

Contemporary Faces of Housing Discrimination

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Outline

1. The continued importance of disparate impact liability

- a. A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate. Under this standard, a facially-neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification. Thus, where a policy or practice that restricts access to housing has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect. Discriminatory effects liability is assessed under a three-step burden-shifting standard requiring a fact-specific analysis.
- b. HUD Final Rule on Discriminatory Effects, 78 Fed. Reg. 11459-82 (Feb. 15, 2013), codified at 24 C.F.R. § 100.500.
- c. Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015).
- d. Application to tenant screening policies
 - i. Criminal history

1. Dept. of Housing and Urban Development, Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, April 4, 2016, *available at*: https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.
 2. *The Fortune Society, Inc. v. Sandcastle Towers Housing Development Fund Corp., et al.*, United States of America's Statement of Interest, *available at*: <https://www.justice.gov/crt/file/903801/download>.
- ii. Eviction records
 1. *Nikita Smith v. Wasatch Property Management, Inc. and Wasatch Pool Holdings, LLC*, complaint, *available at*: <https://www.aclu.org/legal-document/smith-v-wasatch-property-management-complaint>.
 - iii. Immigration status
 1. *Rosy Giron DeReyes, et al., v. Waples Mobile Hope Park, Limited Partnership, et al.*, Brief of *Amici Curiae* Professors of Law and History in Support of Appellants and Reversal, *available at*: <https://www.law.uh.edu/news/faculty-news/fall2017/Olivas1.pdf>.

2. Covered properties, exemptions, and home sharing

- a. Covered Properties under the Fair Housing Act
 - i. Dwelling defined: – See 42 U.S. C 3602 (b); *United States v. Hughes Memorial Home*, 396 F. Supp. 544 (W.D. Va. 1975); Implementation of the Fair Housing Amendments Act of 1988, 4 Fed. Reg. 3232, 3228 (Jan. 23, 1989)
- b. Exemptions
 - i. General Overview – 42 USC 3603 (b) and 3607
 - ii. Exemption issues in home sharing – Mrs. Murphy, Single Family Homeowner, Shared Living
 - iii. State and local fair housing laws
- c. Enforcement issues
 - i. Internet Service Providers immunity - *Fair Housing Council of San Fernando Valley v. Roommates.com, L.L.C.*, 489 F.3d 921 (9th Cir. 2007) rev'd in part, vacated in part, aff'd in part, 521 F.3d 1157 (9th Cir. 2008) (en banc); *Chicago Lawyers Committee for Civil Rights under the Law vs. Craigslist* 519 F. 3rd 666 (7th Cir. 2008).
 - ii. Mandatory Arbitration Clause
- d. Enforcement strategies
 - i. Use of other laws - state/local fair housing laws, other local laws, public accommodations, ADA and consumer laws

- ii. Tester initiated actions
- iii. Education initiatives
- iv. Legislation