

Focus on:



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Michigan's fair housing provisions in the Elliot-Larsen Civil Rights Act

by R. Shane Uber

MSU Law Student

As attendance increases at local universities and colleges in Michigan and new jobs are created, the cultural diversity in the area increases as well. Students and citizens from all different nationalities, religions, and even non-traditional families come to reside in these areas. Michigan's Elliot-Larsen Civil Rights Act of 1976, which superseded the state Fair Housing Act of 1968, prohibits discrimination in the sale, rental, or financing of housing based on race, color, national origin, or religion.

Michigan's former Fair Housing Act of 1968

Under Michigan's former Fair Housing Act, the Legislature provided protection from discrimination and unfair housing practices by owners, real estate brokers, or real estate salespersons. (MCL 564.201) In that Act, the legislature set forth a broad definition of a "real estate broker or salesman," including a person who negotiates or attempts to negotiate the sale, purchase, exchange, rent or lease of real property, or acts as one engaged in such negotiations. (MCL 564.102(j)). Additionally, anyone who held her or himself out as negotiating or attempting to negotiate a loan secured by a mortgage, or who was engaged or employed in the listing of real property by publication, fell under the definition of who was prohibited from engaging in unfair housing practices.

The Act further detailed that the class defined by MCL 564.201 could not refuse to negotiate a real estate transaction or enter into a real estate transaction with a person based on color, race, religion, or national origin. (MCL 564.201(a)) Moreover, a person could not be discriminated against in the "terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith."

In addition to the direct discrimination that could occur from owners, landlords, or anyone else defined under the Act, indirect discrimination through publication and housing applications was also prohibited. Use of a publication directly or indirectly demonstrating intent to accomplish some type of limitation, specification, or discrimination was prohibited. Though direct discrimination is easily noticed in statements such as, "White Family Seeks Tenant," it is often the indirect discrimination that goes unnoticed. An example of a publication that may not appear to be directly discriminatory, but suggests a discriminatory intent is: "No



EQUAL HOUSING
OPPORTUNITY

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Translator in Leasing Office.” Though the advertisement is not suggesting a treatment based on the individual’s national origin, it ultimately suggests that unless the potential tenant speaks English, they will be unable to do business there, thereby reflecting back upon the origin of the tenant.

Finally, the Fair Housing Act established protection from discrimination based on national origin, color, race, and religion when an individual was seeking financial assistance that was connected with a real estate transaction. In addition, it was prohibited to use a form, application, or keep a record or inquiry in connection with an individual seeking financial assistance which directly or indirectly referred to race, color, religion, or national origin.

The Michigan Elliott-Larsen Civil Rights Act of 1976

The Elliot-Larsen Civil Rights Act of 1976 repealed Michigan’s Fair Housing Act, but preserved and broadened the protections of the Fair Housing Act. Under the Elliott-Larsen Act, the legislature sought to extend prohibitions of discriminatory practices based on traits and characteristics of individuals. Prohibitions under the Elliot-Larsen Act were expanded to include discrimination based upon religion, race, color, national origin, age, sex, height, weight, familial status, or marital status.

Specifically, Article 5 of the Elliot-Larsen Act gives guidance on unfair housing practices, and expands the prohibitions provided for under the former Fair Housing Act to include discrimination based on age, sex, familial status, and marital status. (MCL 37.2502(1)). Elliot-Larsen does cover by its plain language the publication and housing application discrimination referred to above. Additionally, the Act enforces certain protections when individuals are discriminated against based on the aforementioned characteristics when seeking financial assistance during real estate transactions. (MCL 37.2505(1))

Michigan’s Fair Housing Act of 1968 and the Elliot-Larsen Civil Rights Act of 1976 may seem like old legislation, but they have ultimately evolved over time, based on our country’s diversity. The Elliot-Larsen Act, incorporating the provisions of the Michigan’s former Fair Housing Act, represents a safe haven for a country that grows more diverse every day. With increased diversity among those seeking housing opportunities, the Elliot-Larsen Act remains a necessary arrow in the archer’s quiver for protecting individuals discriminated against in the housing market.

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Fair housing and the mentally ill

by Lyndsay Anderson
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In April 1968, Congress passed the Civil Rights Act. Title VIII of that act is known more commonly as the Fair Housing Act. The act protects against discrimination in the sale, rental, and financing of housing based on race, religion, and national origin. Over the years the Act has been amended to extend protection beyond the original stated classes; for example, discrimination based on gender - passed by Congress in 1974. However, discrimination based on handicap was not included in the act for 20 years until the Fair Housing Amendments Act of 1988 (FHAA). (FHAA, P.L. 100-430, 102 Stat. 1619).

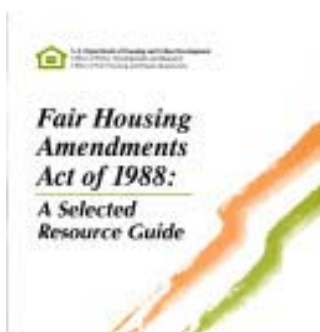
The statute defines handicap broadly as, “a physical or mental impairment which substantially limits one or more of such person’s major life activities, a record of having such an impairment or being regarded as having such an impairment,” but excludes “current, illegal use of or addiction to a controlled substance.” (42 U.S.C.A. § 3602.) This broad definition *does* include the mentally ill. Inclusive protection of the mentally ill is critical because mental illness has a wide impact. Four of the 10 leading causes of disability in America are mental disorders. Within this group of handicaps are veterans of the Iraq and Afghanistan war who are suffering from mental health issues, including post-traumatic stress disorder.

Housing is a unique issue for the mentally ill. According to National Coalition for the Homeless, 26 percent of those homeless who are in shelters are persons with severe mental illness. (See [link](#).) Veterans have a particularly high incidence rate, as this group makes up one fifth of the homeless population, but only 8 percent of the general population can claim veteran status. (See [link](#).) A majority of these veterans suffer from mental illness and the lingering effects of post-traumatic stress syndrome. Often, treatment of mental illness is dependent on stability and well-being that only dependable housing can secure for those who are suffering.

Protections

The FHAA includes broad protection for the mentally ill by prohibiting discrimination based on handicap in sales or rentals, or to otherwise make a dwelling unavailable, to either a buyer or renter, to any person residing in the dwelling, and to a person associated with that buyer or renter. (42 U.S.C.A. § 3604.) In other words, this protection

Twenty-six percent of those homeless in shelters are persons with severe mental illness.



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extends to all members in the dwelling and even visitors of the dwelling. The prohibition of discrimination can include the following acts: refusing to rent or sell housing; refusing to negotiate for housing; making housing unavailable; denying a dwelling; setting different terms, conditions or privileges for the sale or rental of a dwelling; providing different housing services or facilities; falsely denying that housing is available for inspection, sale, or rental; or persuading owners to sell or rent for a profit. (See [link](#).)

Enforcement

Housing discrimination based on mental illness is illegal under federal law, and the department responsible for the administration of that law is the Department of Housing and Urban Development (HUD). If a person with mental illness, or within any of the protected classes, believes his or her rights have been violated, he or she can file a complaint with HUD. The department accepts complaints online, by mail, and by phone. Those who file a complaint are known as complainants and those against whom complaints are filed are known as respondents. If HUD accepts the complaint for investigation, HUD will send the respondent a copy of the complaint to be answered. HUD will investigate by interviewing both parties and any witnesses. HUD seeks conciliation with all housing complaints, but it is on a voluntary basis. If there is a conciliation agreement that is later violated, HUD can recommend that the U.S. Department of Justice file suit.

Limitations

While the FHAA is written broadly, there are limitations. Mental illness can often intersect with substance abuse, leading a party to fall within the exception enumerated in the statute. The statute protects *recovering* alcoholics and drug addicts because the definition of handicap encompasses this group; however, those currently battling an addiction are not included.

Conclusion

Fair Housing is a fundamental right of all citizens, and the mentally ill are not an exception from this rule. While the mentally ill suffer a disparate impact of homelessness, there are protections that the mentally ill can invoke. This protection helps secure the stability that housing can provide and which is necessary for treatment. While the protection provided is broad, there is a carved out an exception for the use of drugs and alcohol. This exception is most difficult for the mentally ill as this group sometime suffers the “dual diagnoses” of mental illness and substance abuse. This intersection compounds the challenge for this group.

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Fair lending and the Fair Housing Act

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Government agencies and private lenders had a long history of unrestrained discrimination in the area of mortgage loans, as documented in the book *The Persistent Problem of Lending Discrimination: A Law and Economics Analysis*, 73 TEX. L. REV. 787 (1995), by PETER P. SWIRE. In 1968, Congress passed the Fair Housing Act (the Act) in an attempt to enforce fair lending practices. (42 U.S.C. § 3601 *et seq.* (1968) (amended 1988)). The Act prohibits discrimination by a person, business, or entity engaged in “residential real estate-related transactions” on the basis of race, color, religion, sex, handicap, familial status, or national origin. (42 U.S.C. § 3605 (1988)). The phrase “residential real estate-related transactions” necessarily encompasses mortgage loans, and the Act thus prohibits discrimination in lending based on enumerated protected classes. (See Timothy C. Lambert’s book, *Fair Marketing: Challenging Pre-Application Lending Practices*, 87 GEO. L. J. 2181, 2197 (1999)). The Act provides for enforcement by filing a charge with the Secretary of Housing and Urban Development, (42 U.S.C. § 3612 (1988)), by private action in state or federal court, (42 U.S.C. § 3613 (1988)), or by an action by the Attorney General in cases of a “pattern or practice” of discrimination that “raises an issue of general public importance.” (42 U.S.C. § 3614(a) (1988)).

Although flagrantly discriminatory lending practices still continue today, discrimination in lending has taken on more subtle forms. One prominent form of lending discrimination that runs afoul of the Act is “redlining,” a practice whereby a lending entity does not lend to residents of an entire neighborhood as a matter of policy, as Swire notes in *Lending Discrimination*. Often, such neighborhoods are singled out based on a predominantly minority population or their status as predominantly white neighborhoods being infiltrated by minorities. Such practices constitute discrimination on the basis of race or nationality and are prohibited by the Act.

Similarly, a lender’s absence or low market share in a minority market where other lenders have been successful may indicate a “pattern or practice” of lending discrimination prohibited by the Act. Such discrimination may occur at the pre-application stage, and may be ascertained by statistical analysis of a lending institution’s applicant pool, noted in Lambert’s book *Fair Marketing*. The unexplained lack of



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minorities in a lending institution's applicant pool may constitute significant evidence of discrimination. For example, in *United States v Chevy Chase Savings Bank*, (No. 94-1824 JG, P-H: Fair Housing-Fair Lending Rptr. ¶ 19,385 (D.D.C. Aug. 22, 1994)), the U.S. Department of Justice used statistical data to make out a case of lending discrimination against Chevy Chase Savings Bank by showing that 97.6 percent of their loan applicants were from predominantly white census tracts, while only 2.4 percent came from predominantly black census tracts. Such a disparity in the racial makeup of the bank's applicant pool was unlikely to occur by chance, and the bank eventually settled. Thus, although lending discrimination may have taken on more subtle forms since the passage of the Fair Housing Act in 1968, discrimination in lending certainly has not disappeared entirely, and the Act remains an important tool in ensuring equal access to financing for members of minority groups.

The unexplained lack of minorities in a lending institution's applicant pool may constitute significant evidence of discrimination.



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Fair housing and sexual orientation

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Currently neither federal nor Michigan state laws protect individuals from housing discrimination based on sexual orientation. However, 14 Michigan cities have implemented local ordinances.

Currently neither federal nor Michigan state laws protect individuals from housing discrimination based on sexual orientation. While on the federal level, the Fair Housing Act prohibits discrimination in housing related transactions based on race, color, national origin, religion, sex, family status, and disability, it does not protect individuals against discrimination based on their sexual orientation.

Similarly, Michigan's Elliott-Larsen Civil Rights Act does not provide any protection against sexual orientation discrimination in housing transactions. (To pursue cases of housing discrimination based on sexual orientation, the Michigan Fair Housing Centers currently use the marital status provisions of the Michigan Elliott-Larsen Civil Rights Act and/or the Federal Fair Housing Act prohibition of sex discrimination.) However, 14 Michigan cities have implemented local ordinances prohibiting discrimination in housing transactions based on sexual orientation. These cities are listed below.

Michigan housing ordinances prohibiting discrimination based on sexual orientation

City	Ordinance
Ann Arbor	Chapter 112 Non-Discrimination
Birmingham	Article II Discrimination
Detroit	Article IV Real Estate, Insurance, and Loan Practices
Douglas	Chapter 91 Human Relations Sec. 91.01
East Lansing	Article II Civil Rights Sec. 22-34
Ferndale	Chapter 28 Human Rights Sec. 28-4
Grand Rapids	Article III Community Relations Commission Sec. 1.347
Huntington Woods	Chapter 118 Human Rights Sec. 9.404
Kalamazoo	Article II Discrimination Prohibited Sec. 18-17
Lansing	Chapter 297 Human Rights Sec. 297.06
Saginaw	Chapter 93 Non-Discrimination
Saugatuck	Chapter 130 Disorderly Conduct Sec. 130.03
Traverse City	Chapter 605 Sec. 605.03
Ypsilanti	Chapter 58 Human Relations Article III Discrimination Sec. 58-92



There are cities other than those listed above that have passed analogous ordinances; however, those cities have since [done away with their regulations](#).

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Penalties

Many of the ordinances above do not allow for private actions and many penalties include only dispute resolution. However, some ordinances allow the city, as well as the individual discriminated against, to institute penalties.

For example, Ann Arbor's ordinance allows for public and private remedies. The city can bring an action, as the violation is considered civil infraction punishable by a fine of not more than \$500.00 plus all costs of the action. ([Ann Arbor Code of Ordinances, Title IX: Police Regulations, § 9:163.](#))

In addition, an individual may bring a civil action against the violator for appropriate injunctive relief and/or damages for injury or loss caused by each violation.

Saginaw's ordinance has even more teeth. While all of the laws above are considered civil infractions, violation of Saginaw's ordinance can be considered criminal. If the violator does not voluntarily comply with requests to discontinue and abstain from the illegal behavior, under the Saginaw ordinance, violations then become criminal misdemeanors. ([Saginaw Code of Ordinances, Title IX: General Provisions, § 93.04](#))

Investigations

Fair Housing Centers throughout Michigan investigate civil rights violations throughout the state. By "testing" certain housing providers in the past, the Michigan Fair Housing Centers have "uncovered widespread discrimination against same-sex couples." ([Fair Housing Centers of Michigan, Sexual Orientation and Housing Discrimination in Michigan 3 \(January 2007\)](#))

People who believe they have been a victim of housing discrimination based on their sexual orientation (or any other protected characteristic) can contact either:

Michigan State University College of Law

Housing Law Clinic

610 Abbott Rd.

East Lansing, MI 48823

PH: 517.336.8088 option 2

EMAIL: housing@law.msu.edu

The Fair Housing Center of Southeastern Michigan

P.O. Box 7825

Ann Arbor, MI 48107

PH: 1.877.979.FAIR

EMAIL: info@fhcmichigan.org

Many of the ordinances do not allow for private actions...however, some ordinances allow the city to institute penalties.

SEXUAL ORIENTATION AND HOUSING DISCRIMINATION IN MICHIGAN

A Report of Michigan's Fair Housing Centers



Fair Housing Center of Metropolitan Detroit
Fair Housing Center of Southeastern Michigan
Fair Housing Center of Southwest Michigan
Fair Housing Center of West Michigan

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Report by Arcus Foundation



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The Fair Housing Act and subsidized housing

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The federal government sets up and establishes different subsidized communities throughout the United States, but these communities are often built in crime-stricken neighborhoods or less diverse areas.

The Fair Housing Act was established to prohibit discrimination and the intimidation of people in their homes, apartment buildings, and condominium developments in nearly all housing transactions, including the rental and sale of housing and the provision of mortgage loans. The Fair Housing Act made it illegal for landlords to refuse to rent or sell homes to people based on race, color, national origin, religion, sex, familial status, or disability. However, one question remains: How has the Fair Housing Act been applied to issues of discrimination in federal subsidized housing? The federal government sets up and establishes different subsidized communities throughout the United States, but these communities are often built in crime-stricken neighborhoods or less diverse areas. Different groups have spearheaded the movement to ensure that those who must live in federal subsidized housing will still have the benefits that the Fair Housing Act provides.

Racial discrimination in federal subsidized housing

In 1969, the issue of fair housing in federal subsidized housing came to the forefront when a group of black tenants in Chicago brought suit, alleging that the U.S. Department of Housing and Urban Development (HUD) had violated various statutory and constitutional rights by selecting housing project sites in predominately black neighborhoods. (*Gautreaux v Pierce*, 690 F2d 616 (7th Cir. 1982)). The suit also alleged that HUD was using racial quotas to limit the number of blacks in housing projects in predominately white neighborhoods. In 1969, HUD was found to have knowingly acquiesced in the Chicago Housing Authority's discriminatory practices. As a result of this lawsuit, the Gautreaux Assisted Housing Program was created for the purpose of remedying past segregation, by offering interested members of the plaintiffs' class an opportunity to find housing in desegregated areas of the metropolitan region. The Gautreaux Program ended in 1998 after [it had placed 7,100 families in affluent white majority suburbs](#).

Disability discrimination in federal subsidized housing

The Fair Housing Act requires landlords to make "reasonable accommodations" in their policies, procedures, rules and services if such an accommodation is necessary to allow the person with a disability

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equal access to a unit. (42 USC 3604(f)(b)(3). There is a gray area in the application of this rule, in that it does not explicitly say that it applies to federal subsidized housing. This issue was resolved in 1973 with the Rehabilitation Act. It requires that governments, public housing authorities and landlords receiving federal funds make “reasonable accommodations” for the physical or mental limitations of otherwise qualified persons. (29 USC § 794 (2002) This is a requirement unless the recipient of the federal funds can show that the accommodation would “fundamentally alter” the nature of the housing operation or impose “undue financial and administrative burdens.” This “reasonable accommodation” requirement applies to physical structures as well as application procedures, admissions and screening, occupancy rules and lease terminations. The Rehabilitation Act extended the requirements to accommodate a disability to federal subsidized housing as well. However, unlike the Fair Housing Act, if structural changes are necessary to ensure the housing is readily accessible to and usable by individuals with disabilities under the Rehabilitation Act, the landlord must make the changes at his or her expense. ([Housing for Providers: The Importance of Fair Housing Laws](#), UNITED CEREBRAL PALSY.)

Conclusion

The Fair Housing Act prohibits discrimination in housing, but it fails to ensure that the federal subsidized developments will be established in communities that are safe, clean, and offer opportunities that poor communities lack. The Gautreaux Assisted Housing Program made great strides to create subsidized developments in locations that were never considered prior to their creation. Further, supplemental laws such as the Rehabilitation Act of 1973 have articulated that the rights promised under the Fair Housing Act will be granted to those who must live in federal subsidized housing as well. The United States is an equal opportunity nation and we must continue to extend these opportunities to those who are unable to live in affluent neighborhoods due to circumstance, income and education. Expanding the quantity and reach of programs such as the Gautreaux Assisted Housing Program will help increase the impact of the Fair Housing Act on subsidized housing; further, it will help ensure that those who require subsidized housing in order to have a roof over their heads will be able to have access to the same opportunities as those living in affluent suburbs throughout the United States.



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Proactive steps to prevent a discrimination claim under the Fair Housing Act

by Scott Stawiasz
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Title VIII of the Civil Rights Act of 1968, more commonly known as the Fair Housing Act, prohibits an individual from refusing to sell or rent a dwelling to any person due to race, color, religion, sex, familial status, national origin, or handicap. There are narrow exemptions, such as a single family housing rented or sold without the assistance of a broker, so long as the owner owns no more than three single family homes at any one time; or owner-occupied housing with no more than four units. But many housing transactions are caught within the the Act's broad cast. (42 USC § 3603(b)(1)-(2)) Moreover, even those who are exempt from the Act's prohibition of discrimination are still prohibited from printing, publishing, or causing the printing, publishing, or advertising of any notice or statement indicating any preference, limitation, or discrimination based on the aforementioned protected classes. (42 USC § 3603(b))

However, there are many proactive steps that an individual who is not exempt from the Fair Housing Act can take in order to avoid complaints of housing discrimination when offering his or her housing for lease to members of the public. While the following may sound like common sense, unless given some thought, it can be too easy to find yourself on the wrong end of an Fair Housing Act complaint. The following proactive steps can be classified under three broad categories: education, consistency, and prudence.

Education

It is the landlord's duty to remain up-to-date on housing laws when he or she is in the business of rental housing. A landlord needs to follow the developments in housing law. Not only does the landlord need to remain educated, but the landlord's staff needs to be educated and trained with the application of the Act and other applicable housing laws. It is likely that the staff of a landlord will handle nearly all interactions with tenants. Therefore, it is important that these front line employees are equally familiar with housing laws.

Consistency

A landlord should always be consistent. A landlord should ensure that all tenants go through the same selection process. For example, if a

Unless given some thought, it can be too easy to find yourself on the wrong end of an FHA complaint.



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landlord desires to check credit scores, the landlord should check every applicant's credit score. This will help demonstrate that every person is treated the same. Consistency also means that the landlord should have a written policy. More importantly, again, the landlord needs to follow that policy for every tenant. A landlord who follows the same procedure for every tenant will greatly reduce his or her chance of being subject to a discrimination claim.

Prudence

Being prudent in this instance means that an individual is cautious, careful, and thinks of the possible ramifications of proposed conduct. A prime example is prudence in advertising. A landlord should stray away from conduct in advertising that can be perceived as preferring a certain group of people, such as advertising in a religious circular. While intentions may be harmless, this can be perceived as favoring one religion. When advertising, the landlord should emphasize features of the available housing and not advertise that certain groups of people may enjoy the housing. In general, if one has to step back and actually contemplate if an act will be construed wrongly, it is best to not do that act at all. Finally, a landlord needs to treat rental housing like a business. It is important to always base decisions upon neutral, objective criteria.

Following these guidelines will not guarantee that a tenant will not file a Fair Housing Act complaint against a landlord, but it will limit the chance of being sued for a Fair Housing Act violation, as well as demonstrate that the allegations do not constitute actionable discrimination.



A landlord should stray away from conduct in advertising that can be perceived as preferring a certain group of people, such as advertising in a religious circular.
