

Legal Aid of Arkansas



Equal Access to Justice

CDC Eviction Moratorium

(September 4, 2020 – present)



- Prohibits evictions for nonpayment of rent for “covered persons”
- Tenants must sign the declaration and give it to their landlord to get coverage!
- Rent is not forgiven. Late fees can accrue.



**President Biden extended
to March 31, 2021!**

CDC Declaration



A “covered person” is any tenant, lessee, or resident of a residential property who provides to their landlord that:

- (1) The individual has used best efforts to obtain all available government assistance for rent or housing;
- (2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020-2021 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- (3) The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses
- (4) The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
- (5) Eviction would likely render the individual homeless— or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

The Federal Fair Housing Act



- 42 U.S.C. § 3601 *et seq.*
- April 11, 1968
 - The FHA was enacted just days after the Martin Luther King assassination (April 4, 1968).
 - The FHA had a broader reach than the Civil Rights Act of 1866, which dealt with racial discrimination only.
 - The FHA originally covered Race, Color, and National Origin, and Religion.

Fair Housing Act Amendments



- Sex discrimination was added in 1974
- Handicap was added in 1988
- Familial Status was added in 1988
- State Fair Housing Acts (Arkansas 2001)

Basics



- The Fair Housing Act prohibits discrimination in almost all housing related transactions.
- There are 7 “Protected Classes.” These can be thought of as impermissible reasons to treat one person different from another.

Protected Classes



- Race
- Color
- Religion
- National Origin
- Sex
- Familial Status
- Disability (Handicap)

<https://www.youtube.com/watch?v=84k2iM30vbY>

Race



- Race involves treating someone unfavorably because of their race OR
- Personal characteristics associate with race
- Civil Rights Act of 1866 – Does not contain exemptions found in the Fair Housing Act

Color



- Involves treating someone unfavorably because of skin color or complexion
- An example would be to discriminate against a dark skinned, but not a light skinned Asian person
- Very few claims have been brought based on color alone.

National Origin



- Involves treating someone unfairly because of their place of origin or ancestry OR
- Because the person has the physical, cultural, or linguistic characteristics of a specific or particular national origin group

Religion



- Involves treating someone unfairly because of their religious observance, practices, and beliefs
- Intentional actions taken against persons because of their religion are prohibited. E.g. Rule prohibiting tenants from displaying religious symbols on their doors.
- No “reasonable accommodation” required for religion.

Sex



- Involves disparate treatment because of gender

Examples:

- Lender won't give a loan to a woman because she is on maternity leave.
- Landlord evicts tenant because she has been a victim of domestic abuse.
- Sexual Harassment is included
 - Deliberate or repeated unsolicited verbal comments, gestures, or physical contact creating a hostile environment or when sexual favors are sought in return for housing “quid pro quo.”
- Sexual Orientation
 - HUD assisted housing or covered by FHA loan
 - -24 C.F.R § 5.100 et. seq.
 - Defines sexual orientation-homosexuality, heterosexuality, or bisexuality
 - -77 Fed. Reg. 5662

Sexual Harassment: two types



- **Quid pro quo**
 - A provider, employee, or agent conditions access to or retention of housing on a victim's submission to sexual conduct
- **Hostile Environment**
 - A provider, employee, agent, or, in certain circumstances, another tenant, engages in sexual behavior of such severity or pervasiveness that it alters the terms or conditions of tenancy and results in an environment that is intimidating, hostile, offensive, or otherwise significantly less desirable
 - Hostile environment is based upon the perspective of a reasonable person in the tenant's position

Familial Status



- Involves treating someone unfavorable because they have children, are pregnant, or are trying to adopt. Protects Children under 18.
- In the late 1970s, 25% of surveyed rental units (79,000) banned children entirely. Another 50% had at least one restriction on children.
- Examples of violations:
 - Getting evicted for having a baby
 - Restricting children to downstairs units
 - Higher deposits for families with children
 - Advertising to “adults” or “singles”

Disability



- Involves treating a person unfavorably because of their physical or mental disability
- Disability also includes a failure to properly design and construct a dwelling in a manner consistent with ADA or Fair Housing Act Design Standards which would allow a person with a physical disability to enjoy the full use and benefit of a property.
- 42 U.S.C. 3602(h) Handicap [disabled] is defined as:
 - 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 such term does not include current, illegal use of or addiction to a controlled substance

Reasonable Accommodation



A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

- When a qualified person with a disability makes a request that is: **NECESSARY + REASONABLE = THE HOUSING PROVIDER MUST GRANT ACCOMMODATION**
- Necessary = 1) The person is disabled and 2) the accommodation would help with the disability.
- Reasonable = 1) Not an undue financial or administrative burden and 2) Not a fundamental alteration in services provided.

How to Make a Reasonable Accommodation Request



- Requests may be oral or written.
 - If possible, it is always best to make them in writing, but doing so is not necessary.
- The reasonable accommodation process begins once a tenant tells a housing provider that they are disabled and need something changed in order to accommodate that disability.
- If the disability is not apparent, the landlord may ask for verification.
- The need for an accommodation may arise at anytime:
 - when applying
 - during the tenancy
 - to avoid an eviction

Reasonable Modifications



- A housing provider must permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied by such person, if the modifications are necessary to allow the person full enjoyment of the premise
- If the housing is federally funded, it is the owner's responsibility to pay for reasonable modifications. Does not apply to private landlords solely because they accept HCVs.

Landlord's Rights Regarding Modifications



- Landlords can require:
 - The tenant to return the dwelling to its original condition, BUT only if the modifications will interfere with the next tenant's use and enjoyment of the premises
 - Professional workmanship and the work to be done properly
 - The tenant to obtain any necessary building permits
 - The tenant to set aside a reasonable amount of money over a reasonable time in an interest bearing escrow account to pay for restoration

Assistance Animals



- “No pets” policy do not apply to assistance animals
- The FHA treats service animals and emotional support animals the same (at least for now)
- These animals ARE NOT PETS.They are tools.
- Regular reasonable accommodation analysis applies.
- Landlord may also deny if animal would pose a “direct threat” or is causing excessive damage.This must be an individualized analysis.
- Breed/species restrictions don’t apply – may require you to get an accommodation from a municipality.

Other Protected Classes?



- Some states have other protected classes.
- Age
- Sexual Orientation/Gender Identity
- Source of Income
- Marital Status
- Ancestry/Creed
- Domestic Violence Survivors
- Immigration status

What is Covered?



- Dwellings
 - Defined as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence.”
 - public housing, private housing, vacation homes, residential hotels, migrant housing, dormitories, nursing homes, group homes, and homeless shelters (where persons reside for extended periods of time)

Exemptions



- Owner occupied, four units or less
- Sale of single family homes, except use of a broker or agent or discriminatory advertisement or more than 3 sales in a 24 month period if not owner occupied
- Private Club – not generally open to the public and not commercial
- Religious organization (non-commercial) – Still cannot base acceptance on race.
- Housing for older persons (over 55 or 62) – Exempt *only* from familial status provisions

Types of Discrimination



- The Act recognizes two types of discrimination:
 - Discriminatory treatment: overt discrimination
 - Disparate impact: a facially neutral rule has the effect of discrimination against a protected group

Prohibited Conduct



- Refusal to rent, sell, or make housing available, 3604(a);
- Discriminate in the terms, conditions, or privileges for sale or rental, 3604(b);
- Discriminatory statements and advertising, 3604(c);
- False representations of unavailability, 3604(d);
- Blockbusting, 3604(e);
- Disability discrimination, 3604(f)
- Fair Lending (3605)
- Access to brokerage services (3606)
- Threats, intimidation, coercion, and retaliation (3617)

Filing a Complaint



- Individuals can file FHA complaints with HUD or the Arkansas Fair Housing Commission
 - 1 year from date of discrimination
 - Can be made on HUD website or by phone
 - HUD has 100 days to investigate the allegation (this won't happen)
- Individuals can also file private lawsuits under the Fair Housing Act in state or federal court
 - 2 year statute of limitations
 - Works like any other lawsuit

Types of Relief



- Compensatory and Punitive Damages
 - ✦ A.C.A. § 16-123-338(1)
 - ✦ 42 U.S.C. § 3613(c)(1)
- Reasonable Attorney Fees
 - ✦ A.C.A. § 16-123-338(2)
 - ✦ 42 U.S.C. § 3613(c)(2)
- Court Costs
 - ✦ A.C.A. § 16-123-338(3)
 - ✦ 42 U.S.C. § 3613(c)(2)
- Injunctions
 - ✦ A.C.A. § 16-123-338(4)
 - ✦ 42 U.S.C. § 3613(c)(1)

Questions?



**CONTACT
JASON AUER
LEGAL AID OF ARKANSAS
711 TOWNE OAKS DRIVE
LITTLE ROCK, AR 72227
(870) 972-9224 EXT. 6318
JAUER@ARLEGALAID.ORG**