

WEST TENNESSEE  
LEGAL  SERVICES

# The Fair Housing Act & Predatory Lending Practices

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# Disclaimer

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# The Fair Housing Act Rights and Remedies

# The Protected Classes

Race

Color

Religion

National Origin

Sex

Familial Status

Handicap Status

# Sex: What Does It Mean?

Traditionally, sex discrimination has been viewed as only protecting people from differences in treatment based on biological sex, as evidenced by an individual's birth certificate.

However, new guidance from HUD released on February 11, 2021 states HUD will now investigate complaints on the basis of conduct directed towards an individual based upon that individual's Sexual Orientation and/or Gender Identity where applicable.

# Familial Status: What is the Meaning?

1 or more persons under 18 living with ---

(a) a parent or other person with custody; or

(b) a person chosen by the parent or person with custody, with written permission

Includes a person ---

(i) who is pregnant

(ii) in process of securing legal custody

(c) with written consent for minors to reside with that person

# “Handicap Status”: What is the Meaning

- A physical or mental impairment which substantially limits 1 or more major life activities;
- A record of an impairment; or
- Being regarded as having such an impairment (whether a person has an impairment or not)

## Exceptions:

- (a) current, illegal use or addiction to a controlled substance as defined in section 102 of The Controlled Substances Act
- (b) conduct toward a person solely because a person is a transvestite

# The Fair Housing Act:

## Covered Markets:

Rental  
Sales  
Lending  
Insurance  
Zoning  
All other areas  
connected with  
residential housing

## Covered Entities:

Owners/Managers  
HOAs  
Lenders  
Real Estate Agents  
Governments  
Insurers  
Brokers  
All persons/entities  
involved in residential  
housing

## Covered Dwellings:

**All** Residential Housing  
Including:

Private &  
Subsidized Units  
Single Family Units  
Multi-family Units  
Migrant Housing  
Temporary Shelters  
Assisted Living

# 42 U.S.C. § 3604(a): Refusal to Rent, Sell, Negotiate, or Otherwise Make Unavailable

## Examples:

1. Delaying tactics in sale or rental.
2. Creating different harder procedures in the application process.
3. “Grudgingly” making housing available or making people feel unwelcome.
4. Refusing to serve members of a specific protected class.
5. Stating you do not want to lower the price or take a second mortgage (when the seller would for people of a different race).
6. Stating you decided not to sell (when the house is available for persons of a different National Origin).

# 42 U.S.C. § 3604(b): Difference in Terms, Conditions, Services and/or Facilities

## Examples:

1. Demanding higher down payments or prices from members of a protected class.
2. Applying different terms that are higher to meet for members of a protected class.
3. Denying facilities or services to members of a protected class.
4. Providing more favorable conditions or terms such as a “special” to members of 1 class but not to their counterpart.

# 42 U.S.C. § 3604(c): Discriminatory Statements, Limitations, or Preferences

## Examples:

1. Newspaper ads that say “whites only” or “white home.”
2. Steering people to an area with statements that encourage 1 area over another based on protected class (usually race, ethnicity or religion).
3. Placing or enforcing restrictive covenant in deeds (usually based upon race or religion).
4. Texting tenant or potential tenant that if you knew of their protected class status you would not have dealt with them.

# 42 U.S.C. § 3604(d): Denial of Availability

## Examples:

1. A Hispanic couple is told that a particular unit is sold. And discovers several weeks later that the dwelling remains available and was for sale when they inquired.
2. When the wife, who is white, visited the condo complex, she was told that there were several units for sale. When her husband, who is African-American, later in the day visited the complex with her, they were told that all units were sold, with the agent saying, “You must have misunderstood me.”

# 42 U.S.C. § 3604(e): Blockbusting

## Examples:

1. In order to make money, an agent asks homeowners to let the agent sell their house because African-Americans are moving into the neighborhood and the agent tells the homeowners that property values will decrease because of it.
2. Placing leaflets around the neighborhood about who (a protected class member) is moving into the neighborhood in order to scare people into selling their dwellings and offering to help them sell their house.
  - Usually the agent will also steer the seller into another neighborhood that is of the seller's race.

# 42 U.S.C. § 3604(f)(1): Refusal to Rent, Sell, or Otherwise Make Unavailable to Persons with Disabilities

## Examples:

1. A refusal to sell a house to a person because the individual has AIDS.
2. A refusal to negotiate the price of a dwelling because the individual is mobility impaired.
3. The sales office is not accessible for persons who are mobility impaired.
4. A refusal to rent to a person who you believe has a mental illness.
5. A refusal to sell a house to an agency that plans to turn the property into a residential group home for the disabled.

# 42 U.S.C. § 3604(f)(2): Difference in Terms, Conditions, Services, or Facilities to Persons with Disabilities

## Examples:

1. Refusing to accept a co-mortgagor on a note because the purchaser has HIV/AIDS, when accepting a co-mortgagor in other instances not involving persons with disabilities.
2. Denying access to the swimming pool to a person who is mobility impaired because of that impairment.
3. Calling the police every time you see your tenant who has confided his mental health status to you on the property, claiming he is behaving in a violent or threatening manner.

# 42 U.S.C. § 3604(f)(3)(A): Refusal to Permit Reasonable Modifications Necessary Due to a Person's Disability

## Examples:

1. Refusal to permit a person who is mobility impaired to build a ramp to the main entrance.
2. Refusal to permit a person to install studs and grab bars in the bathroom.
3. Refusal to permit doors to be widened in order for a person in a wheelchair to move through the dwelling.
4. Refusal to permit removal of cabinets under the sink in the kitchen so that a person in a wheelchair can reach the sink.
5. Refusal to permit installation of a special lock necessary to prevent an Autistic child from fleeing the unit.

# 42 U.S.C. § 3604(f)(3)(B): Refusal to Permit Reasonable Accommodations Necessary Due to a Person's Disability

## Examples:

1. Refusal to move a mortgage payment date to the date a disabled individual receives their disability income in order to help the individual avoid late fees.
2. Refusal to permit a mobility impaired person a designated parking place near the entry when such is necessary due to their disability.
3. With a no pets policy, refusal to permit an assistive animal to reside with a person with a mental illness when the animal is necessary to their mental well-being.
4. With a no pets policy, refusal to permit an assistive animal to reside with a person with a physical disability when the animal is necessary to assist the person with such activities as picking up items that have fallen on the floor.

# 42 U.S.C. § 3604(f)(3)(C): Accessibility Requirements for New Construction

Covered multi-family dwelling, built for first occupancy after March 13, 1991, with some exceptions, must be designed and constructed so as to be accessible and usable by persons with disabilities.

Covered unit must have the following:

1. Accessible building entrances on accessible routes
2. Accessible, usable public and common use areas
3. Usable doors
4. Accessible route into and through the covered dwelling unit
5. Usable light switches, electrical outlets.
6. Reinforced walls for grab bars
7. Usable kitchens and bathrooms

# 42 U.S.C. § 3605: Lending

## Examples:

1. Imposing a higher interest rate because of race.
2. Not making loans to blacks for homes in majority white neighborhoods.
3. Taking a longer time to process a loan because of the borrower's race.
4. "Redlining" an area that is predominantly black and refusing to make loans within that area regardless of qualifications for the loan.
5. "Reverse Redlining" an area that is predominately black in order to offer loans that the lender is aware borrowers will be unable to repay with disadvantageous terms and conditions attached.

# 42 U.S.C. § 3606: Brokerage Services

## Examples:

1. Specific membership qualifications for real estate associations based upon protected class membership.
2. Exclusion of protected classes from membership in real estate groups.
3. Setting different fees for access to or membership in a MLS because of protected class membership.
4. Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any MLS, real estate brokers' organization, or other service relating to the business of selling or renting dwellings because protected class membership.

# 42 U.S.C. § 3617: Threats, Intimidation, Coercion

## Examples:

1. Graffiti written on or about the individual's property.
2. Acts of vandalism or violence against an individual or their home, such as fire bombing or cross burning.
3. Retaliatory conduct against an agent who will not discriminate against prospective homeseekers because of class membership, at the direction of the employer.
4. Harassing conduct against a home purchaser by members of a HOA due to the purchaser's protected class membership.

# Exceptions to Coverage Under the Act

1. A single-family house sold or rented by the owner
  - Unless the owner has more than 3 at a time
  - There is more than 1 sale within 24 months
  - The owner has an interest in, or there is reserved on the owner's behalf, title to or any right in all or a portion of proceeds from sale or rental of more than 3 single family homes at any time.
  - Without the use of a sales or rental service and without publication of any notice in violation of 42 U.S.C. §3604(c) (the advertisement section of the Act)

# Exceptions to Coverage Under the Act

2. Rooms or units in a dwelling for 4 families with the owner residing in 1 of the units (The Mrs. Murphy exception)
3. Dwellings owned/operated for other than commercial purposes by religious organizations, associations, etc., with sales/rental limited to members of the religious organization, if membership in the religion is not restricted by membership in any of the other protected classes
4. Occupancy through a private club not open to the public
5. Housing constructed through federal subsidy programs when specifically for elderly persons or persons with disabilities
6. Housing for elderly persons with all residents 62 or older
7. Housing for elderly persons with an 80/20 split, in which 20% may allow families with children and 80% must have at least 1 person 55 or older

# Statute of Limitations

## **Federal Act:**

- 1 year from date of last act to file a HUD complaint
- 2 years from date of last act to file a lawsuit
  - Filing a HUD complaint stops the running of the time to file a lawsuit under the Federal Act

## **State Act:**

- 180 days from date of last act to file a complaint with THRC
- 1 year from date of last act to file a lawsuit
  - Unclear on if the filing of a THRC complaint stops the running of the time to file a lawsuit under the State Act.

# Predatory Lending: A Fair Housing Issue

# Why is Predatory Lending A Fair Housing Issue?

Often predatory lenders target members of protected classes for the marketing of higher priced and unequal loan products.

It usually involves aspects where individuals of protected classes are treated differently than comparably members of other classes.

Even when the policies and practices are not being offered only because of a persons' protected class, the policies and practices often impact members of particular protected classes more severely and therefore have a disparate impact on protected class members.

# Characteristics of Predatory Lending

- Targets vulnerable consumers
- Is unreasonably costly to the borrower
- Uses overly aggressive and/or deceitful practices
- No regard for ability to meet obligation
- Potentially strips the equity from borrowers and leads to foreclosure
- Supports a credit system that promotes inequality and poverty

# Predatory Lending or Subprime Lending: One in the Same?

Subprime lending is not necessarily predatory lending, but the two often overlap.

Subprime lending is lending that provides credit to borrowers with past credit problems at a higher costs than conventional lending products.

Good subprime lending is needed for those with impaired credit and can be profitable without engaging in predatory practices.

However, it is typically more profitable, especially in the short-term, to engage in predatory subprime lending.

- This typically happens with subprime loans are given to borrowers with good credit, who qualify for better product. This is both unethical and predatory.

# Potential Victims of Predatory Lending

- Homeowners with high equity and credit problems who need cash
- Elderly households
- Low-income households
- Minority households
- Households in financial crisis caused by health problems, job loss, death of spouse or major home repairs
- Homeowners who lack financial management skills or knowledge
- Homeowners with sub-par credit histories

# Predatory Lending Practices

- Aggressive marketing and solicitations to targeted neighborhoods
- Home improvement scams
- Racial steering to high-rate lenders
- Marketing only subprime products to minority neighborhoods
- Using non-traditional marketing methods with the intention to reach vulnerable populations
- Falsification of loan applications (particularly income levels)
- Adding insincere co-signors
- Shifting unsecured debt into mortgage
- Forging signatures on loan documents

# Predatory Lending Practices

- Targeting those with mental disabilities the impact their ability to understand, knowing that the individual does not understand the terms they are agreeing to
- Purposely structuring loan payments the borrower cannot afford
- Kickbacks to mortgage brokers (Yield Spread Premiums)
- Loans in excess of 100% Loan to Value
- Changing loan terms at closing (especially fixed to adjustable-rate mortgage)
- Charging excessive interest, points, and fees
- Repeatedly refinancing a loan without providing any real value to the borrower

# Indicators of a Predatory Loan in Loan Documents

- High annual interest rates
- High points/padded closing costs
- Balloon payments
- Negative amortization
- Inflated appraisal costs
- Padded recording fees
- Bogus broker fees/no logical explanation and/or duplication of services/charges
- Unbundling (itemizing duplicate services and charging separately for them)
- Requiring credit insurance
- Falsely identifying loans as lines of credit
- Forced placed homeowner's insurance
- Mandatory arbitration clauses

# Indicators of a Predatory Loan After Closing

- Flipping (repeatedly refinancing, often after high-pressure sales)
- Daily interest when loan payments are late
- Abusive collection practices
- Excessive prepayment penalties
- Foreclosure abuses
- Failure to report good payment on borrower's credit reports
- Failure to provide accurate loan balance or payoff amount

# Other Federal Laws & Regulations Protecting Consumers from Predatory Lending

- The Truth in Lending Act (“TILA”)
- 15 U.S.C. §1601, et seq.
- The Home Ownership and Equity Protection Act (“HOEPA”)
- Regulation Z (12 C.F.R. §1026.1, et seq.)
- The Real Estate Settlement Procedures Act (“RESPA”)
- 12 U.S.C. §2601, et seq.
- Regulation X (12 C.F.R. §1024.1, et seq.)
- Credit Repair Organizations Act (15 U.S.C. §1679, et seq.)
- Fair Debt Collection Practices Act (15 U.S.C. §1692, et seq.)

# Other Federal Laws & Regulations Protecting Consumers from Predatory Lending

- Dodd-Frank Wall Street reform and Consumer Protection Act of 2012 (Dodd-Frank Act)
- Changes in:
  - Reg. Z (which implements the Truth in Lending Act): Effective 1/10/14
  - Reg. X (which implements the Real Estate Settlement Procedures Act): Effective 1/10/14
  - Amends Equal Credit Opportunity Act (ECOA): Effective 1/18/2014
  - Rules on providing Appraisals and other Valuations (12 C.F.R. §§1002.4 and 1002.14)

# Contact Information

HUD:  
Five Points Plaza, 40 Marietta St.  
16th Floor,  
Atlanta, GA 30303-2806  
1-800-440-8091

Tennessee Human Rights Commission):  
710 James Robertson Parkway, Suite 100  
First Floor, Andrew Johnson Tower  
Nashville, TN 37243  
1-865-594-6500  
[www.tn.gov/humanrights.html](http://www.tn.gov/humanrights.html)

West Tennessee Legal Services  
210 West Main Street  
Jackson, TN 38301  
1-731-423-0616 ext. 250  
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107 Music City Circle  
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