

FAIR HOUSING LAWS AND DISCRIMINATION

April is fair housing month and, this year, it's also the 45th anniversary of the passage of the Fair Housing Act. Adopted in the wake of the assassination of Dr. Martin Luther King, Jr. The Fair Housing Act transformed the legal rights that all Americans have to rent and own homes in communities across the country. It marks a giant step toward equal opportunity for all.

Discrimination in mortgage lending is prohibited by the federal Fair Housing Act and the Equal Credit Opportunity Act who actively enforce the provisions of these laws.

1. The Fair Housing Act

Under the Fair Housing Act ("FHA") (Title VIII of the Civil Rights Act of 1968), it is **"unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin."** 42 U.S.C. § 3605. Section 3605, although not specifically naming **foreclosures**, discrimination in "the manner in which a lending institution forecloses a delinquent or defaulted mortgage note" falls under the realm of the "terms or conditions of such loan." *Harper v. Union Savings Association*, 429 F.Supp. 1254, 1258-59 (N.D. Ohio 1977). The Office of Fair Housing and Equal Opportunity is charged with administering and enforcing the Fair Housing Act. Any person who feels that they have faced lending discrimination can file a fair housing complaint.

Link to filing a complaint:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint

2. The Equal Credit Opportunity Act

Under the Equal Credit Opportunity Act ("ECOA"), a creditor **may not discriminate** against an applicant based on the applicant's race, color, or national origin "with respect to any aspect of a credit transaction," 15 U.S.C. § 1691

3. The Federal Deposit Insurance Corporation

Consistent with many jurisdictions throughout the country, the Federal Deposit Insurance Corporation ("FDIC"), based in part on a study conducted by the Federal Reserve Bank of Boston, issued a "Policy Statement On Discrimination In Lending" on April 29, 2004, emphasizing the breadth of prohibitions on discriminatory conduct in lending under the ECOA and the FHA. The FDIC Policy

was pressure on both sides, as working-class blacks wanted a part of the nation's home-owning trend.

- c. Disparate impact: When a lender doesn't target a single group, but equal loan practices result in a harsher impact on one group.

7. Lender Discrimination Reality:

- a. One of the most notable instances of widespread mortgage discrimination occurred in United States inner city neighborhoods from the 1930s up until the late 1970s. There is evidence that the practice still continues in the United States today.

African Americans and other minorities found it nearly impossible to secure mortgages for property located in redlined zones. The systematic denial of loans was a major contributor to the urban decay that plagued many American cities during this time period. Minorities who tried to buy homes continued to face direct discrimination from lending institutions into the late 1990s. The disparities are not simply due to differences in creditworthiness. With other factors held constant, rejection rates for Black and Hispanic applicants was about 1.6 times that for Whites in 1995.

Fairness in lending was improved by the Home Mortgage Disclosure Act, passed in 1975. It requires banks to disclose their lending practices in the communities they serve. In the 1970s, the private sector fight against mortgage discrimination began to be led by community development banks, such as ShoreBank in Chicago.

- b. With other factors held constant, rejection rates for Black and Hispanic applicants was about 1.6 times that for Whites in 1995.
- c. Yet, despite the significant progress that we've made on fair housing, new research and recent events have made clear that we still have a ways to go. The new Fair Housing Trends Report from the National Fair Housing Alliance finds a significant rise in housing discrimination complaints last year, with a marked spike (up 35% from the previous year) in complaints of harassment because of race, national origin, disability, gender, and families with children in the home. The U.S. Department of Housing and Urban Development estimates that the 28,519 complaints filed in 2012 represent less than 1% of the discrimination actually committed in our country.
- d. The Wells Fargo case: *City of Memphis et al v. Wells Fargo Bank, N.A. et al*; and other relevant case law.

8. Other Homebuyer Discrimination Realities

- a. Real Estate Agent Deception: where prospective homebuyers are led to buy houses for too much, or in bad neighborhoods, or to sign contracts the

buyer doesn't understand or charge unlawful fees to the buyer. This is especially common with Hispanics, who do not understand the language or our culture.

- i. The "3 houses and you buy" true story
 - ii. The "pay \$500 for me to show you a house" true story
- b. Realtor-Loan Officer Conspiracy: where realtors are paid money to bring clients to the loan officer who then provides the homebuyer with an expensive or predatory loan that is bad for the buyer but profitable for the loan officer.
- i. This still happens all the time
 - ii. This particular practice is very difficult to detect and prevent
- c. House Appraisal Deceptions – If a house is appraised for more, then the realtor can sell it for more (which results in a larger commission) and the loan officer can get them a bigger loan (which results in more money for the loan officer)—and the appraiser gets a kick back, of course. This was common in illegal flipping schemes.
- d. Educational disparities: Lack of education tends to create situations where the homebuyer is timid or embarrassed to ask questions. Many in the local Hispanic population – even if they can speak English well – can not read or write in English.
- e. Language Barriers: There are many foreigners in the Memphis Area—Hispanic, Asian, Middle Eastern—who struggle with understanding and communicating in English. They are easy targets and have to rely 100% on their real estate agent and loan officer (and closing attorney).
- f. Cultural Barriers: Buying a home has a cultural aspect to it. If your parents, and grandparents and aunts and uncles own homes, then your family has a culture of owning homes and you are far more likely to expect that you will own a home of your own someday. And with all the experience family members to advise you, you don't feel daunted by the idea of finding and buying a home. The opposite is true if no one in your family has ever owned their own home.

9. The Effects of Housing Discrimination

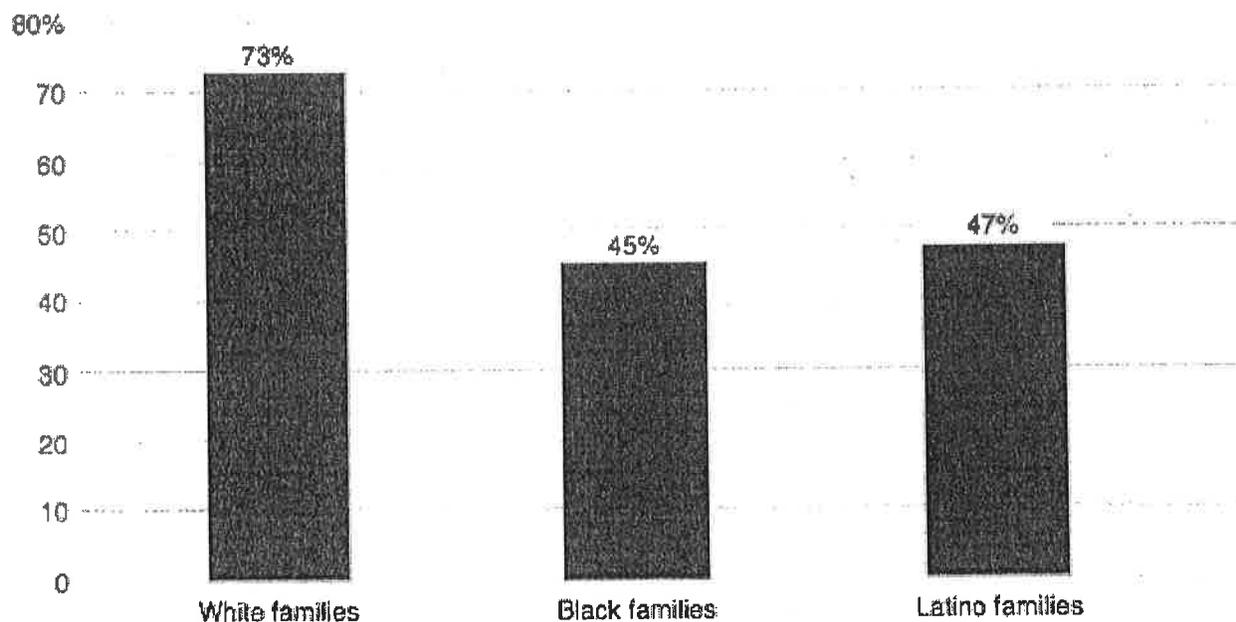
- a. Demos is a U.S. "Think Tank" that tracks, among other things, the wealth divide between whites and minorities.
- b. See next page: *Why America's Racial Wealth Gap Is Really a Homeownership Gap*

Why America's Racial Wealth Gap Is Really a Homeownership Gap

Minorities are less likely to own a home, and get worse returns on the ones they do own. Owning a home isn't just a fragment of the American Dream, it's the key to it. Homeownership is also the primary way by which Americans accumulate wealth. American asset-building policies are heavily focused on homeownership, but these policies have discriminated against minorities in the past, and have left a lasting scar.

People of color continue to face barriers to homeownership. They are less likely to own a home (below) and less likely to get returns from the homes they do own, says Catherine Ruetschlin, senior policy analyst at Demos, a public policy organization. Ruetschlin and her colleagues have authored a new report with Brandeis University's Institute on Assets and Social Policy showing the extent to which inequality in homeownership drives the racial wealth gap, and how

Figure 2. Homeownership Rates



Source: Survey of Income and Program Participation (SIPP), 2009 Panel Wave 10, 2011

eliminating this disparity could significantly reduce U.S. wealth inequality.

Racial disparities in homeownership rates, according to 2011 data. (Demos)
The report finds that if homeownership rates were the same for all races, the wealth gap between black and white families would be reduced by 31 percent. The gap between Hispanic and white families would shrink by almost the same amount—28 percent:

Federal Fair Lending Regulations and Statutes

Fair Housing Act

The Fair Housing Act (FHA), which is title VIII of the Civil Rights Act of 1968, as amended (42 USC 3601 et seq.), makes it unlawful for any lender to discriminate in its housing-related lending activities against any person because of race, color, religion, national origin, sex, handicap, or familial status. Anyone who is in the business of providing housing-related loans is subject to the FHA (as well as the Equal Credit Opportunity Act).

Key Provisions of the Fair Housing Act

The Fair Housing Act specifically applies to the financing of a loan secured by residential real estate: As noted in section 805 of the act, a bank may not deny a loan or other financial assistance for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling because of the race, color, religion, national origin, handicap, familial status, or sex of the

- Loan applicant
- Any person associated with the loan applicant
- Any current or prospective owner of the dwelling
- Any lessees
- Any tenants or occupants

The FHA also makes it unlawful for a creditor to use a prohibited basis to discriminate in fixing the amount, interest rates, duration, or other terms of the credit. In addition, because residential real estate-related transactions include any transactions secured by residential real estate, the act's prohibitions (and regulatory requirements in certain areas, such as advertising) apply to home equity lines of credit as well as to home purchase loans. These prohibitions also apply to the selling, renting, brokering, or appraising of residential real property and to secondary-mortgage-market activities. Consequently, a bank's practices in the area of housing lending should be examined in a general way to ensure that they do not "otherwise make unavailable or deny" housing, even when no specific act or practice may violate any specifically named prohibition of the FHA.

Unlawfully Discriminatory Lending Practices under the FHA

Like the other civil rights statutes, the Fair Housing Act was broadly written by Congress. A variety of

lending practices have been found to be illegal under the act, including some that are not specifically mentioned in the act but that have been determined to be illegal because they violate requirements and prohibitions that are implicit in the act's language. Some of the practices that the courts have determined to be prohibited are described below.

Redlining

Redlining is the practice of denying a creditworthy applicant a loan for housing in a certain neighborhood even though the applicant may otherwise be eligible for the loan. The term refers to the presumed practice of mortgage lenders of drawing red lines around portions of a map to indicate areas or neighborhoods in which they do not want to make loans.

Redlining on a racial basis has been held by the courts to be an illegal practice. It is unlawful under the FHA only when done on a prohibited basis. Redlining an area on the basis of such considerations as the fact that the area lies on a fault line or a flood plain is not prohibited.

The prohibition against redlining does not mean that a lending institution is expected to approve all housing loan applications or to make all loans on identical terms. Denying loans or granting loans on more-stringent terms and conditions, however, must be justified on the basis of economic factors and without regard to the race, color, religion, national origin, sex, or marital status of the prospective borrowers or the residents of the neighborhood in which the property is located. For example, a bank may consider such economic factors as

- An applicant's income or credit history
- The condition, use, or design of the proposed security property (or of those nearby properties that clearly affect the value of the proposed security property), provided that such determinants are strictly economic or physical in nature
- The availability of neighborhood amenities or city services
- The need of the lender to hold a balanced real estate loan portfolio, with a reasonable distribution of loans among various neighborhoods, types of property, and loan amounts

Each of the factors must be applied without regard to any of the prohibited bases.

Lowballing

Lowballing—the practice of making an excessively low appraisal in relation to the purchase price on the basis of prohibited considerations—is one form of redlining. Lending more than the appraised value of the collateral is not sound banking practice, and lowballing forces a borrower either to cancel the purchase contract or the loan application, or both, or to make a larger down payment on a property in order to make up the difference between the sales price and the appraised price.

Use of Racially Exclusive Images

The use of racially exclusive images has repeatedly been found to be illegal in the employment context even when there was little or no evidence of a discriminatory policy directed toward any given individual applicant. This practice has been held to violate the Fair Housing Act as well. For example, a housing lender might exploit an exclusive image by showing only applicants of a particular race in advertisements for home loans. Using only white individuals in advertisements for home equity loans, for instance, may suggest to viewers that only white applicants need apply or that the lender is looking only for applicants who resemble the individuals in its housing advertisements.

In addition to prohibiting the use of racially exclusive images, the FHAct makes it unlawful to make or print a statement or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or the intention to make any such preference, limitation, or discrimination. The courts have applied this prohibition to newspaper advertisements soliciting tenants and homebuyers who speak only certain languages. For example, a Korean bank that advertises only in Korean-language publications targeting Koreans while ignoring other minority groups in the bank's community may be discouraging other minority applicants from applying. Although it is recognized that a determination of the impact of an advertising policy will depend on all the facts of the situation, some advertising guidelines issued by the Secretary of the Department of Housing and Urban Development may be useful to banks and examiners in determining the kinds of advertising practices that should be encouraged or avoided. Banks should ensure that their advertising policies do not have the effect, even inadvertently, of prescreening applications for credit on prohibited bases.

Discriminatory Acts That Have a Negative Impact on Nonminorities

The courts have held that discriminatory acts that have a negative impact on nonminorities, such as white individuals, are illegal and that such individuals have standing to sue.

Use of Excessively Burdensome Qualification Standards

The use of excessively burdensome qualification standards to deny, or that have the effect of denying, housing to minority applicants is also illegal under the FHAct.

Imposition of More-Onerous Interest Rates or Other Terms, Conditions, or Requirements

The imposition of more-onerous interest rates, or other more-onerous terms, conditions, or requirements, on minority loan applicants is explicitly prohibited. The phrase "terms or conditions" as used in the act covers many types of discriminatory practices.

Application of Different Standards or Procedures for the Same Process

The application of different standards or procedures in administering foreclosures, late charges, penalties, reinstatements, or other collection procedures is unlawful.

Insurance

The FHAct and the ECOA diverge on the treatment of discrimination in the terms or availability of insurance. The ECOA does not prohibit a creditor who sells or participates in the sale of insurance from differentiating, on a prohibited basis, in the terms and availability of insurance. Nor does it prohibit discrimination in the availability or terms of credit on the basis that insurance is unavailable, except when the insurance has been denied on the basis of age. When it comes to housing-related lending, however, the result may be different. The Department of Justice has taken the position that the FHAct is violated when insurance required for housing credit is denied, or is made more difficult to obtain, on a basis prohibited by the FHAct.

Racial Steering

Racial steering—deliberately guiding loan applicants or potential purchasers toward or away from certain types of loans or geographic areas because of race—is illegal.

In summary, banks are not expected to make unsound real estate loans or to render services on

more-favorable terms to applicants solely because of the applicant's status as a member of a protected class. However, denying loans or services on this basis is illegal.