Unit 4: HUD Oversight: Advertising
Unit 5: Federal Enforcement
Unit 6: Americans with Disabilities Act
Unit 7: New York Civil Rights Law

Module Objectives

By the end of this module, you will be able to:

- Describe the evolution of fair housing laws.
- Identify examples of discrimination.
- Identify protected classes under the federal Fair Housing Act.
- Describe federal fair housing laws and practices.
- Define elements of the Americans with Disabilities Act.
- Identify acceptable advertising guidelines.
- Identify implications of violating fair housing mandates.
- Define elements of New York law related to fair housing.
- Identify protected classes in New York State.
- Describe the authority of the New York Human Relations Commission.
- Identify protected classes in New York City.
Unit 1: Civil Rights Overview

The Civil Rights Act of 1866

The Civil Rights Act was the first federal anti-discrimination statute to have the greatest effect on real estate transactions. It was enacted in 1866 in an effort to guarantee equal housing opportunities for all U.S. citizens. The Civil Rights Act of 1866:

- Prohibits all racial discrimination, public or private, in the sale or rental of all real property.
- Grants all citizens the same rights with regards to property.

Supreme Court Rulings

There was no more federal legislation after the Civil Rights Act of 1866 until the 1960s, so discrimination cases were addressed by local and state courts. In the following cases, plaintiffs appealed to the United States Supreme Court to overturn state actions.

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<th>Year</th>
<th>Case</th>
<th>Supreme Court Ruling</th>
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<tr>
<td>1896</td>
<td>Plessy v. Ferguson</td>
<td>In favor of a “separate but equal” doctrine of legalized racial segregation.</td>
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<td>1917</td>
<td>Buchanan v. Warley</td>
<td>A city ordinance barred blacks from buying property in certain neighborhoods. The court ruled that the ordinance violated the Fourteenth Amendments’ due protection clause and was unconstitutional. Did not address private restrictive covenants.</td>
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<td>1948</td>
<td>Shelly v. Kraemer</td>
<td>A court may not constitutionally enforce a “restrictive covenant” which prevents people of certain race from owning or occupying property.</td>
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<td>1954</td>
<td>Brown v. Board of Education</td>
<td>The U.S. Supreme Court ruled that the separate but equal doctrine introduced in was, in fact, unconstitutional. The Supreme Court concluded that “separate but equal” educational facilities were inherently unequal, ruling that segregation violated the due protection clause of the Constitution and overturning Plessy v. Ferguson.</td>
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<td>1968</td>
<td>Jones v. Alfred H. Mayer Co.</td>
<td>Mr. and Mrs. Jones, an African American couple, attempted to buy a home in a subdivision when their offer was refused. They claimed they were turned down because of their race. Ruling in favor of the Joneses, the court held that the Civil Rights Act of 1866 Act was constitutional.</td>
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## Unit 2: Fair Housing Act: Protected Classes

### Fair Housing Act

The federal Fair Housing Act of 1968 prohibits discrimination in the sale or lease of residential property for protected classes. The protected classes include race, color, religion, sex, disability, familial status, and national origin.

The federal Fair Housing Act also prohibits discrimination:

- In advertising, real estate brokerage, lending, and some other services associated with residential transactions.
- Against individuals associated with persons in these protected classes.
- Against U.S. citizens and non-citizens.

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### Familial Status

Familial status refers to households that include individuals under the age of 18 who either live with parents or legal custodians. It is illegal to discriminate against a person whose household includes one or more children who are under the age of 18.

This rule doesn’t apply to “housing for older persons.” The Act defines housing for older persons as any housing that is:

- Provided under a state or federal program to assist the elderly.
- Intended for and solely occupied by persons 62 or older.
- Designed to meet the physical and social needs of older persons, if management publishes and follows policies and procedures demonstrating an intent to provide housing to persons 55 and older, and at least 80% of the units are occupied by at least one person 55 or older.
Disability

While most disabilities are covered under the federal Fair Housing Act, there are minor exceptions, such as addiction to a controlled substance, which are not part of the protected class.

- Under the federal Fair Housing Act, a disability is defined as “a physical or mental impairment that substantially limits or curtails one or more major life activities.”
- Discrimination would include the refusal by a landlord or rental agent to permit, at the expense of the disabled person, reasonable modification of the premises.
- Discrimination also encompasses the building of new multi-family dwellings for first occupancy on or after April 1, 1991 that do not include certain accommodations for the disabled such as:
  - Wheelchair-width doorways,
  - Accessible common areas,
  - Modified light switches,
  - Electrical outlets,
  - Thermostats,
  - Kitchen fixtures,
  - Bathroom facilities.

Exemptions

Although the federal Fair Housing Act covers the majority of residential transactions in the U.S., there are several specific exemptions:

**Single-Family Homes**
The law does not apply to a single-family home sold or rented by a private owner provided that:

- The owner owns no more than three such homes.
- No discriminatory advertising is used.
- No real estate broker (or any real estate professional) is used.

If the owner is not the occupant or most recent occupant, he or she may use this exemption only once every 24 months.

**Owner-Occupied Buildings (no more than four units)**
The law does not apply to the rental of a room or unit in a dwelling with no more than four units provided that:

- The owner occupies one unit as his or her residence.
- No discriminatory advertising is used.
- No real estate broker or agent is used.

This exemption is referred to as “the Mrs. Murphy exemption.”
Religious and Nonprofit Organizations
In dealing with their own property in noncommercial transactions, religious organizations or affiliated nonprofit organizations may limit occupancy to or give preference to their own members provided that membership isn’t restricted on the basis of race, color, or national origin.

Private Clubs
Private clubs with lodgings that aren’t open to the public and that aren’t operated for a commercial purpose may limit occupancy to or give preference to their own members.
Unit 3: Fair Housing Act: Prohibited Acts

The following practices and activities violate the federal Fair Housing Act if they are based on a person's race, color, religion, sex, national origin, handicap, or familial status.

- Refusing to rent or sell residential property after receiving a good faith offer
- Refusing to negotiate for the sale or rental of residential property
- Taking any action that would otherwise make residential property unavailable or deny it to any person (this general clause prohibits steering and redlining along with many other discriminatory practices and marketing methods)
- Discriminating in the terms or conditions of any sale or rental of residential property or in providing any services or facilities in connection with such property
- Using discriminatory advertising or any other notice that indicates a limitation or preference or intent to make any limitation, preference, or discrimination
- Making any representation that property is *not* available for inspection, sale, or rent when it is in fact available
- Inducing or attempting to induce, for profit, any person to sell or rent property based on representations made regarding entry into the neighborhood of persons of a particular race, color, religion, sex, or national origin (blockbusting, also called panic selling or panic peddling)
- Discriminating against anyone by a commercial lender in making a loan for buying, building, repairing, improving, or maintaining a dwelling or in the terms of such financing (includes redlining)
- Denying access to a multiple listing service or any similar real estate brokers’ organization or discriminating in terms or conditions for access to the organization
- Coercing, intimidating, threatening, or interfering with anyone because of his or her enjoyment, attempt to enjoy, or encouragement and assistance to others in their enjoyment of the rights granted by the federal Fair Housing Act

Key Violations to Remember:

**Steering**
Channeling prospective buyers or renters to or away from specific neighborhoods based on their race (or religion, national origin, or other protected class), to maintain or change the character of a neighborhood.

**Blockbusting**
Inducing or attempting to induce, for profit, any person to sell or rent property based on representations made regarding entry into the neighborhood of persons of a particular race, color, religion, sex, or national origin.

**Redlining**
Discriminating against anyone by a commercial lender in making a loan for buying, building, repairing, improving, or maintaining a dwelling or in the terms of such financing. Addressed with the passage of the 1977 *Community Reinvestment Act (CRA)*, which provides the opportunity for people with lower incomes to purchase property and help to prevent the neighborhoods from deteriorating, a process is sometimes referred to as filtering down.
Unit 4: HUD Oversight: Advertising

Department of Housing and Urban Development

The federal Fair Housing Act is administered and enforced by the Department of Housing and Urban Development, through the Office of Fair Housing and Equal Opportunity. HUD offers a variety of programs, including funding and grants to public and private organizations as well as state and local governments. Through these programs, local agencies work with HUD to prevent, enforce, and eliminate discriminatory housing practices.

HUD and Affirmative Action

In addition to being a guiding principle, affirmatively furthering fair housing is a requirement for participating in HUD programs. HUD, in conjunction with the private sector, has developed voluntary programs and partnerships, including Voluntary Affirmative Marketing Agreements (VAMA) and the HUD/NAR Fair Housing Partnership. These programs are designed to affirmatively promote fair housing to all home seekers through a series of commitments and shared responsibilities.

Fair Housing Advertising

Advertising is an area that requires special care to prevent fair housing violation claims. Ultimately the responsibility for the quality, accuracy, and legality of an advertisement is the brokers. Monitoring the advertising copy, including those ads paid for and submitted by the agents and affiliates of the broker is a critical activity for the management of the brokerage. Keep in mind, an item that is in writing and placed before the public cannot be defended as a misinterpretation.

Fair housing laws prohibit printing or publishing any statement that indicates any preference, limitation, or discrimination based on race, color, religion, sex, familial status, handicap, or national origin. Terms or phrases that are simply descriptive of the property, such as “wheelchair accessible,” “close to shopping,” “gated community,” are allowed. Part 109 of the Civil Rights Act of 1968 provides clear guidance on the guidelines for advertising, use of logos, slogans, and statements.

Fair Housing Policies and Procedures

The federal Fair Housing Act requires all real estate advertising (for sale, rent, or financing) to contain the Equal Housing Opportunity logo, statement, or slogan. In addition, any human models used in advertising must represent the general population (e.g., majorities, minorities, men, women, children, both sexes) and should not be used to indicate a preference for a protected class, for example:

- Restricted
- Exclusive
- Private
- Traditional

Finally, a statement regarding local fair housing laws must be included when using the Equal Housing Opportunity statement.
Unit 5: Federal Enforcement

Enforcement Authority

• The Department of Housing and Urban Development (HUD) is responsible for the enforcement of the federal Fair Housing Act.
• HUD utilizes testers (fictitious potential buyers or renters) to detect and combat discrimination of protected classes.
• Agencies are encouraged to implement voluntary self-testing to check for compliance within their organizations.

Filing a Complaint

• Fair housing complaints may be reported and investigated by the Department of Housing and Urban Development (HUD).
• In states where there’s a state fair housing law substantially equivalent to the federal law, HUD may refer complaints to the state or local agency that has similar responsibilities.
• When HUD is handling the dispute, if there is a violation, HUD will try to settle the dispute using negotiation and conciliation. If HUD is unable to settle the dispute, the parties involved are referred to one of HUD’s administrative law judges.
• Almost anyone involved in a real estate transaction can be held liable for fair housing violations. The Supreme Court held that checkers and fair housing groups can sue for fair housing violations.

Remedies

If the administrative law judge rules in favor of the complainant, the judge can:

• Issue an injunction against the respondent.
• Award compensatory damages to the complainant.
• Award punitive damages.
• Impose civil penalties:
  • Up to $10,000 for the first violation
  • Up to $25,000 for another violation within five years
  • Up to $50,000 for two or more violations within seven years
  • Up to $100,000 for a pattern of discrimination
• Order the respondent to pay the complainant’s attorney’s fees.

Criminal Penalties

It is a felony to violate fair housing laws and obvious violators will be prosecuted. Any person found guilty of such an act can be fined up to $1,000 or imprisoned not more than one year, or both. If bodily injury results, the person can be fined up to $10,000 or imprisoned not more than 10 years, or both.

Treat all equally, let clients direct you, and keep good documentation to protect yourself from fair housing violations.
Unit 6: Americans with Disabilities Act

American with Disabilities Act

The American with Disabilities Act (ADA) gives civil rights protection to individuals with disabilities. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local governments, and telecommunications.

The ADA addresses five general areas or titles of service or operation:

- **Title I – Employment:** Employers engaged in interstate commerce having 15 or more employees, including employment agencies, labor organizations, or joint labor-management committees.
- **Title II – Public Services:** State and local services and public transportation.
- **Title III – Public Accommodations:** Private entities which own, lease, lease to, or operate a place of public accommodation (includes transportation provided by private entities).
- **Title IV – Telecommunications:** Common carriers engaged in interstate communication.
- **Title V – Miscellaneous Provisions:** This title provides miscellaneous provisions, including minimum guidelines and a technical assistance plan along with a number of other provisions.

**Title III**

Title III prohibits discrimination of the disabled in public accommodations, including such places as entertainment, education, restaurants, lodging, public gathering, and sales establishments. Essentially, this title requires that all public and commercial facilities be 100% accessible to the disabled. Exemptions include:

- Places of worship
- Private clubs
- Historical buildings, if adapting the building would destroy its historic significance

**ADA Compliance**

Existing buildings are required to comply based on what is easily accomplished without much difficulty or expense. This is also known as reasonable accommodation and includes such things as installing grab bars in showers, providing handicap parking spaces in parking lots, and widening doorways and hallways.

**Penalties for Non-Compliance**

The ADA prefers to work with entities towards compliance and utilizes alternative means of dispute resolution before enforcing penalties. In cases where resolution is not achievable, cases may be filed through state and federal courts. It is up to the individual to pursue legal enforcement of the ADA. Legal enforcement can include equitable relief, monetary damages, and civil action.
Unit 7: New York Civil Rights Law

New York State Human Rights Law

- Technically an exercise of the state’s police power to protect the public welfare, health, and peace.
- Contained within Article 15 of the New York Executive Law (EXC).
- Enforced by the New York Division of Human Rights (DHR).
- Applies to the sale, rental, or lease of residential and public housing, commercial property, vacant land.
- Extends protected classes in New York State:
  - **Age**, defined as 18 or older
  - **Marital status**, defined as people who are either married or divorced
  - **Military status**, defined as a person's participation in the military service of the United States or the military service of the state
  - **Sexual orientation**, defined as heterosexuality, homosexuality, bisexuality, or asexuality, whether actual or perceived. This class was added with the passage of the Sexual Orientation Non-Discrimination Act (SONDA) in 2002.

New York State Human Rights Law Prohibited Acts

- Refusing to sell, rent, lease, or otherwise to deny to or withhold from any person or group of persons housing accommodation.
- Indicating that any housing accommodation or land is not available for inspection, sale, rental, or lease when in fact it is available.
- Discriminating in the terms, conditions, or privileges of the sale, rental, or lease of any housing accommodation, or in the furnishing of its facilities or services.
- Printing or circulating any statement, advertisement, or publication that expresses, directly or indirectly, any limitation, specification, or discrimination.
- Using any application form or making an inquiry for the purchase, rental or lease of housing in connection with the prospective purchase, rental, or lease of housing that expresses, directly or indirectly, any limitation, specification, or discrimination.

New York State Human Rights Law Exemptions

- The rental of one unit of an **owner-occupied two-family residence**, for example, a duplex.
- The rental of a room in a housing accommodation where all rooms are rented to people of the **same sex**, such as in a dormitory.
- The rental of a room or rooms in an **owner-occupied single-family home**.
- Restriction based entirely on age and familial status for housing accommodations or public housing exclusively intended for people age 62 or older (and a spouse) or housing intended and operated for occupancy by at least one person age 55 or older in each unit.
New York State Human Rights Law Complaints and Penalties

Anyone alleging discrimination may:

- File a complaint with the New York State Division of Human Rights (DHR) within **one year** of the alleged act.
- Bring a civil suit in New York Supreme Court within **three years** of the incident.

The Division will investigate to determine if they have jurisdiction, and if so, whether there is probable cause to continue. If the complaint is not dismissed, the Division attempts first to resolve the matter through a mediation conference. If that is not successful, there will be a hearing.

If, upon hearing all the evidence, the commissioner finds the respondent guilty, the commissioner could:

- Require the respondent to **cease and desist** from such unlawful discriminatory practice.
- Require the respondent to take **affirmative action**, for example, extend a lease to the complainant under equal terms.
- Award compensatory damages to the complainant.
- Award punitive damages to the complainant not to exceed **$10,000**.
- Require the respondent to pay the state any profits obtained through the commission of unlawful discriminatory acts associated with blockbusting.
- Assess civil fines and penalties not to exceed **$50,000** or not to exceed **$100,000** if the act of discrimination was determined to be willful, wanton, or malicious.

**Nonsolicitation Order**

- Intended to combat blockbusting.
- Prohibits the solicitation of residential property listings in a defined geographic area.
- Applies to brokers and salespersons.
- Challenged by the New York State Association of REALTORS® in 2002 and ruled unconstitutional.

**Cease and Desist Zones and List**

- Secretary of State has authority under Article 12A of Real Property Law to declare a cease-and-desist zone if residents report intense solicitation by real estate licensees.
- Individual property owners may file to be placed on a cease-and-desist list.
- Brokers and salespersons are prohibited from soliciting owners on the cease-and-desist list.
- Violation of a cease-and-desist order could result in stiff penalties.
**Protected Classes in New York City**

- Partnership status
- Citizenship/alien status
- Lawful occupation or lawful source of income

Note, however, that New York City does **not** specifically recognize military status as a protected class.

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**Resources**

- The U.S. Department of Housing and Urban Development: [www.hud.gov/fairhousing](http://www.hud.gov/fairhousing)
- The State Division of Housing and Community Renewal: [www.dhcr.state.ny.us](http://www.dhcr.state.ny.us)
Terminology Review

ADA (Americans with Disabilities Act)
A wide-ranging federal civil rights law, signed in 1990, that prohibits, under certain circumstances, discrimination based on disability.

Advertisements
Any public notification of property being offered for sale, and thus must follow guidelines of federal, state, and local fair housing acts, as well as Regulation Z and the Truth in Lending Act.

Affirmative Action
A policy or a program that sought to redress past discrimination through active measures to ensure equal opportunity.

Blockbusting
The illegal practice of inducing owners to sell their homes (often at a deflated price) by suggesting the ethnic or racial composition of the neighborhood is changing, with the implication that property values will decline as a result. Also called panic selling.

Checker
A person working with a fair housing organization, who pretends to be interested in buying or renting property from someone suspected of unlawful discrimination. Also called a tester.

Civil Penalties
Monetary relief, in the form of fines or surcharges, against an individual as restitution for wrongdoing by the individual.

Civil Rights
Fundamental rights guaranteed to all persons by the law. The term is primarily used in reference to constitutional and statutory protections against discrimination based on race, religion, sex, or national origin.

Coercion
The practice of compelling a person to involuntarily behave in a certain way (whether through action or inaction) by use of threats, intimidation, or some other form of pressure or force.

Commercial Facility
A facility involved in work that is intended for the mass market.

Compensatory Damages
Damages award, usually of money, intended to compensate the plaintiff for harm caused by the defendant’s act or failure to act, including personal injuries (physical and mental), property damage, and financial losses.

Complainant
A party that makes a complaint or files a formal charge, as in a court of law; a plaintiff.

Damages, Compensatory
Damages award, usually of money, intended to compensate the plaintiff for harm caused by the defendant’s act or failure to act, including personal injuries (physical and mental), property damage, and financial losses.
**Damages, Punitive**
Damages award that is added to compensatory damages, to punish the defendant for malicious or outrageous conduct and discourage others from engaging in similar acts.

**Disclosures**
Points or facts that must be revealed. For example, the law requires certain financial disclosures, specific disclosures for ARMs, and disclosures under Truth-In-Lending Act.

**Disability**
According to the ADA, it is any physical or mental impairment that substantially limits a major life activity.

**Discrimination**
Treating people unequally because of their race, religion, sex, national origin, age, or some other characteristic of a protected class, in violation of civil rights laws.

**Disparate Impact**
When a law that isn't discriminatory on its face value has a greater impact on a minority group than it has on other groups.

**Entrapment**
An effort to lure an individual into a compromising statement or act.

**Errors and Omissions Insurance**
Professional liability insurance that protects real estate licensees from mistakes or negligence.

**Exclusionary Zoning**
A zoning law that effectively prevents certain groups (such as minorities or poor people) from living in a community.

**Fair Housing Act**
Common name for Title VIII of the Civil Rights Act of 1968.

**Familial Status**
A protected group under the federal Fair Housing Act, making it illegal to discriminate against a person because he or she is the parent or guardian of a child under 18 years of age.

**FHEO**
Office of Fair Housing and Equal Opportunity

**Filtering Down**
The process of subsidizing lower-income buyers to assist in purchasing property in a declining neighborhood as a means of raising housing standards.

**HUD**
Department of Housing and Urban Development

**Injunction**
A court order prohibiting an act or compelling an act to be done.
Liable
Legally responsible.

Mrs. Murphy Exemption
An exemption to the federal Fair Housing Act which holds that the rental of a unit or a room in an owner occupied dwelling containing four units or less is exempt from the federal Fair Housing Act, provided rental advertising is not discriminatory and a real estate agent is not used to locate tenants.

NAR
National Association of REALTORS®.

Ordinance
A law passed by a local legislative body.

Panic Peddling or Selling
See Blockbusting

Personal Property
Tangible items that (usually) are not permanently attached to or part of real estate; any property that is not real property; movable property not affixed to land. Also called chattels or personalty.

Police Power
The constitutional power of state and local governments to enact and enforce laws that protect the public’s health, safety, morals, and general welfare.

Private Action
Action by an individual, rather than by the government.

Public Accommodation
A facility that is owned, leased, leased to, or operated by a private entity.

Racial Steering
Channeling prospective buyers or tenants to particular neighborhoods based on their race.

Real Property
Not only the physical land and everything attached to it, but also the rights of ownership (bundle of rights) in the real estate. Also called realty.

Reasonable Accommodation
Any change or modification in the environment or the way things are customarily accomplished that enables a qualified individual with a disability to enjoy equal opportunities.

Redlining
When a lender refuses to make loans secured by property in a certain neighborhood because of the racial or ethnic composition of the neighborhood.

Restrictive Covenant
A restriction on real property use, imposed by a former owner; promise to do or not do an act relating to real property; usually owner’s promise to not use property in a particular way. May or may not run with land.
**Retaliation**
To repay as an injury (in kind); to get revenge.

**Revocation**
When the state licensing agency permanently withdraws a real estate agent’s license.

**SONDA**
New York State’s Sexual Orientation Non-Discrimination Act of 2002 which added sexual orientation as a protected class to the New York State Human Rights Law.

**Standing to Sue**
Generally, meaning that a lawsuit can only be filed by someone who was personally harmed by the potential defendant’s action. The Supreme Court has interpreted this very broadly with regard to housing discrimination lawsuits.

**State Action**
In constitutional law, action by a government (federal, state, or local) rather than by a private party.

**Steering**
Channeling prospective buyers or tenants to particular neighborhoods based on their race, religion, national origin, or ancestry.

**Suspension**
A real estate agent’s license being temporarily withdrawn. Usually, reactivation is automatic the day after the suspension is lifted.

**VAMA**
Voluntary Affirmative Marketing Agreements