

WEST TENNESSEE LEGAL SERVICES

THE FAIR HOUSING ACT: HOUSING RELATED HATE ACTS

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Disclaimer

The work that provided the basis for this presentation was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and presenter are solely responsible for the accuracy of the statements and interpretations contained in this presentation. Such interpretations do not necessarily reflect the views of the Federal Government.

THE FAIR HOUSING ACT



Protected Classes

The Fair Housing Act prohibits discrimination in housing-related transactions because of:

- Race
- Color
- Religion
- National Origin
- Sex (including gender identity and sexual orientation)
- Familial Status (children under the age of 18 in household)
- Disability Status

The Fair Housing Act: Covered Markets

Rental

Sales

Lending

Insurance

Zoning

Advertisements

All other areas connected with residential housing

The Fair Housing Act: Covered Dwellings

Private and Subsidized Units

Single Family Homes

Multi-Family Units

Shelters

Group Homes

Assisted Living

College Dormitories

All Other Residential Housing: “Where I live”

The Fair Housing Act: Covered Entities

Owners

Managers/Management Companies

Homeowner's Associations/Condo Boards

Lenders

Real Estate Agents

Governments

Insurers

All persons/entities involved with residential housing

Prohibited Activities

- Refusing to sell or rent after the making of a bona fide offer, or otherwise making unavailable or denying housing
- Discriminating in the terms, conditions and privileges of sale or of rental
- Making, printing or publishing a discriminatory statement
- Lying about availability
- With respect to disability, refusing to make reasonable accommodations, or refusing to allow reasonable modifications
- Harassing, intimidating, coercing someone on account of membership in a protected class (includes retaliation for pursuing, or helping another pursue, their fair housing rights)

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

The Tennessee 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

HOUSING RELATED HATE ACTIVITY

Hate Acts

Any act that threatens, coerces, intimidates, or injures persons or their property because of a bias against the victim due to the victim's:

- ❑ Race/color
- ❑ Religion
- ❑ Gender
- ❑ Ethnic Background
- ❑ Physical or Mental Disability
- ❑ Familial Status, or
- ❑ Perception of Class Membership

Hate Acts that result in violence are considered Hate Crimes

Housing Related Hate Acts

- Any act that threatens, coerces, intimidates, or injures one asserting legal rights to equal housing choice because of class bias
- Such acts may include:
 - Violent acts, such as murder, arson, or assault
 - Nonviolent acts, such as racial slurs or harassing phone calls
- May include conduct covered by hate crime laws
- May violate both criminal and civil laws simultaneously and cases may be brought under either or both laws

Advantages of Applying Civil Hate Act Laws to Hate Crimes

- Victims may get damages for losses caused by the act, as well as imposition of civil penalties against the perpetrator
- Victims may act independently of law enforcement, saving time
- Victims may have a better chance of success in court since intent may not need to be proven and the burden of proof may be less in a civil case

**THE FAIR HOUSING ACT &
HOUSING RELATED
HATE ACTIVITY**

Housing Related Hate Acts & The Fair Housing Act

- The Fair Housing Act makes it a violation of federal law to engage in housing related hate acts based upon the victim's protected class status
- The Fair Housing Act also allows for criminal sanctions against an individual for the use or attempted use of force to injure, intimidate or interfere with another due to the victim's protected class status under 42 U.S.C. § 3631

42 U.S.C. § 3631: Elements

To prove a violation of this Section of the Act, the government must prove:

- The accused used force or threats of force,
- The accused attempted to intimidate or interfere with the victim's rights to equal housing choice,
- The accused acted willfully,
- The accused acted as they did because the victim was occupying (or attempting to occupy) a dwelling, and
- The victim suffered harm as a result of the offense

OTHER LAWS THAT PROHIBIT HATE ACTS

Simultaneous Coverage of the Fair Housing Act & Other Hate Crime Laws

- There are other laws, both state and federal, that also prohibit hate acts.
- An incident can violate these laws, as well as the Fair Housing Act.
- These laws vary in coverage and penalties.

Federal Laws that Prohibit Hate Acts

- 42 U.S.C. §§ 1981-1982
- 42 U.S.C. § 1983
- 42 U.S.C. § 1985
- 42 U.S.C. § 1986
- 18 U.S.C. § 241
- 18 U.S.C. § 242
- 18 U.S.C. § 245
- 18 U.S.C. § 844 (H)

42 U.S.C. §§ 1981-1982

- Only covers acts on the basis of race and ethnic characteristics
- Reaches both private and public acts under the color of law
- Filing period may vary by state
- No administrative complaint process
- May have to show discriminatory intent
- No civil penalties

42 U.S.C. § 1983

- Reaches hate acts under the color of law
- Must show a violation of another law for action
- Filing period may vary by state
- No administrative complaint process
- No civil penalties

42 U.S.C. § 1985

- Bans conspiracy to deny a person their legal rights, to interfere with an officer of the United States from performing their duties, or to intimidate a party, witness, or juror based on class membership
 - Class is not specifically defined and has been determined on a case-by-case basis by the courts, but typically requires that there be some shared inherent characteristics of the group targeted for protection to apply
 - Various cases have held that race, sex, and region are classes for purposes of this law
- Reaches public and private acts
- Must show other law has been violated
- Must show discriminatory intent
- No administrative process
- Filing time may vary by state

42 U.S.C. § 1986

- Bans failing to prevent a conspiracy to violate 42 U.S.C. § 1985
- Reaches public and private acts
- Must show other law has been violated
- Must show discriminatory intent
- No administrative process
- Suit must be brought within one year of the accrual of the cause of action
- Penalty of up to \$5,000 may be awarded if death was caused by the violation of § 1985

18 U.S.C. § 241

- Makes conspiracies to deprive civil right illegal
- Reaches public and private acts
- Covers “traditional” hate crimes, such as cross burnings, fire bombings, etc.
- Protects ANY person denied civil rights-traditional minority status not required
- Violation is always a felony
- Penalty- 10 years/fine/both
- Penalty enhancement allowed for cases involving death, sexual assault, and/or kidnapping
- Penalty with enhancement: 10 years/life/death/fine/ any combination thereof

18 U.S.C. § 242

- Makes conspiracies to deprive federal civil right illegal
- Reaches only public acts
- Protects ANY inhabitant denied civil rights-traditional minority status not required and aliens are included
- Violation is a misdemeanor unless there are aggravating circumstances
- Penalty enhancement allowed for cases involving bodily injury, death, weapons sexual assault, and/or kidnapping
- Penalty with enhancement: 10 years/life/death/fine/any combination thereof

18 U.S.C. § 245

- Protects person who attempt to or assert their federal legal rights and protects person who “aid or encourage” others to assert their federal legal rights.
- No private right of action

18 U.S.C. § 249

The Matthew Shepard & James Byrd Jr. Hate Crime Prevention Act of 2009

- Criminalizes behavior that willfully causes bodily injury (or attempts to do so with fire, firearm, or other dangerous weapon) because of:
 - The actual or perceived race, color, religion, or national origin of any person at any time
 - The actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person when such a crime was in or affected interstate or foreign commerce
- Penalty-10 years/fine/both
- Penalty enhancement allowed for death, sexual assault, and/or kidnapping
- Statute of Limitations
 - Generally, 7 years
 - No limitation if death occurs due to the act

18 U.S.C. § 844(H)

- Bans fire/explosives in felonies
- May be used with § 3621, § 241, and § 242
- First conviction- 10 years in jail
- Second conviction- 20 years in jail
- Time cannot be served concurrently with any other sentence
- Sentence cannot be suspended
- Perpetrator cannot be paroled
- Penalty enhancement allowed if underlying offense was a hate crime

Tennessee State Laws that Prohibit Hate Acts

- T.C.A. § 4-21-601
- T.C.A. § 4-21-701
- T.C.A. § 39-17-309
- T.C.A. § 40-35-114

Municipalities and cities may also have their own ordinances.

Tennessee Code Annotated § 4-21-601

Tennessee Human Rights Act (THRA)

- ❑ “Substantially equivalent” to the Fair Housing Act
- ❑ Bans housing discrimination based upon race, color, creed, religion, sex, handicap, familial status, national origin
- ❑ Forbids coercion, threats, intimidation of person who assert their legal rights or who assist those asserting their rights
- ❑ Administrative and legal remedies exist
- ❑ Filing Period: 180 days from the alleged act

Tennessee Code Annotated § 4-21-701

Malicious Harassment

- ❑ Provides damages, including emotional distress damages, punitive damages, court costs, and attorney's fees to victims who are successful in court
- ❑ Only applies to actions due to a person's race, color, ancestry, religion, or national origin
- ❑ Requires not only that a person acted maliciously, i.e., ill-will, hatred or spite, but also that a person unlawfully intimidated another from the free exercise or enjoyment of a constitutional right by injuring or threatening to injure or coercing another person or by damaging, destroying or defacing any real or personal property of another person.
- ❑ Requires proof of intent

Tennessee Code Annotated § 39-17-309

Anti-Intimidation Law

- ❑ Prohibits threats, coercion, or injury to persons asserting state or federal legal rights due to victim's race, color, ancestry, religion, or national origin
- ❑ Covers property destruction/vandalism for the same purpose
- ❑ Bans use of mask or disguise in execution of these acts
- ❑ Class D felony, except use of mask, which is a Class A misdemeanor
- ❑ Allows civil remedies for the same act

Tennessee Code Annotated § 40-35-114

Enhancement Factors

- Allows for enhanced penalties in criminal prosecution if: the defendant intentionally selected the person against whom the crime was committed or selected the property that was damaged or otherwise affected by the crime, in whole or in part, because of the defendant's belief or perception regarding the race, color, disability, sexual orientation, national origin, ancestry, or gender of that person or the owner or occupant of that property

HATE ACT STATISTICS AND RESOURCES

Hate Act Indicators

- Ways to determine the presences of illegal bias:
 - Admission by the Accused
 - Analysis of the Facts to Infer Intent
 - Demographic Background of the Victim and Accused
 - Knowledge of Victim's Minority Status
 - Remarks of the Perpetrator
 - Graffiti, Slogans used by the Perpetrator
 - Prior Contact between the Victim and Accused
 - Dress of Victim
 - Location and Timing of the Event
 - Witness Accounts

Hate Act Statistics

- Maintained on both the Federal and State level
- Most recent statistics are for 2019
- Federal Statistics for 2019 indicate 7,314 hate crimes occurred with 8,812 victims
- State Statistics for 2019 indicate 121 hate crimes occurred with 123 victims (note: this does not include cases where a bias was suspected, but not definitively established)
- Race/ethnicity/ancestry bias accounted for the majority of hate crimes at both the State and Federal level, followed by Religious and Sexual Bias.

Hate Act Statistics

- More information on Federal Hate Act Statistics can be found online at [Hate Crime Statistics | HATECRIMES | Department of Justice](#)
- More information on State Hate Act Statistics can be found online at [HateCrime2019.pdf \(tn.gov\)](#)

Who to Contact if You Believe You Have Been Discriminated Against

HUD:

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

https://portalapps.hud.gov/AdaptivePages/ HUD_Spanish/Espanol/complaint/complaint-details.htm

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

West Tennessee Legal Services
210 West Main Street
Jackson, TN 38301
1-731-423-0616 ext. 250
wtls.org

Tennessee Fair Housing Counsel
107 Music City Circle
Suite 318
Nashville, TN 37214
1-615-874-2344
<https://tennfairhousing.org/>

