

## FEDERAL HOUSING ACT (FHA) DISCRIMINATION ACTIONS

Presented by Charles R. Franklin<sup>1</sup>

### 1. FAIR HOUSING ACT and the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### a. Fair Housing Act

##### i. *Sec. 804 [42 U.S.C. 3604] Discrimination in sale of rental of housing and other prohibited practices.* It shall be unlawful:

1. (a) to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.
2. (b) to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.
3. (c) to make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

##### ii. *Sec. 802. [42 U.S.C. 3602] Definitions.* “Aggrieved Person” includes any person who:

1. Claims to have been injured by a discriminatory housing practice, or

---

<sup>1</sup> Charles R. Franklin is a partner at Belongia, Shapiro & Franklin, LLP. Since 1980, Charlie has concentrated in general civil litigation, fraud, and first and third-party defense, recovery and other insurance-related work. He is experienced in representing professional real estate appraisers and property inspectors in malpractice claims, lawsuits and disciplinary hearings. Charlie counsels clients (both companies and policyholders) on insurance coverage and presentation of claims. He has successfully argued before the Illinois Supreme Court on a case involving exculpatory provisions in a contract. Charlie also often serves as a “neutral” or independent arbitrator in various matters.

Charlie earned his Bachelor of Arts in Asian Studies from the University of Michigan, and his Juris Doctor from the University of Miami (Florida) School of Law. He is “AV Preeminent” rated with Martindale-Hubbell. Charlie is a past president of the Casualty Adjusters Association of Chicago, and was a founder and former board member of the Claims Association of Greater Chicago.



2. Believes that such person will be injured by a discriminatory housing practice that is about to occur.
  - iii. *Sec. 812. [42 U.S.C. 3612] Enforcement by Secretary.*
    1. (o) Civil Action for Enforcement When Election is Made for Such Civil Action.
      - a. (1) If an election is made under subsection (a), the Secretary shall authorize, and not later than 30 days after the election is made, the Attorney General shall commence and maintain a civil action on behalf of an aggrieved person in a U.S. district court seeking relief under this subsection.
  - iv. *Sec. 813. [42 U.S.C. 3613] Enforcement by Private Persons.*
    1. (a)(1)(A) An aggrieved person may commence a civil action in an appropriate U.S. district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice ... to obtain appropriate relief ...
    2. (c)(1) In a civil action under subsection (a), the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant any permanent or temporary injunction, temporary restraining order, or other order.
    3. (c)(2) In a civil action under subsection (a), the court may allow the prevailing party, other than the U.S., a reasonable attorney's fee and costs.
    4. (e) Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention, the Attorney General may obtain such relief as would be available to the Attorney General under section 814 (e) in a civil action to which such section applies.
2. CASE AT ISSUE – Public Action; *United States v. Sabbia, et al.* (10-cv-05967) (N.D. Ill. 2010).
- a. The United States brings an action on behalf of the Willborn family (an African-American, married couple) and their real estate agent, Dylcia Cornelious, against Daniel and Adrienne Sabbia (a white, married couple) and their real estate agent for discriminatory housing practices in violation of the Fair Housing Act.
    - i. The United States alleges that the Willborns were victims of discriminatory housing practices when the Sabbias and their real estate agent refused to sell their five-bedroom, 8,000 sq. foot, single-family home, located in Chicago's Bridgeport neighborhood.
    - ii. In early 2008, the Sabbias' property was listed to sell at \$1.99 million. The property was removed briefly in late 2008 and relisted in mid-2009 at \$1.79 million. In early 2010, the Willborns, with their real estate agent, Dylcia Cornelious, toured the property and offered \$1.5 million. The

Sabbias countered with \$1.75 million (allegedly knowing at all times relevant that the Willborns were African-American). Over a span of three days, the Willborns offered \$1.65 million and later accepted the Sabbias' counter offer of \$1.7 million. However, the Sabbias' agent informed the Willborns' agent that the property was removed from the market, because Adrienne Sabbia changed her mind about moving, the Sabbias could not find a suitable new home, and the Sabbias wanted to keep their children in their current schools. After the Willborns filed a complaint with HUD, the Sabbias relisted and offered the property, which the Willborns rejected.

b. Related Cases:

- i. Private Action; *Willborn v. Sabbia, et al.* 10-cv-05382 (N.D. Ill. 2010).
  1. This case has been consolidated with the public action.
- ii. Declaratory Judgment Action; *Farmers Ins. Exch. v. Sabbia, et al.* 10-CH-45739.
  1. Farmers is disavowing coverage under two policies (primary and umbrella), asserting there is no coverage for a variety of reasons, including no bodily injury or property damage coverage, personal injury (as defined in the policy) coverage, no occurrence is alleged, etc.

3. CASE LAW

a. Standing to Sue for Discrimination under the FHA

- i. *3 Requirements* → (i) injury in fact (concrete and particularized); (ii) actual or imminent, not hypothetical (causation between injury and conduct complained of); and (iii) likelihood of redress by a favorable decision.
- ii. *Prima Facie Case* → Plaintiff shows: (1) that he or she is a member of a protected class, (2) that he or she applied for and was qualified to rent or purchase certain property or housing, (3) that he or she was rejected, and (4) that the housing or rental property remained available thereafter. *See Mencer v. Princeton Square Apartments*, 228 F. 3d 631 (6th Cir. 2000).
- iii. *Those not Directly and Immediately Subjected to Discrimination may Possess Standing* → In *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 93 S.Ct. 364, 34 L.Ed.2d 415 (1972), a black tenant and a white tenant of an apartment complex brought an FHA suit, alleging that their landlord racially discriminated against nonwhites. The Court held that both tenants had standing, because "the alleged injury to existing tenants by exclusion of minority persons from the apartment complex is the loss of important benefits from interracial associations." *Id.* at 209-10, 93 S.Ct. 364. "The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is ... the whole community." *Id.* at 211, 93 S.Ct. 364 (internal quotation marks omitted).

b. Discriminatory Factors to Consider

- i. *Personal Preference* → economic theories suggest that the housing market is not dictated by rational decision-making in its purest economic form (where perfect information guides decision-makers to evaluate purely through cost/benefit rationales).
  1. “[H]omebuyers usually do not engage in wealth-maximizing behavior but, instead, act like ‘satisfiers.’ They search for alternatives until they find one that is ‘good enough’, rather than best.” *Honorable v. Easy Life Real Estate Sys.*, 100 F. Supp. 2d 885, at 889 (N.D. Ill. 2000), quoting William N. Eskridge.
- ii. *Racial Steering* → the practice of directing potential home buyers and renters away from certain locations for the purpose of maintaining patterns of segregation. *Heights Cmty. Cong. v. Hilltop Realty, Inc.*, 774 F.2d 135, at 139-40 (6th Cir. 1985) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 366 n. 1, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982)).
  1. *See Wallace v. Chicago Hous. Auth.*, 298 F. Supp. 2d 710, (N.D. Ill. 2003) citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 366 n. 1, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982) (defining racial steering as a practice by which defendants "preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial or ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups.").
  2. Redlining → the practice of denying the extension of credit to specific geographic areas due to the income, race, or ethnicity of its residents. Reverse redlining is the practice of extending credit on unfair terms to those same communities. *Honorable*, 100 F. Supp. 2d 885, at 892 (N.D. Ill. 2000).
    - a. Mortgage redlining falls under the Fair Housing Act’s broad protection against discriminatory denials of insurance and discriminatory real estate pricing.
- iii. *Family Structure* → cases involving blatantly discriminatory sale or lease provisions in which the protected group is actually singled out for different treatment are rare; those that do occur usually involve provisions targeting children or families with children. *See, e.g., Gorski v. Troy*, 929 F.2d 1183, 1185 (7th Cir. 1991) (striking down a lease which provided that children were not permitted without written consent from the owners).
  1. The FHA defines "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with" a parent or someone with an equivalent custodial relationship. 42 U.S.C. § 3602(k)(1); *see also* 24 C.F.R. § 100.20 (2006). *White v.*

*U.S. Dep't. of Hous. and Urban Dev.*, 475 F. 3d 898, (7th Cir. 2007).

2. To determine whether a statement indicates impermissible discrimination on the basis of familial status, an "ordinary listener" standard is used. *See Jancik v. Dep't of Hous. & Urban Dev.*, 44 F.3d 553, at 556 (7th Cir. 1995); *see also Ragin v. New York Times Co.*, 923 F.2d 995, 999 (2d Cir. 1991) (applying "ordinary reader" standard to analysis of advertisement under § 3604(c)).
  - a. The inquiry under this objective standard is whether the alleged statement would suggest to an "ordinary listener" that a person with a particular familial status is preferred or disfavored for the housing in question. *See Jancik*, 44 F.3d at 556. The ordinary listener "is neither the most suspicious nor the most insensitive of our citizenry." *Id.* at 556 n. 4 (citing *Ragin*, 923 F.2d at 1002).

iv. *Permissible Government Intrusion*

1. *Public Safety Justification* → In connection with the city of Boise's legislative objectives, Community House, Inc. ("CHI") leased from Boise, in 1994 as part of a public/private partnership, a building that CHI operated as a homeless shelter and as low-income transitional housing. In 2004, CHI and Boise agreed to terminate the lease agreement and CHI's right to manage the building. In 2005, Boise leased the building to the Boise Rescue Mission ("BRM"), an organization that operates the facility as a homeless shelter for single men and that includes in its activities Christian religious services and pre-meal prayers. In 2007, the BRM purchased the facility pursuant to an option contained in the lease agreement.
  - a. After CHI agreed to terminate its lease but before Boise's new lease with the BRM, CHI, along with several individual plaintiffs, filed a civil rights complaint under 42 U.S.C. § 1983 against Boise alleging, among other things, that the anticipated lease of the building to the BRM violated the First Amendment's anti-Establishment Clause (that Congress shall make no law respecting an establishment of religion) and the FHA. The 9<sup>th</sup> Circuit determined that although public officials named as defendants were immune from liability, there were genuine issues of material fact whether providing a male-only homeless shelter satisfied a public safety exemption from violating the FHA. *Cmty House, Inc. v. City of Boise*, 654 F. Supp. 2d 1154 (D. Idaho 2009).



2. *Religious Exemption* → *See also* Community House, Inc. v. City of Boise: the FHA recognizes a religious exemption from its requirements, demonstrating that in some circumstances, religious discrimination is allowed under the FHA. *See* 42 U.S.C. § 3607(a).

#### 4. CONSEQUENCES FOR VIOLATIONS

- a. Government intrusion into your life
- b. Being forced to wear “a Scarlet Letter”
- c. \$\$\$ → your fees, their fees, actual and punitive damages, and court costs, most likely none of which are reimbursable by insurance.