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# Fair Housing Laws and Recovery Residences: Understanding Your Rights



**Justice, served.**

Helping people overcome injustice  
is more than just our work. It's our passion.

# The Fair Housing Act

Fair Housing Act (FHA) was enacted in 1968 and amended in 1988 to incorporate protections for persons with disabilities.

- Broad basis for “Standing”—ability to bring a claim under the acts

FHA talks about any “aggrieved person”

- Generous Damages:

Compensatory damages—for emotional distress and dignitary harm

Unlimited Punitive damages under the FHA only

Attorney’s Fees

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# The Fair Housing Act Prohibits:

- Disparate Treatment
  - A regulation or practice that treats individuals differently because of a protected status (e.g. familial status or disability)
- Disparate Impact
  - An apparently neutral regulation or policy that has a discriminatory effect or negative consequence on a protected status such as race or disability
- Failure to Grant Reasonable Accommodations or Modifications
  - A reasonable change or exception to a policy or rule that is necessary to afford persons with disabilities the equal opportunity to enjoy housing
  - A reasonable modification or alteration to the dwelling that may be necessary to afford persons with disabilities full enjoyment of the premises Reasonable Accommodations

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# Key Provisions: Statements

42 U.S.C. § 3604(c). It is unlawful to:

(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.

- Applies to anyone
- “Ordinary Listener” Standard
- Fact Intensive

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# Key Provisions: Discrimination

42 U.S.C. § 3604(f). It is unlawful to:

discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of in the provision of services or facilities in connection with such dwelling, because of a handicap person associated with that person.

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# Key Provisions: Retaliation

42 U.S.C. § 3617. It is unlawful to:

to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected [the Fair Housing Act].

- holding a public form for purpose of amplifying community opposition,
- making public statement against the RR or its mission,
- denying tax-exempt status,
- causing undue delays , etc.

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# Fair Housing Act Preempts State & Local Laws

Any state law “that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.” 42 U.S.C. § 3615.

The FHAA does not prohibit the city from imposing *any* special safety standards for the protection of developmentally disabled persons. Rather, it prohibits those which are not *demonstrated to be warranted by the unique and specific needs and abilities of those handicapped persons.*

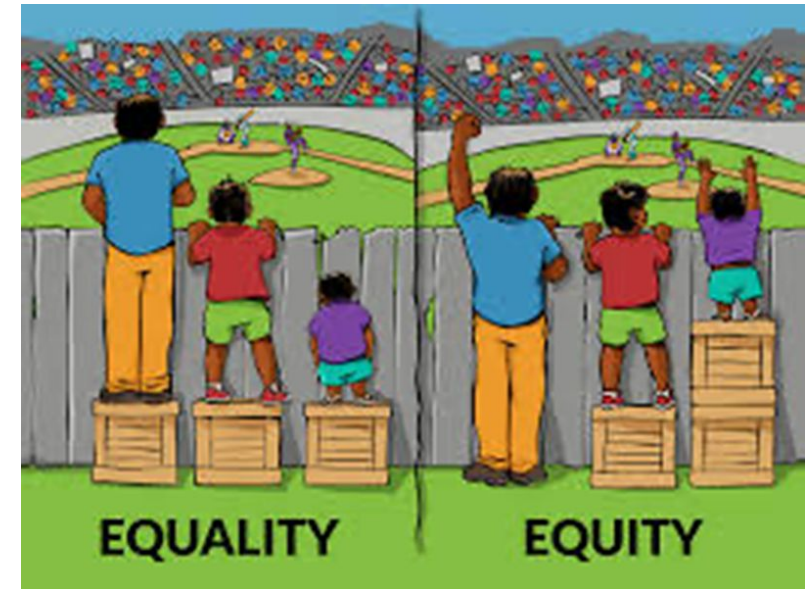
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# Reasonable Accommodation

An exception to a rule or policy that is *reasonable and necessary* to afford the relevant persons with disabilities an *equal opportunity* to use and enjoy the dwelling.

- Equal Opportunity:
  - Broadly Defined
  - Equal Results, not just "formal equality"





# Necessary

High Standard:

- “indispensable” “essential”
- “as far as they are necessary”

*Example: Amber Reineck House*

“Therefore, as Atsalakis’ letter explained, an exemption from the Moratorium was necessary to ensure that women in recovery had an equal opportunity to live in a single-family neighborhood—or, as it happens, any other neighborhood—within the City of Howell.”

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# Reasonable

- The accommodation must not impose an undue financial or administrative burden.
- An accommodation is reasonable if the costs of implementing it do not exceed any expected benefits it will provide to the disabled recipients.
- Would the accommodation interfere with the rights of a third party?

# “Direct Threat” Exception

- Applies to an *individual* whose tenancy would present a “direct threat” to the safety of other individuals or result in substantial physical damage
- This is a very difficult standard requiring an individualized assessment that considers **Reliable, Objective** evidence of the threat.
- If you hear this exception arise:
  - Ensure that the individual known propensities towards danger can show how circumstances have changed. (Such a request must be limited to the minimum of necessary information required to assess the threat.)
  - Require satisfactory and reasonable assurances that the individual will not pose a direct threat during her tenancy

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# Unequal Treatment

- Is the zoning law applied unequally to similarly situated residences?
- Just because an ordinance singles out people with disabilities, does not make it discriminatory – it might be seen as offering an advantage.
- Is there a discriminatory purpose? For instance, city's officials harbored personal animus or were ratifying NIMBY sentiments.
- If the purpose is to disadvantage people with disabilities, then there's discrimination

*Remember that families receive specific constitutional protections that are stronger than the protections for friends, acquaintances and other groups.*

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# Quotas and Ghettoization

## Distance/Spacing Requirements

- Supposedly promote integration and prevent clustering
- Often it's insufficient to justify the burden it puts on the disabled
- FHA protects the rights of the disabled to live in the residence and community of their choice

## Limited Choices for Persons in Recovery

- Belies the "justification" of preventing clustering, since persons in recovery need to live in a RR

# NIMBY

## “Notice” Rules

- Suspicious because they can have the effect of facilitating organized opposition to the RR and its residents

Are city officials echoing and endorsing discriminatory statements? Imposing delays?

## Beware of social media

- it can help you build community
- but it can invite unwanted attention and amplify negative messages.

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# Or is it Paternalism?

The only clustering or segregation that will occur, then, is as the result of the free choice of the disabled. In other words, the state's policy of forced integration is not protecting the disabled from any forced segregation; rather, the state is forcing them to integrate based on the paternalistic idea that it knows best where the disabled should choose to live.

Larkin v. State of Mich. Dep't of Soc. Servs., 89 F.3d 285, 291 (6th Cir. 1996)

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# How Courts Decide

Is an ordinance tailored to the needs of the disabilities or a one-size-fits-all safety standard?

- Do all group homes need automated fire suppression systems?

Arlington Heights Factors (shed light on discriminatory purpose):

- Impact of the law
- Historical background
- Specific sequence of Events leading up to the law
- Departures from Normal Procedures
- Legislative history and contemporary statements by decision makers.

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# Cautionary Reminder: Discretion to Legislate

“It is said, however, that if two unmarried people can constitute a ‘family,’ there is no reason why three or four may not. But every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial, function.” *Id.* at 8, 47 S.Ct. at 1540 (footnote omitted). We find that *Taylor's definition of a “family” is a constitutional exercise of its legislative discretion to zone a residential neighborhood.*

Smith & Lee Assocs., Inc. v. City of Taylor, Mich., 13 F.3d 920, 925 (6th Cir. 1993)

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# Issue Spotting

- Efforts to tailor the ordinances to the FHA?
- Does the rule tie to the legitimate needs of the persons with disabilities?
- Is there a process for appeals and does it provide for predictable, fair results? Or is it ad hoc?
- Does the burden fall too heavily on the persons with disabilities to get their opportunity for housing?
- Is the regulation overly broad? and not tailored to the needs of the persons with disabilities?
- Is there a requirement that seems more about inciting NIMBY?

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# Avenues to Pursue

- Informal and Formal Advocacy
- Zoning/Planning Board & Appeal
- State Civil Rights Commissions
- HUD
- Litigation/Courts

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# Strategy

Try to work with the system and the administrators and planning boards. You could get your way without a lawsuit. OR you could get more evidence of bias if you have to go to the courts.

Engage with your local Fair Housing Enforcement Organization.

<https://nationalfairhousing.org/find-help/>

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Questions? Comments?

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