

# CLASH OF CLANS

## The New Face of Fair Housing Diversity & Disability



### STUDENT Playbook

Making Education Fun, Engaging & Useful



1-877-944-4260

# North Carolina Real Estate Commission

## Continuing Education

### Student Information Sheet

## READ IMMEDIATELY UPON CHECKING IN

### Basic CE Requirement (21 NCAC 58A.1702)

The CE requirement to maintain a license on active status is **eight (8) classroom hours per year** (each license period) consisting of the four (4) hour Real Estate Update course (mandatory for all licensees) and a four (4) hour elective. The content of the Update course changes each year.

### Important Points to Note

- Newly licensed licensees do NOT need to take any CE prior to their **first license renewal**, but must satisfy the CE requirement prior to their **second license renewal**.
- A course may not be taken for CE credit twice in the same license period. Make sure you have not already taken this course during the current license period.
- If your license is **inactive**, you should check with the Commission to ascertain the amount of CE you need to activate your license.

### Attendance Requirement

In order to receive CE credit for a course, students must attend the entire scheduled class session. Sponsors and instructors may, on an individual basis, excuse a student for good reason for up to 10% of the scheduled class session (20 minutes for a 4 hours class session); however, a student must attend a minimum of 90% of the scheduled class session in order to receive a course completion certificate and CE credit. No exceptions to the 90% attendance requirement are permitted for any reason.

### Student Participation Requirement

To help assure that the mandatory continuing education program will be one of high quality, the Commission requires that students comply with the following student participation standards:

A student shall direct his active attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class. **Examples of Prohibited Conduct:** Sleeping; reading a newspaper or book; performing office work; carrying on a conversation with another student; making or receiving a phone call on a cellular phone; receiving a page on a pager that makes a noise; loudly rattling or shifting papers; or repeatedly interrupting and/or challenging the instructor in a manner that disrupts the teaching of the course.

Sponsors and instructors are required to enforce the student participation standards. Sponsors have been directed to NOT issue a course completion certificate to a licensee who violates the standards and sponsors must report inappropriate behavior to the Commission.

### Course Completion Reporting

Sponsors are responsible for reporting course completion information to the Commission via the Internet within **7 days of course completion**. Licensees are responsible for assuring that the real estate license number that they provide to the course sponsor is correct.

Licensees may address comments/complaints about courses, instructors, and/or sponsors to:

**Continuing Education Officer**  
North Carolina Real Estate Commission  
P.O. Box 17100  
Raleigh, North Carolina 27619-7100

### Certificates of Course Completion

Course sponsors will provide each licensee who satisfactorily completes an approved CE course a Certificate of Completion on a form prescribed by the Commission within 15 calendar days following a course. The certificate should be retained as the licensee's personal record of course completion. **It should not be submitted to the Commission unless the Commission specifically requests it.**

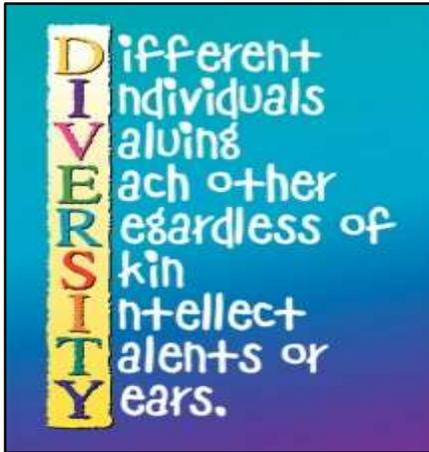
### Check the Label of Your Newsletter

The number of continuing education credit hours credited by the Commission to your licensee record for the current license period as of a stated date will appear on the mailing label of each edition of the Commission's newsletter. You may also check your **current year's** CE credits online at the Commission's website: [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us). You will need to log in under Licensee Login using your license number and pin number. If you are unsure of your pin number, please follow the instructions on our website.

**Please avoid calling the Commission office to verify the crediting of continuing education credit hours to your license record unless you believe that an error has been made.** Please use our website to verify that your credit hours have been reported. Your cooperation in this regard will be especially needed during the May 15 - June30 period each year.

## Why This Course Was Written

The face of fair housing is changing, so are the cases and the rules. In 2014, the most recent year for which a full set of statistics is available, there were 27,528 housing discrimination complaints filed in the United States. The largest categories of violations included racial (diversity) claims and disability claims. The United States Supreme Court in 2015 issued a major landmark case from the state of Texas and backed HUD's 2013 disparate impact rule.



Licenseses need to be aware of the changing nature of these cases and the impact of the nature of the violations. This is not your typical fair housing course which contains just a rehash of old rules and protected classes that you have heard over and over again.

Clash of Clans will help students recognize and appreciate the diverse world in which we live. It provides fresh new insights into diversity and takes a hard and practical look at what real estate professionals need to know today to help decrease the number of fair housing complaints and protect themselves and their clients from the risks of discrimination.

This course contains the most recent trends in these fair housing complaints and contains the most recent cases dealing with such issues as the use of background checks, wrongful evictions of veterans, the use of credit scoring and the new source of income violations. It also contains the most recent cases regarding handicaps and disability involving service and assistive animals, accessibility and reasonable accommodations.

We promise that at the end of this course you will view fair housing in a new and fresh perspective.

### Student Notes

## About the Author

### Len Elder, JD, DREI, CDEI Senior Instructor & Curriculum Developer



Len Elder is the Senior Instructor and Curriculum Developer for Superior School of Real Estate. With over 25,000 hours of live classroom presentations and teaching, Len has excelled to the top of his field and is recognized nationally as an author, speaker, course developer and a Distinguished Real Estate Instructor (DREI) by the national Real Estate Educators Association. Len joined Superior School in the fall of 2013.

With a B.A. degree in Speech Communications & Broadcasting and a law degree from Capital University, Len brings a multi-disciplinary approach into the classroom. His professional life spans the private practice of law, the mortgage banking industry, the real estate profession and the educational profession. He has served on numerous committees, acted as the President of the Southern Arizona Mortgage Brokers Association, served as a Board member of the national Real Estate Educators Association and is one of six elected people in the country who served on the Distinguished Real Estate Instructors Leadership Council.

For 10 years Len was the Senior Instructor at Hogan School of Real Estate in Southern Arizona and after that was the founder and CEO of the national education company, Course Creators. Len is a noted author **and** has written over 100 educational courses for real estate professionals throughout the United States, published law journal articles, been featured as the cover author of the REEA Magazine and created the national textbook for the training and development of instructors, ***Ovation – How To Present Like a Pro***. Len regularly delivers Instructor Development Workshops and has acted as the instructor for the real estate commissions and departments in North Carolina, Arizona, Utah, South Dakota, Alaska, Arkansas, Iowa, Oregon, Idaho, Alabama, Oklahoma and others.

He is a regular presenter at national conventions and events. Most of all he believes that educational classes should be fun, exciting and he has dedicated his life to helping other people succeed.

**Recipient of the John Getgey Award for Academic  
Excellence in the Practice of Law  
Mortgage Broker of the Year, Tucson, Arizona  
Marjorie Lewis Distinguished Service Award  
Past Board Member of the National Real Estate Educators Association  
Leadership Council of Distinguished Real Estate Instructors**

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# Putting the World into Perspective



If only we knew what we wanted to be when we grow up. If only we knew what we already were. It is impossible to begin to understand others without first coming to some basic understanding about ourselves. America has been called a great many things. Some would say that when it comes to diversity we are a “melting pot” with people of different color, nationality, religion and race all blending into something called an American. Others would claim we remain a collection of diverse individuals all of whom retain their own individual identity by religion, color, nationality or race. What do you think?

## A “Look in the Mirror” Question

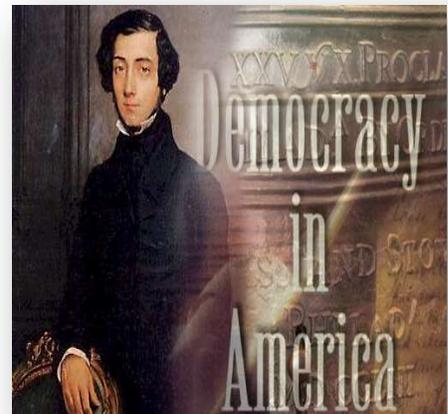


Are we:

- A melting pot?
- or
- A collection of diverse individuals?

## An Outsider’s View of America

French philosopher, Alexis deToqueville, was inspired by the political change in France during the French Revolutions. In order to answer questions about democracy and government he traveled to the United States and spent nine months here between 1831-1832. At the time the United States was still a relatively young country. On the basis of observations, readings, and discussions with a host of eminent Americans, Tocqueville attempted to penetrate directly to the essentials of American society and to highlight that aspect—equality of conditions—that was most relevant to his own philosophy. Tocqueville’s study analyzed the vitality, the excesses, and the potential future of American democracy. Above all, the work was infused with his message that a society, properly organized, could hope to retain liberty in a democratic social order.

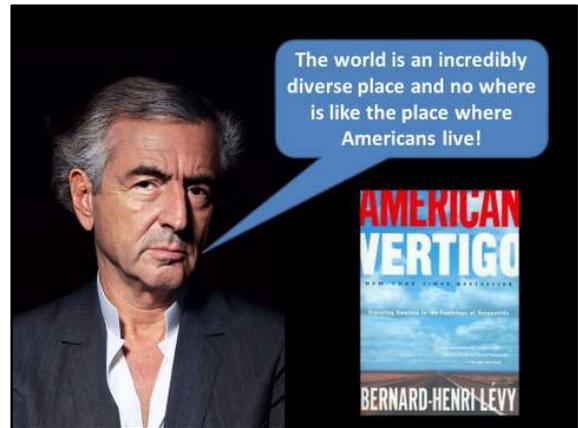


The result of deTouqueville’s work and journey in the United States was the authorship of Democracy in America. The treatise done in four parts attempted to define for the rest of the world

what it meant to be an American. His understanding and rendition of American culture has made the book an integral part of academic study, political science and law for both undergraduate and graduate students. He was the first to coin the phrase “melting pot” when describing Americans to others.

Roughly a decade ago another French philosopher, Dr. Bernard Henri Levi, was sent to America to travel in the footsteps of Touqueville, revisit the portrait of America and answer two fundamental questions. What does it mean to be an American today? What can America be today? The result was his book American Vertigo. You will find it to be a fascinating, fresh view of the country we think we know. Among his conclusions about the United States:

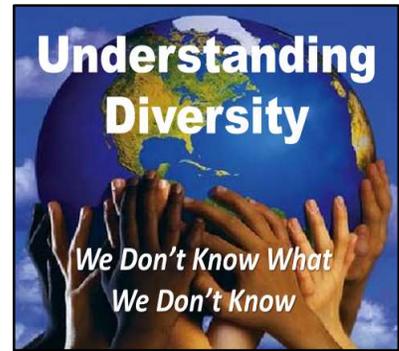
- It is the most diverse, most inclusive place on the planet
- It remains the world’s ideal place to worship, earn and live as one pleases
- A place where inclusion remains not just an ideal but an actual practice
- A place where there is magical co-existence between freedom and religion
- Where there is truly a place of national patriotism and pride



### Student Notes

## Understanding Diversity in the World

In order to understand the “flattening” of the world and why diversity in the United States has become such a key factor we have to appreciate what has happened demographically in the world over the past 200 years. Hans Rosling is a medical doctor who has spent a lifetime researching the world’s diversity, income and health. His organization, Gapminder.Org has mastered the detail of that research in a very visual way.



### A “Look in the Mirror” Question



What do you think the impact of Rosling’s statistics have to the practice of real estate in the United States?

Part of our ability to deal with issues of diversity require admitting to what it is we don’t know about the world in which we live. Let’s put our knowledge to the test. Here are 20 questions about the global world in which we now live:

### Countries

1. How many countries are there in the world? \_\_\_\_\_
2. How many of those countries are members of the United Nations? \_\_\_\_\_
3. What is the largest country in the world? \_\_\_\_\_
4. What is the smallest country in the world? \_\_\_\_\_

### Income

5. Which country has the largest per capita income? \_\_\_\_\_
6. What is the average annual income in Afghanistan? \_\_\_\_\_
7. What is the average per capita income in the world? \_\_\_\_\_
8. How much do you need to earn annually to be in the world’s top 1%? \_\_\_\_\_

**Languages**

9. How many different languages are there in the world? \_\_\_\_\_
10. How many different languages are spoken in the United States? \_\_\_\_\_
11. What is the most widely spoken language in the world? \_\_\_\_\_
12. Name the top 3 English speaking countries: \_\_\_\_\_

**Geography**

13. How many oceans are there in the world? \_\_\_\_\_
14. How many continents are there in the world? \_\_\_\_\_
15. What is the distance around the world at the equator? \_\_\_\_\_
16. What percentage of the world's population lives in the United States? \_\_\_\_\_

**Religion**

17. How many different religions are there in the world? \_\_\_\_\_
18. What is the fastest growing religious denomination in the United States? \_\_\_\_\_
19. How many religious denominations are there in the United States? \_\_\_\_\_
20. What is the fastest growing religion in the world? \_\_\_\_\_

**Student Notes**

**Student Notes**

## What this Diversity Means for the Practice of Real Estate

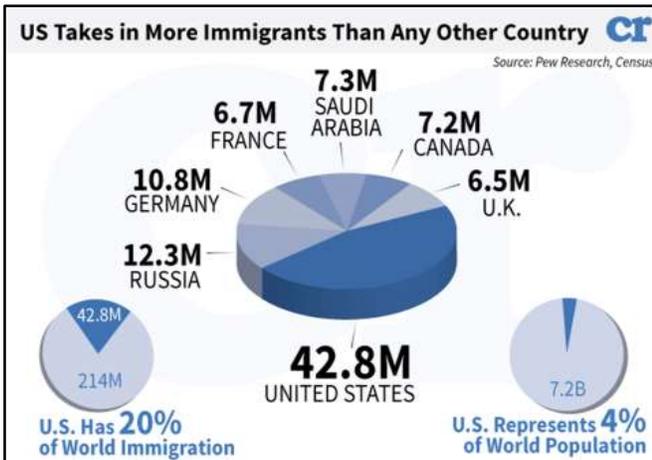
There are more Irish in New York City than in Dublin, Ireland, more Italians in New York City than in Rome, Italy and more Jews in New York City than Tel Aviv Israel. The growing wealth of the world, increased ease of transportation and the astounding levels of diversity affect the United States. Knowing what you now know:

**A “Look in the Mirror” Question**



**What impact does the world’s and America’s diversity have on the practice of real estate?**

Given the world demographic, income and diversity numbers, is it really any wonder that the United States takes in more immigrants than any other country? The U.S. represents only 4% of the world’s population but 20% of world immigration is bound for our shores.



The numbers have been consistently on the rise since the mid 1970’s and today come close to representing the percentages that flowed through Ellis Island in the early 1900’s.

Today as real estate professionals we are expected to work with an incredible cross section of diversity involving different religions, cultures, national origins, languages and socio-economic backgrounds.

### Student Notes

## A Relative Gut Check of Real Estate Impacts

**A \$10,000 down payment in the United States on average is less than 3 months of income. How many months do you think that would take for those relocating from:**

- Hungary \_\_\_\_\_
- Brazil \_\_\_\_\_
- Jordan \_\_\_\_\_
- Afghanistan \_\_\_\_\_

**An American works two days to earn enough for a \$300 home inspection based on per capita income. How many days do you think that would take for those relocating from:**

- North Korea \_\_\_\_\_
- Yemen \_\_\_\_\_
- Vietnam \_\_\_\_\_
- Phillippines \_\_\_\_\_

**Based on relative income your \$25,000 car has relative dollar for dollar value of how much for those relocating from:**

- El Salvador \_\_\_\_\_
- Vietnam \_\_\_\_\_
- Philippines \_\_\_\_\_
- China \_\_\_\_\_
- Niger: \_\_\_\_\_

### Student Notes



## Where Diversity Trends Meet Fair Housing Enforcement

The high level of immigration that we have been discussing forces real estate professionals to interact with an increasingly broader array of cultures, religions, races and national origin. Real estate professionals should be cautious about believing that a change in federal administrations or political parties will have much of an impact on the enforcement of fair housing in this ever changing world in which we live. That is because, despite a new administration and the appointment of Ben Carson as the new HUD secretary, HUD is no longer the primary enforcement agency of fair housing violations. In fact, the enforcement mostly happens at the local level.

### The New Face of Fair Housing Enforcement & Violations

Most of us learned during the licensing or continuing education process that Housing & Urban Development (HUD) was the lead player in enforcing discrimination in housing. That is no longer the case and the face of fair housing enforcement is changing rapidly. Federal laws and regulations allow HUD to delegate the enforcement of fair housing to other entities and private non-profit fair housing groups. The leading entity involved in such enforcement today is the National Fair Housing Alliance (NFHA).



Founded in 1988 and headquartered in Washington DC, the National Fair Housing Alliance (NFHA) is the only national organization dedicated solely to ending discrimination in housing. NFHA works to eliminate housing discrimination and to ensure equal housing opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy and enforcement.

Today NFHA is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. NFHA recognizes the importance of "home" as a component to the American Dream and hopes to aid in the creation of diverse, barrier free communities across the nation.

Most of these organizations are funded by HUD to receive and investigate housing discrimination complaints. These agencies participate in HUD's Fair Housing Assistance Program (FHAP), which provides annual funding on a noncompetitive basis to agencies that enforce a local or state law that provides the same substantive rights, procedures, remedies and judicial review provisions as the federal Fair Housing Act. In those jurisdictions, HUD in most circumstances refers complaints of housing discrimination it has received to the state or local FHAP agency for investigation.

## A Look at Recent Enforcement Statistics

The information shared here is from the most recent NFHA report for 2015. The most recent data accumulated in the 2015 report is through the year 2014.

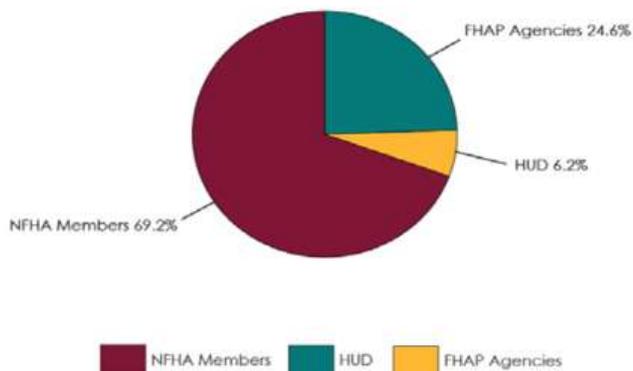
Nonprofit fair housing organizations, HUD, FHAP agencies and DOJ reported a total of 27,528 complaints of housing discrimination in 2014. This number reflects a slight increase in reported complaints compared to the previous year, but is still 1,000 less than the number reported in 2012.



**Table 1. Housing Discrimination Complaints: 2004-2014**

Year	NFHA Members	HUD	FHAP Agencies	DOJ	Total
2004	18,094	2,817	6,370	38	27,319
2005	16,789	2,227	7,034	42	26,092
2006	17,347	2,830	7,498	31	27,706
2007	16,834	2,449	7,705	35	27,023
2008	20,173	2,123	8,429	33	30,758
2009	19,924	2,091	8,153	45	30,213
2010	18,665	1,943	8,214	30	28,852
2011	17,701	1,799	7,551	41	27,092
2012	19,680	1,817	6,986	36	28,519
2013	18,932	1,881	6,496	43	27,352
2014	19,026	1,710	6,758	34	27,528

### Student Notes

**Figure 3. Housing Discrimination Complaints in 2014 by Reporting Agency**

As is evident in Table 1 on the previous page and very obvious in Figure 3 to the left, the vast majority of complaints are either originated with NFHA members or FHAP agencies. HUD accounted for the handling of only 6.2% of the complaints in 2014.

It is one thing to look at the number of complaints, it is another to understand the ramifications of enforcement and how these issues got resolved. Here is the agency closure statistics for 2014 (the most recent year for which complete data exists):

**Table 3. HUD and FHAP Agency Case Closures in 2014**

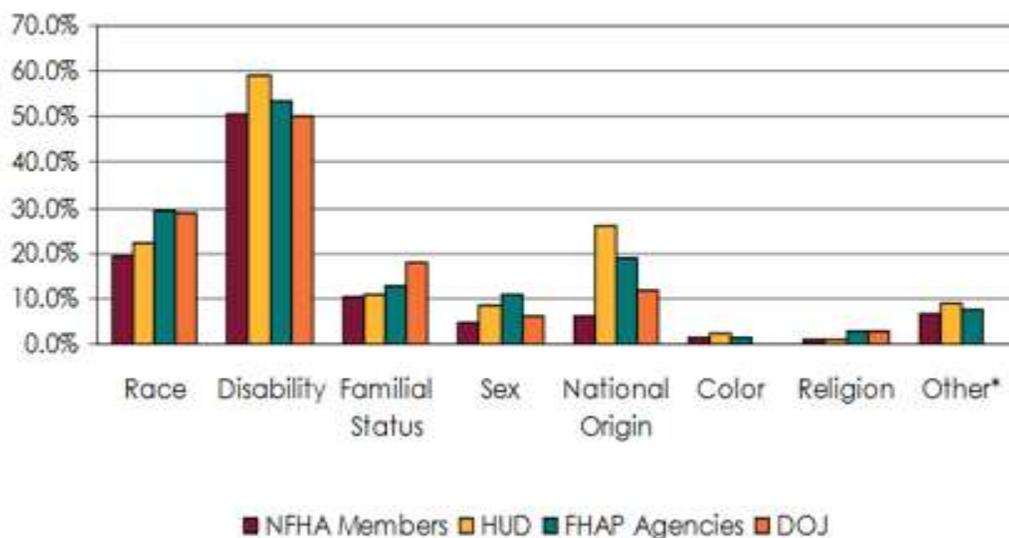
Type of Closure	HUD	FHAP	Total by Type
Administrative Closure	274	644	918
No Cause	554	3,546	4,100
Conciliation/Settlement	506	1,439	1,945
Withdrawn after Resolution	161	961	1,122
ALJ Consent Order Entered After Issuance of Charge	7	-	7
Election to Go to Court	16	-	16
DOJ Dismissal	5	-	5
DOJ Settlement	3	-	3
FHAP Judicial Consent Order	-	119	119
FHAP Judicial Dismissal	-	58	58
Litigation – Discrimination Found	-	9	9
Litigation – No Discrimination Found	-	3	3
Administrative Hearing Ended – Discrimination Found	-	13	13
Administrative Hearing Ended – No Discrimination Found	-	8	8
<b>Total Closures</b>	<b>1,526</b>	<b>6,800</b>	<b>8,326</b>

It is important to note that a large number of complaints were either closed for administrative reasons or for no cause. Administrative closures can occur because they are not timely filed, the complainant failed to cooperate, there was a lack of jurisdiction of the complainant or the respondent could not be located.

Of those that were pursued, the vast majority of cases were resolved by some type of conciliation or settlement with the agency. Very few cases go to court and only a very small fraction involve criminal enforcement through the Department of Justice.

As real estate licensees it would also be beneficial to know the cause of the leading sources of complaints and violations as a current trend.

**Figure 5. Discrimination by Protected Class**



The leading categories or classes of discrimination today are led by violations regarding race and disability. Together they comprise over 75% of the fair housing complaints and violations. Therefore, this course will focus on those two overriding issues in fair housing today.

**Student Notes**

## A Brief History of Fair Housing Rules & Statutes

The concept and goals of inclusion across broad ranges of diversity are well rooted in the history and evolution of fair housing. The passage of the 1866 Civil Rights Act made it illegal to discriminate on the basis of race or color. At the time of its passage the law did not mean what it has been extended to mean today. For over a century the United States Supreme Court interpreted the law as only prohibiting discrimination by the government. From 1866 until 1968 the law was given no application to private employers or housing. Today its protections have been extended to prohibit all discrimination on the basis of race or color with no exceptions.



The original law passed in 1866 was due largely to the efforts of Abraham Lincoln during the Civil War. The legacy of Abraham Lincoln is a grand one. He is heralded by many as one of the greatest American presidents. He is known throughout the world for two major accomplishments during his presidency. He is the president who presided over the country at the time of the Civil War and recognized as the President who preserved and saved the Union.



We like showing you things in class from different perspectives in ways you will never forget. Take a look at the back of a \$20 bill. It contains an engraving of the Whitehouse. The upper story window between the two columns is the window that Abraham Lincoln leaned out of on April 11, 1865 and said, “We should not discriminate against each other on the basis of race or color.” It was an historic moment. It was

the first time those words were ever said by an American president in public.

It is true that Lincoln presided over the country and lived to see General Lee’s surrender. Lee surrendered at Appomattox Courthouse on April 9, 1865 just two days prior to Lincoln’s last speech. The night of April 15, 1865 at Ford’s Theater was intended to be a night of relaxation for Lincoln before the hard work of pulling this country back together again began. At the time of both his speech and his assassination, we were far from being a unified country again and many doubted that the reunification could occur. So while it is appropriate that Lincoln is recognized as the president who “preserved the Union,” we should be astute enough to know he never lived to see that truly happen. He caused it, but Lincoln died not knowing whether or not we would hold that \$20 bill in our hand and whether it would indeed say at the top “The United States of America.”

While the implementation of the 1866 Civil Rights law happened in large part due to Lincoln’s efforts during the war and the Emancipation Proclamation, it is after all a law passed in 1866 and

Lincoln was assassinated in 1865. Therefore, the two major accomplishments often credited to Lincoln certainly belong to him, he just did not live long enough to see either of them occur. Abraham Lincoln died wondering whether or not his life had made much of a difference at all.



The dedication of the Memorial. Looking toward the east front

The 1866 Civil Rights Act was passed over the veto of then President Andrew Johnson, but had no application at all to housing discrimination. There is an often forgotten footnote to history. It is preserved forever on the back of the \$5 bill as an engraving of the Lincoln Memorial. The Memorial was built and dedicated in 1922 to the efforts of Abraham Lincoln. On May 30, 1922, the day that the dedication ceremony occurred, Dr. Robert Russo Moton, a black man, was asked to deliver the keynote address. On the day of the ceremonies he was asked to please sit in the “colored” section. That’s because even some 65 years after Lincoln’s death America was still a heavily racially divided country.

It would take more than another four decades and the tragic death of Dr. Martin Luther King, Jr. before housing discrimination would become illegal. After Dr. King was assassinated in Memphis, Tennessee on April 4, 1968, a few days later congress enacted into law the 1968 Fair Housing Act which remains the primary piece of fair housing legislation in place today.



### Student Notes

The 1968 Fair Housing Act made it illegal to discriminate in the sale or rental of homes, in the advertising and financing of them, in the providing of brokerage services and in appraisal. It created the concept of protected classes. Here is the timeline for the creation of the protected classes:

### 1866 Civil Rights Act

Protected classes of race and color

### 1968 Fair Housing Act

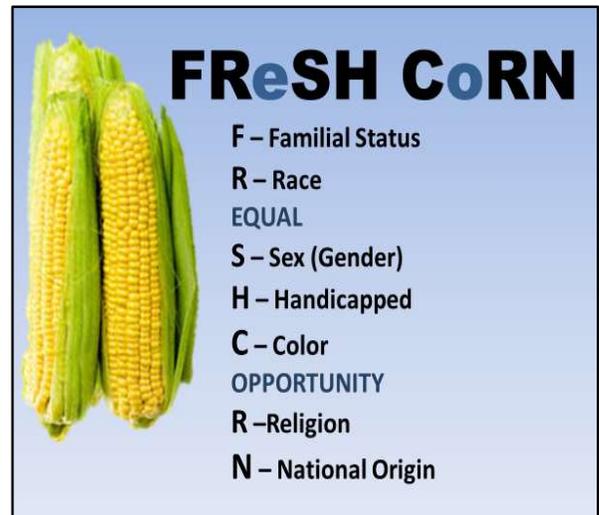
Protected classes of race, color, religion and national origin

### 1974 Fair Housing Amendments

Added the protected class of gender

### 1988 Fair Housing Amendments

Added the protected classes of disability and familial status



We had already identified earlier the two major areas of violations today, the first one is the issue of race. Race is not simply black and white violations, those actually fall under the protected class of color. We already know that the United States has a racially and ethnically diverse population and the immigration numbers that were discussed earlier in this class are having a huge impact today on fair housing violations.

## At the Heart of Today’s Racial Violations

Part of our understanding has to take into account the expanding definition of “race” under the law. The United States Census Bureau officially recognizes six racial categories:

- White American
- African American
- Native American
- Asian American
- Native Hawaiian
- Other Pacific Islander



The United States Census Bureau also classifies Americans as “Hispanic or Latino” and “Not Hispanic or Latino” which identifies Hispanic and Latino American as an ethnicity (not a race) distinct from others that composes the largest minority group in the nation. The United States Supreme Court unanimously held that “race” is not limited to Census designations, but extends to all ethnicities, and thus can include Jewish and Arab as well as Polish, Italian, Irish, etc.



## Disparate Impact Doctrine

### *The Biggest Thing to Happen in Fair Housing in a Long Time*

Disparate Impact is a legal doctrine under the Fair Housing Act which states that a policy may be considered discriminatory if it has a disproportionate “adverse impact” against any group based on race,

national origin, color, religion, sex, familial status, or disability when there is no legitimate, non-discriminatory business need for the policy. In a disparate impact case, a person can challenge practices that have a “disproportionately adverse effect” on those protected by the Fair Housing Act and are “otherwise unjustified by a legitimate rationale.”

On January 21st, 2015, the U.S. Supreme Court heard oral arguments in *Texas Department of Housing & Community Affairs vs. The Inclusive Communities Project, Inc.*, a case challenging whether disparate impact will remain a safeguard against discrimination in housing regardless of intent.

This landmark Texas case involved tax credits provided to developers who build low income housing. In 2008 the Inclusive Communities Project filed suit against the Texas Department of Housing that administered the credits claiming that it disproportionately allocated too many tax credits in predominantly black inner city areas and too few in predominantly white suburban neighborhoods.

On June 25, 2015, the Supreme Court ruled, in a decided victory for civil rights groups and consumers across America, that “[d]isparate impact claims are cognizable under the Fair Housing Act” after considering the Act’s “results-oriented language, the Court’s interpretation of similar language in title VII and the ADEA, Congress’ ratification of disparate-impact claims in 1988 against the backdrop of the unanimous view of nine Courts of Appeals, and the statutory purpose.” The Court stated:

***“Much progress remains to be made in our Nation’s continuing struggle against racial isolation...The FHA must play an important part in avoiding the Kerner Commission’s grim prophecy that ‘[o]ur Nation is moving toward two societies, one black, one white-separate and unequal.’...The Court acknowledges the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.”***

Federal appellate courts have consistently ruled in favor of applying the disparate impact standard. Indeed 11 appellate courts have found that disparate impact is a legitimate claim under the Fair Housing Act. Disparate impact has been used to expand housing opportunities for persons with disabilities, families with children and others protected by the Fair Housing Act. Without it, municipalities can more easily pass zoning ordinances that prohibit people with disabilities from modifying their homes to make them accessible; condo associations can more easily establish rules that prevent people with disabilities from making reasonable modifications to their homes; landlords can more easily evict victims of domestic violence; lenders can again employ policies and practices that steer borrowers with good credit into higher cost, unsustainable mortgages; and apartment managers can establish rules that make housing excessively and prohibitively expensive for families with children.



The Supreme Court’s decision also upholds the US Department of Housing and Urban Development’s disparate impact rule which establishes a burden-shifting framework for addressing disparate impact claims. HUD issued its rule in February, 2013, to establish a standard by which disparate impact cases would be adjudicated.

The Court found that the Fair Housing Act’s “results-oriented” language - “otherwise make unavailable”, under §804(a) and “discriminate against any person in” making certain real-estate transactions “because of race” or other protected characteristic, under §805(a) - address the “consequences of an action rather than the actor’s intent.” The language of the Act together with legal precedents decided by the Supreme Court related to Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 made it clear to the Court that there is “strong support for the conclusion that the FHA encompasses disparate-impact claims.” The Court, in its wisdom, recognized that discrimination is not always overt and that disparate impact is an important tool to permit “plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”

The Court recognized that disparate impact is not a new standard but a long-established protection that millions have come to rely upon in order to access housing opportunities. Indeed, the Court was loathe to go against the “longstanding judicial interpretation of the FHA to encompass disparate-impact claims and congressional reaffirmation of that result” commenting that the disparate impact protection has been in place for over 4 decades with no “dire consequences.” The Fair Housing Act was passed not just to address individual acts of discrimination but to also eradicate systemic practices that create and perpetuate residential segregation and racial isolation in America. Realizing the full purpose of the Fair Housing Act is not possible without disparate impact. Without disparate impact, our country is indeed doomed to the gripping conclusion reached by the Kerner Commission. The Court’s opinion not only lauds the Fair Housing Act’s lofty purpose but highlights the need for the continuation of the disparate impact standard since the Fair Housing Act’s purpose has not been fully achieved. In the Court’s words, “[m]uch progress remains to be made in our Nation’s continuing struggle against racial isolation.”

### Student Notes



## HUD's Disparate Impact Rule

In 2013 HUD finalized its discriminatory effects rule. The actual rule separated two types of discrimination claims:

**Disparate Treatment** – An intentional act of discrimination based on one of the protected class characteristics such as race or ethnicity.

**Disparate Impact** – Unintentional differential results that arise from practices that are facially neutral in their treatment of different groups, but that fall more harshly on one group than another.

Both the 2013 HUD rule and the United States Supreme Court decision in *Texas Department of Housing & Community Affairs vs. The Inclusive Communities Project, Inc.* have substantial and drastic impact on the nature of fair housing claims filed and the liability of real estate licensees for fair housing violations. The major impacts and effects of these new interpretations are:

- **There is NO requirement to prove intent in the discriminatory act**
- **Defendant must prove substantial legitimate justification for the policy**
- **Discrimination can occur beyond what we considered “protected classes”**

The problem is that most real estate licensees in past fair housing classes only learned about the “disparate treatment” intentional types of violations along straight protected class categories. We learned that all of the following were illegal conduct:

- **Blockbusting** – encouraging people to move or sell in a particular neighborhood due to changing protected class demographics.
- **Steering** – directing people to or away from certain neighborhoods on the basis of protected classes.
- **Redlining** – changing or altering loan terms based on geographical differences that affected protected classes.

### Student Notes

Many times in the past we indicated that real estate professionals, lenders, property owners and property managers could make distinctions based all of the following:



- **Low credit scores**
- **Level of income**
- **Sources of income**
- **Inability to document income**
- **Length of employment**
- **Criminal records**

We said these things because “criminals” “poor people” “unemployment” and “credit” are not protected classes. However, if our policies regarding any of these items has a disparate impact on protected classes we are now committing a fair housing violation if we cannot provide substantial legitimate justification for the policy.

**A “Look in the Mirror” Question**



**What examples can you think of where discriminatory impact can occur regarding these issues?**

**Student Notes**



## The Trend of Recent Cases & Settlements

The following recent cases were selected and chosen for this course because they represent new and extended application of fair housing laws in areas in which students may not be familiar. All cases are from 2016.

**NEW TREND  
ALERT**

## The Illegal Use of Criminal Background Checks

The Justice Department recently filed a statement of interest in a lawsuit challenging the use of criminal background checks at a New York community. In its brief, the Justice Department argued that the Fair Housing Act (FHA) requires that landlords who consider criminal records in evaluating prospective tenants do not use overly broad generalizations that disproportionately disqualify people based on a legally protected characteristic, such as race or national origin.

The lawsuit was filed by an organization that helps formerly incarcerated individuals find housing, alleging that the 917-unit affordable housing complex had a policy of refusing to rent to individuals with prior convictions for felonies or misdemeanors other than traffic offenses. The organization argues that this policy has an unjustified disparate impact against prospective African-American and Hispanic tenants, in violation of fair housing law.

The DOJ's brief doesn't take a position on the factual accuracy of the plaintiff's allegations, but instead aims to assist the court in evaluating whether a housing provider's policy that considers criminal records in an application process produces unlawful discriminatory effects in violation of federal fair housing law. Although the FHA doesn't forbid housing providers from considering applicants' criminal records, the brief states that "categorical prohibitions that do not consider when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then run a substantial risk of having a disparate impact based on race or national origin."

The brief explains that when a housing provider has a criminal record check policy with a disparate impact, the housing provider must "prove with evidence—and not just by invoking generalized concerns about safety—that the ban is necessary." Even then, the policy will still violate the FHA if there is a less discriminatory alternative.

“This filing demonstrates the Justice Department’s steadfast commitment to removing discriminatory barriers that prevent formerly incarcerated individuals from restarting their lives,” Principal Deputy Assistant Attorney General Vanita Gupta, head of the Justice Department’s Civil Rights Division, said in a statement. “Women and men who served their time and paid their debt to society need a place to live, yet unlawful housing policies can too often prevent successful reentry to their communities. While not all criminal records policies adopted by landlords violate the Fair Housing Act, we will take action when they do.”

The Justice Department said that the legal position taken in this case is consistent with HUD’s recent guidance concerning how the FHA applies to the use of criminal records by providers or operators of housing and real-estate related transactions.



### How to Be a Better Guardian in this new Clash of Clans

#### Student Notes

**NEW TREND  
ALERT**

## New Source of Income Violations

The owner of a Virginia community has agreed to pay \$40,000 to settle a fair housing case for allegedly refusing to accept Social Security Disability Insurance (SSDI) as income, according to a recent announcement by Housing Opportunities Made Equal of Virginia, Inc. (HOME). In its HUD complaint, HOME alleged that failure to accept disability income for housing discriminates against people because of their disability, which is a violation of federal fair housing law. The community, W.S. Carnes, Inc., denied that it discriminates against any tenant or prospective tenant on the basis of disability.

HOME reported that HUD facilitated the settlement, which includes a \$20,000 fund set aside to make reasonable modifications to the units or complex as requested by people with disabilities or on its own initiative. Another \$20,000 will be used to compensate HOME for the time and resources used in the investigation.

Paul Carnes, President of W.S. Carnes, Inc., stated that, “for more than 40 years, we have strived to maintain a welcoming and comfortable environment for all of our tenants at Meadowbrook Apartments, including individuals with disabilities. We take our responsibility to be an equal opportunity housing provider seriously and have always done our best to go above and beyond what is legally required. In this case, even before we found out about HOME’s complaint, we had already changed our rental policy to allow SSDI as an acceptable sole income source after members of our staff learned during an annual training course that excluding SSDI could be considered discriminatory. We fully support HOME’s mission and were glad we could work with them to bring about a prompt and amicable resolution to this case.”



### How to Be a Better Guardian in this new Clash of Clans

#### Student Notes

**NEW TREND  
ALERT**

## New Section 8 Voucher Violations

The Seattle Office for Civil Rights (SOCR) recently filed charges against 23 property owners after its latest round of fair housing testing allegedly showed that prospective renters experienced different treatment from Seattle landlords based on use of a federal Section 8 voucher.

“Housing discrimination is real in Seattle—not something that just happens in other places,” Seattle Mayor Ed Murray said in a statement. “These test results tell us that we still have work to do to achieve fair housing in Seattle.” The testing, which was conducted by telephone and email, used paired testers posing as prospects to measure differences in the services they received from leasing agents, as well as information about vacancies, rental rates, and other conditions.

**Section 8 voucher:** Two-thirds of the tests showed evidence of different treatment, resulting in 13 charges. Some landlords refused to respond to applicants who mentioned using a Section 8 voucher or simply turned away Section 8 applicants. Others refused to consider adjusting their leasing policies to consider Section 8 applicants.

“We have filed 23 charges where the differences in treatment were undeniable,” said Patricia Lally, Director of the Seattle Office for Civil Rights. “These test results are not isolated incidents—they demonstrate patterns of behavior that have profound impacts on people’s lives.”



### How to Be a Better Guardian in this new Clash of Clans

#### Student Notes

**NEW TREND  
ALERT**

## Unlawful Eviction of Servicemembers

The Justice Department recently announced a \$200,000 settlement with a company that owns and operates dozens of on-base and off-base military housing communities in California based on allegations that it unlawfully evicted active-duty servicemembers and their families in violation of the Servicemembers Civil Relief Act (SCRA). The case marks the first time that the Justice Department has filed suit alleging the unlawful eviction of servicemembers from their homes. **PPT Slide #82**

The SCRA provides servicemembers with protections against certain transactions that could adversely affect their civil legal rights while they are in military service. Under the SCRA, if a tenant who is on active duty is sued for eviction and does not make an appearance in the case for any reason, the landlord must file an affidavit with the court stating whether the tenant is in military service, showing necessary facts to support the affidavit. To evict a tenant in California, a landlord must first obtain a court order.

The complaint alleged that the owner/operator requested default judgments against servicemembers without filing the affidavits required by the SCRA to alert the court of the tenants' military status. As a result, the complaint alleged, servicemembers were put at risk of being evicted without having an opportunity to participate in the case and without having an attorney assigned to represent them. Even though the servicemembers who are receiving compensation under the settlement were all in military service at the time of their evictions, the company allegedly filed affidavits stating that none of the defendants were in military service.

Under the settlement, which still requires court approval, the company agreed to pay \$35,000 to each affected servicemember, vacate the eviction judgment, forgive any deficiency balance, and ask the credit bureaus to remove the evictions from their credit reports. The settlement also requires the company to pay a \$60,000 civil penalty.

In addition, the company agreed to make systemic changes to its business practices, including providing SCRA training to its employees and developing new policies and procedures consistent with the SCRA. The policies and procedures will require the company and its agents to review the Department of Defense Manpower Data Center (DMDC) database and file a proper affidavit of military service before seeking a default judgment against a tenant in an eviction action.

“Our servicemembers, who risk their lives to protect our freedom, should never return from duty to find their civil rights violated and their families evicted,” Principal Deputy Assistant Attorney General Vanita Gupta, head of the Justice Department’s Civil Rights Division, said in a statement. “The

Justice Department will continue our vigorous and robust enforcement of the SCRA to safeguard the rights of those who defend us.”



### How to Be a Better Guardian in this new Clash of Clans

#### Student Notes



### The Illegal Use & Discriminatory Nature of Credit Scores

Just what impact that HUD’s Disparate Impact Rule and the Supreme Court’s decision in the Texas case will have on the use of credit scores remains yet to be seen. In 2015 the National Fair Housing Alliance issued a detailed report entitled: Impact of Credit Scoring on Under-Served Markets. The report can be found on HUD’s website at [www.hud.gov](http://www.hud.gov), on the NFHA website at

[www.nationalfairhousing.org](http://www.nationalfairhousing.org) or it can be accessed directly through this link:  
<https://portal.hud.gov/hudportal/documents/huddoc?id=creditscoringpres.pdf>

Fair lending laws have long prohibited lenders from discrimination in the extension of credit and in the processing and underwriting of mortgage loans. Those however, were violations of the Equal Credit Opportunity Act (ECOA) which applied to lenders and banks, not to real estate professionals. Many are arguing that the recent changes in fair housing law should also allow for fair housing discrimination claims if the use of credit scores violates the disparate impact rule. Whether or not landlords and property managers will be able to rely solely on an arbitrarily chosen credit score without proving substantial legitimate justification of why a particular score cut-off was used is an issue that is certain to be challenged in the months ahead.



### Student Notes

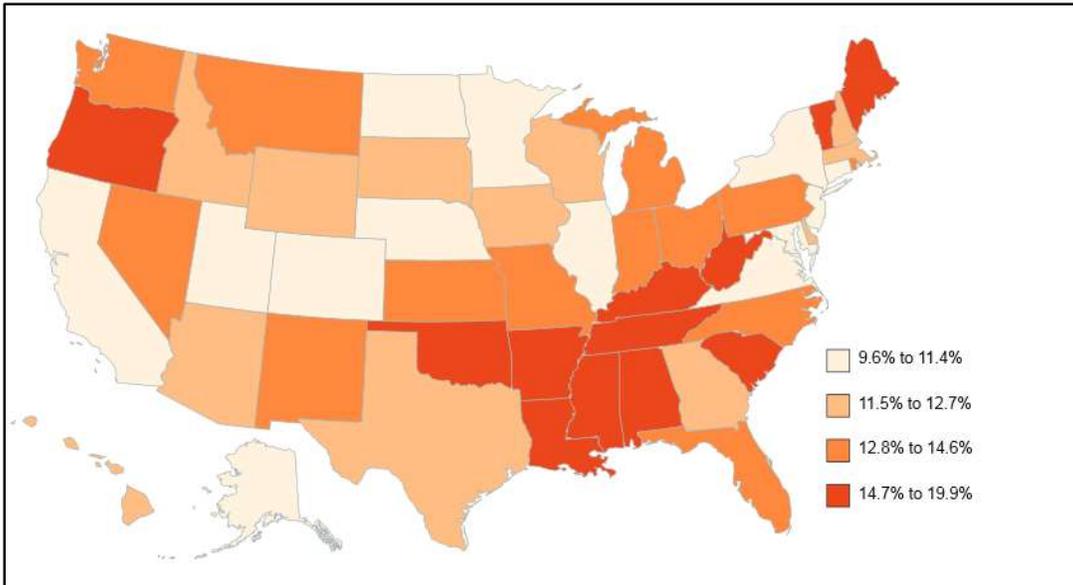


# Dealing with Disabilities and Handicapped Status

## *The #1 Fair Housing Violation*

### The Prevalence of Disabilities

According to the American Community Survey (ACS) an annual survey conducted by the United States Census Bureau, the overall percentage of disability in the United States is 12.6%. Over 1/3 of people with disabilities are employed.



### Student Notes

## The 1988 Amendments & Disabilities Under Fair Housing

The 1988 Amendments to the 1968 Fair Housing Act define a person with a disability as "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."

In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.



## Disability Rights in Real Estate and Housing

Regardless of whether you live in private or public housing, federal fair housing laws provide all of the following rights to persons with disabilities:

- **Prohibits discrimination against persons with disabilities.** It is unlawful for a housing provider to refuse to rent or sell to a person simply because of a disability. A housing provider may not impose different application or qualification criteria, rental fees or sales prices, and rental or sales terms or conditions than those required of a person who is not disabled.

**EXAMPLE:** *A housing provider may not refuse to rent to an otherwise qualified individual with a mental disability because he/she is uncomfortable with the individual's disability. Such an act would violate the Fair Housing Act because it denies a person housing solely on the basis of their disability.*

- **Requires housing providers to make reasonable accommodations for persons with disabilities.** A reasonable accommodation is a change in rules, policies, practices or services so that a person with disabilities will have an equal opportunity to use and enjoy a dwelling unit or common space. A housing provider should do everything he/she can do to assist but is not required to make changes that would fundamentally alter the program or create an undue financial or administrative burden.

**EXAMPLE:** *A housing provider would make a reasonable accommodation for a tenant with a mobility impairment by fulfilling the tenant's request for a reserved parking space in front of the entrance to their unit, even though all parking is unreserved.*

- **Requires housing providers to allow persons with disabilities to make reasonable modifications.** A reasonable modification is a structural modification that is made to allow persons with disabilities the full enjoyment of the housing and related facilities. Reasonable modifications are usually made at the resident’s expense.

**EXAMPLE:** *A reasonable modification would include allowing a person with disabilities to install a ramp into the unit, lower the entry threshold of a unit, or install grab bars in a bathroom.*

- **Requires that people with disabilities be allowed to have an assistive animal.** An assistive animal is one that is prescribed as medically necessary for a disability. Housing providers may not prohibit assistive animals and may not charge “pet deposits” for such animals.

**EXAMPLE:** In a community that allows pets and charges a pet deposit, if the housing provider charges a fee for the assistive animal, that is a violation of fair housing law.

- **Requires that new covered multifamily housing be designed and constructed to be accessible.** In covered multifamily housing consisting of 4 or more units with an elevator built for occupancy after March 13, 1991, all units must comply with the following seven design and construction requirements of the Fair Housing Act:
  - Accessible entrance on an accessible route
  - Accessible public and common use areas
  - Usable doors
  - Accessible route into and through the unit
  - Accessible light switches, electrical outlets, thermostats and controls
  - Reinforced walls in bathrooms
  - Usable kitchens and bathrooms

### Student Notes

## Fair Housing Meets the Real World

Teaching fair housing has more of an impact when we apply it to real world scenarios in very local settings. Imagine that a home that was recently purchased in your neighborhood was in the process of getting approved as a group home for recovering drug addicts, mental patients and those with alcohol addiction problems. How do you think your community would react to such a proposal?



### A “Look in the Mirror” Question



How do you think your neighborhood would react to a Group Home?

### Student Notes

## Reasonable Accommodations & Modifications

What is the difference between an accommodation and a modification? An **accommodation** is a change or variance in rules, services, practices or policies that allows a person with a handicapping condition to enjoy the housing, but doesn't alter application of the rule, policy, service or practice as to other tenants. Landlords may not refuse to make reasonable accommodations in rules, policies, practices or services if necessary for disabled person to use the housing.

Examples of reasonable accommodations include:

- **assigning a reserved parking space to a mobility impaired tenant near his or her apartment when the complex offers tenants ample unassigned parking**
- **providing written material either orally or in large print or braille to a visually impaired tenant**
- **reminding a developmentally challenged tenant that rent is due in three days**
- **permitting a live-in-aide to reside with a disabled tenant even if it violates normal policy**
- **altering chemicals used for pest control or maintenance, or if such alternate chemicals are ineffective at least providing allergic tenant with several days notice prior to using the chemicals in his or her building**

A **modification** alters the physical characteristics of the dwelling or common areas of the building. These requests generally arise only in lease transactions, because in a purchase, the buyer acquires and controls the property and may make whatever changes he or she wishes.



In a lease transaction, prospective tenants with a handicapping condition may request a landlord to allow reasonable modifications to the dwelling or common use areas to enable the tenant to use the housing. Generally, landlords may not refuse such reasonable requests, but the landlord may require the tenant to pay for the modifications.

Further, if the internal modifications would interfere with the future occupants use, then the landlord may require the tenant, if reasonable and necessary, to restore the dwelling to its original condition at the end of the tenancy. The same is not true of external modifications, such as a wheelchair ramp. Typically tenants may not be required to remove the external modification at the end of the tenancy.

### Student Notes

## Modifications fall into one of the following three classifications:

1. **Modifications that don't need to be restored to the original condition.** These include modifications that don't interfere with future occupants use of the unit and modification of the public and common use areas. These items include: widening interior doorways, installing grab bars in bathrooms and erecting ramps to afford ingress and egress.
2. **Modifications that must be restored to their original condition, but don't require an escrow account.** Typically, these modifications are relatively minor, easy to restore and inexpensive such as replacing the cabinet underneath the bathroom sink that was removed to allow wheelchair access.
3. **Modifications that must be restored but are moderately expensive and require an escrow account.** An owner who permits more extensive modifications that will cost more to remediate, such as lowering kitchen and bathroom counters or replacing all the kitchen cabinets, may lawfully request the tenant deposit a reasonable agreed to sum into an escrow account that will be held until the end of the tenancy and used to pay for the restoration of the premises. Any unused funds from such deposits that are not used to pay for the restoration should be returned to the tenant.

## Must Requests for Accommodation & Modification be in Writing

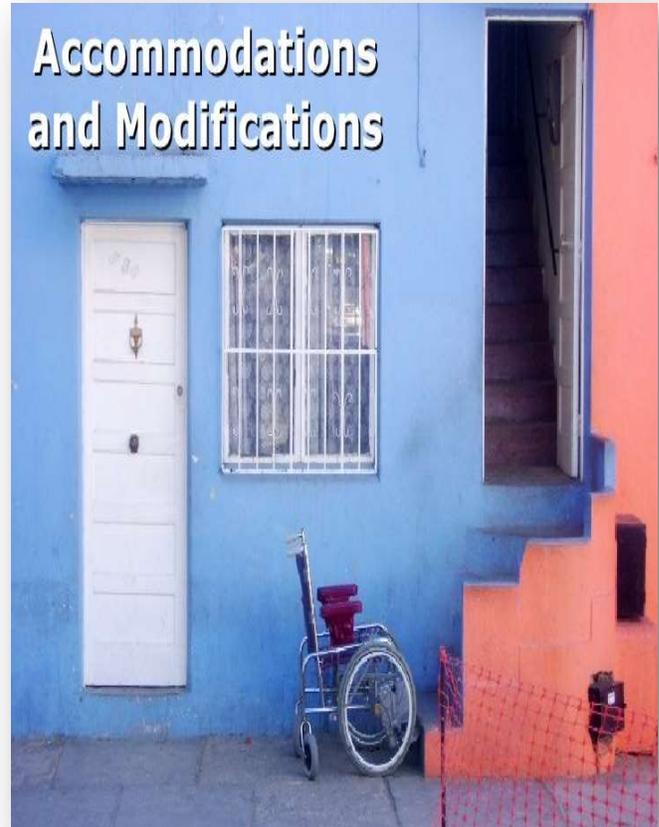
According to the joint statements issued by HUD and the DOJ in May 2004 and March 2008 regarding reasonable accommodations and modifications respectively, an owner landlord may not require the accommodation or modification request be made in writing. Rather a request is made whenever a tenant:

**Makes clear to the housing provider that the tenant is requesting an exception change or adjustment to a rule, policy, practice, or service because of a disability or is requesting a structural change.**

### Student Notes

The tenant should explain the type of accommodation or modification sought and, if the need is not apparent, the relationship between the requested accommodation modification and disability. The joint statements note:

- **The request under the Fair Housing Act need not be made in any particular manner**
- **May be requested by another person acting on behalf of the disabled individual**
- **Need not reference the FHA act or use the term reasonable**
- **May be oral or in writing**
- **Cannot be refused merely because the tenant didn't follow the landlord's requested procedure**



### Student Notes



## Assistive Animals in Fair Housing

Perhaps the most frequently encountered question by brokers or owners is from tenants who have an assistance or service animal. Assistance animals may also be referred to as a “support animal” a “therapy animal” or a “service animal.” It is important for licensees to realize that there are two separate classifications under the law:

1. An Assistance Animal under the Fair Housing Act
2. A Service Animal under the Americans with Disabilities Act

Knowing which law applies and the proper terminology to use is critical. The definitions are different as are the rules for allowing the animal and the inquiries and validation that are permitted. Let’s start with the Fair Housing Act which uses the term “Assistive Animal” and applies to the sale or rental of residential housing.

Under the Fair Housing Act owners who have a no pet policy are prohibited by both state and federal law from refusing to rent to a person who has an assistance animal whether in a vacation rental or short or long-term lease. These “assistance animals” are not pets. While the Americans with Disabilities Act (ADA) now defines a service animal as a canine that is properly trained, the fair housing act imposes no such limitations on assistance animals and they come in a wide array that can include cats, birds, ponies, monkeys or guinea pigs to name a few. These “assistance animals” do not need to be trained or certified.



- No pet deposit may be charged for such animals
- Such animals cannot be excluded from a person’s personal residence.

### Student Notes

If the community, the property manager or the owner has a policy allowing only pets that don't exceed a certain size and weight, that policy may need to be waived to accommodate the assistance animal. Licensees and owners can establish reasonable policies for the safety and well-being of other members of the community such as:

- Cleaning up after the animal
- Using a leash
- Keeping them quiet and under control
- Prohibiting any aggressive or dangerous conduct by the animal

While owners may not charge a pet deposit for assistance animals they may deduct from the security deposit any damage caused by the animal. If the tenant with the assistance animal adds another in the household without proof of its assistant nature then a pet deposit can be charged for the unverified animal, but not for the assistance animal.

## Permissible & Non-Permissible Inquiries & Verification

The verification requests that are legally permitted include only a request from the resident that they possess a medical provider's letter indicating the type of animal and that the animal is necessary as a result of a disability or handicap. Typically, both elements, disability and need, must be present and verified before an owner is obligated to make an accommodation under fair housing.

<b>Permissible Inquiries &amp; Verification FH</b>	
<b>YES</b>	<b>NO</b>
<ul style="list-style-type: none"> <li>• Inquire if they have a disability when not apparent</li> <li>• Request a medical letter that the animal is necessary for a disability</li> </ul>	<ul style="list-style-type: none"> <li>• Ask about the nature of the disability</li> <li>• Require medical records</li> <li>• Require proof of treatment</li> <li>• Require certification or training of the animal</li> </ul>

An owner or landlord may ask the tenant if they have a disability when it is not readily apparent and they can request a medical letter that the animal is necessary as a result of the disability.

Owners and property managers are not permitted to ask about the nature of the disability, require medical records, require proof of the disability or treatment, nor may they require any particular certification or training for an assistive animal. It is amazing what animals are capable of in today's world. Today these animals:

- **Can sense levels of depression and anxiety**
- **Intervene with a PTSD patient to lower anxiety**
- **Detect and alert to coming seizures and mental disorders**
- **Detect blood glucose levels**

### Student Notes



## American with Disabilities Act and Service Animals

The ADA applies to “public entities” i.e. federal state and local government programs, services, activities and facilities (Title II) as well as to commercial facilities, educational facilities, and public accommodations (Title III) including leasing offices, shelters, assisted living facilities, guest lodging, most retail establishments and many others.

Because real estate professionals encounter transactions that are subject to both the Fair Housing Act and the provisions of ADA it is essential that they understand which law applies when and the proper terminology and rules to apply when dealing with animals.

In 2010 the U.S. Department of Justice revised the ADA regulations to narrowly define a “service animal” as:

**Any DOG that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. Other species of animals, whether wild or domestic, trained or untrained are not service animals for purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability.**

While only canines may be “service animals” under ADA and the foregoing definition, other ADA regulations provide limited exceptions for miniature horses that may also be service animals to whom access must be allowed. The regulations provide that the work or task performed by the service animal must be directly related to the person’s disability and mention the following examples:

- Assisting persons who are blind or have low vision to navigate and other tasks
- Alerting persons who are deaf or hard of hearing to the presence of people or sounds
- Providing nonviolent protection or rescue work
- Assisting individual having a seizure
- Pulling a wheelchair
- Alerting a person to the presence of allergens
- Retrieving items such as medicine or the telephone
- Providing physical support and assistance with balancer stability to mobility impaired person
- Preventing or interrupting impulsive or destructive behaviors in persons with psychiatric or neurological disabilities

The ADA definition of service animal expressly states that the crime deterrent effects of an animal’s presence in the provision of emotional support, well-being, comfort or companionship do not constitute work or tasks for the purposes of this definition. Thus service animals are now a very limited and defined term under the ADA and comprise a much smaller group than the assistance animals under fair housing laws

## Permissible & Non-Permissible Inquiries & Verification

HUD's April 2013 notice observes that if an animal meets the ADA definition of service animal then public entities and public accommodations must allow the service animal into the covered facility. Where the individual's disability and the work or task performed by the dog are apparent, the ADA covered facility including broker property managers and owners may not request any further documentation or verification however where either the disability or the work tasks performed are not apparent then the only two questions the covered facility may ask are:

- Does the person need this animal to accompany him or her due to her disability?
- What work or task is the animal been trained to perform that relates to the disability

<b>Permissible Inquiries &amp; Verification ADA</b>	
<b>YES</b>	<b>NO</b>
<ul style="list-style-type: none"> <li>• Inquire if they have a disability when not apparent</li> <li>• Inquire whether the DOG is trained and certified to perform tasks</li> </ul>	<ul style="list-style-type: none"> <li>• Ask about the nature of the disability</li> <li>• Require medical records nor a doctor's letter</li> <li>• Require proof of treatment</li> <li>• Ask for the Dog's certification papers</li> </ul>

### Student Notes

Typically, there must be a nexus between the disability and the task performed by the trained service animal. The covered facility may not ask about the nature or extent of disability nor require medical records or proof that the animal has been certified, trained or licensed. The facility may not charge any fee for the animal’s admittance. If it is either apparent or the individual verifies the existence of disability related work or task performed by the animal, then the service animal must be admitted to all areas of the facility where the public has access unless:

- The animal is out of control and the handler doesn’t take effective action to control the animal
- The dog is not housebroken
- The animal poses a direct threat to the health, safety, or welfare of others that can’t be eliminated or reduced to an acceptable level by reasonable modification to other policies practices and procedures

US Department of Housing and Urban Development issued a notice on April 25, 2013 titled, “Service Animals and Assistance Animals for People with Disabilities and Housing and HUD Funded Programs.” (FHEO-2013-01). The Notice makes very clear the distinction between “assisted animals” under the Fair Housing Act and “service animals” under ADA and makes the rules clear for both. In an April 30, 2013 press release, John Trasvina, HUD Assistant Secretary for Fair Housing said:

**The vital importance of assistance animals in reducing barriers, promoting independence, and improving the quality of life for people with disabilities should not be underestimated, particularly in the home. Disability related complaints including those involving assistance animals are the most common discrimination complaint receipt. This notice will help housing providers understand and meet their obligations to grant reasonable accommodations to people with disabilities that require assistance animals to fully use and enjoy their housing.**

### Student Notes



## The Trend of Recent Cases & Settlements

The following recent cases were selected and chosen for this course because they represent new and extended application of fair housing laws in areas in which students may not be familiar. All cases are from 2016.

**NEW TREND  
ALERT**

### Requiring Additional Documentation & Imposing 3rd Party Liability for Assistive Animals

The owners and managers of four multifamily apartment complexes in Utah recently agreed to pay \$45,000 to settle a fair housing case alleging discrimination against residents with disabilities who wanted to live with their assistance animals.

The complaint alleged that the communities required residents with disabilities who sought to live with an assistance animal to have a healthcare provider complete a “prescription form,” which suggested that the healthcare provider may be held responsible for any property damage or physical injury caused by the animal. Allegedly, the communities did not require residents without disabilities to have a third-party assume liability for their pets.

Under the settlement, the communities agreed to pay \$20,000 to a former tenant and her 7-year-old son with autism who were allegedly denied permission to keep the child’s assistance animal after the child’s doctor refused to assume liability for any possible damages caused by the animal. The communities also agreed to pay \$25,000 to establish a settlement fund to compensate any additional individuals allegedly harmed by their conduct.

“The Fair Housing Act requires landlords to make accommodations for individuals with disabilities who require assistance animals in their homes,” Principal Deputy Assistant Attorney General Vanita Gupta, head of the Justice Department’s Civil Rights Division, said in a statement. “The Justice Department remains deeply committed to protecting the rights of persons with disabilities and holding accountable housing providers who utilize discriminatory policies.”

## How to Be a Better Guardian in this new Clash of Clans



### Student Notes



## Multi-Family Housing Accessibility Under the ADA

The Justice Department recently announced that the developers of six multifamily housing complexes in southern Mississippi have agreed to pay \$350,000 to settle claims that they violated the Fair Housing Act and the Americans with Disabilities Act by building apartment complexes that were inaccessible to persons with disabilities.

The settlement came weeks before trial was set to begin in early January 2017. As part of the settlement, the developers agreed to make substantial retrofits to remove accessibility barriers at the six complexes, which have nearly 500 covered units. The retrofits include eliminating steps; making bathrooms more usable; providing accessible curb ramps and parking; and providing accessible walks to site amenities such as the clubhouses, pools, and mailboxes. The developers agreed to pay all costs related to the retrofits; \$250,000 to compensate 25 individuals harmed by the inaccessible housing; and \$100,000 in civil penalties.

The federal Fair Housing Act requires all multifamily housing constructed after March 13, 1991, to have basic accessibility features, including accessible routes without steps to all ground-floor units and units accessible to wheelchair users and others with disabilities. The Americans with Disabilities Act requires, among other things, that places of public accommodation, such as rental offices at multifamily housing complexes, designed and constructed for first occupancy after Jan. 26, 1993, be accessible to persons with disabilities.

“Housing impacts critical areas of one’s daily life,” Principal Deputy Assistant Attorney General Vanita Gupta, head of the Civil Rights Division, said in a statement. “This comprehensive settlement demonstrates the Justice Department’s commitment to protecting the rights of persons with disabilities to reside in and visit the housing of their choice.”

“When housing fails to meet the Fair Housing Act’s design and construction requirements it further limits the type of housing persons with disabilities need the most,” added Gustavo Velasquez, Assistant Secretary for Fair Housing and Equal Opportunity at the Department of Housing and Urban Development. “Hopefully today’s action will help developers to better understand the importance of meeting their obligation to comply with the law.”



## How to Be a Better Guardian in this new Clash of Clans

### Student Notes

**NEW TREND  
ALERT**

## **TTY Relay Services and Sign Language Services for the Hearing Impaired**

The Springfield Housing Authority in Massachusetts recently agreed to settle allegations of discrimination against an 82-year-old deaf resident, who allegedly did not receive the same access to communications as individuals without disabilities. The housing authority was accused of refusing to grant a reasonable accommodation that would have provided the long-time resident with the equipment needed to receive the same level of notification available to hearing tenants and allegedly denied her equal access to services they provide to other residents.

The Fair Housing Act prohibits housing providers from denying or limiting housing to persons with disabilities or from refusing to make reasonable accommodations in policies or practices. Similarly, ADA and Section 504 prohibit certain housing providers from discriminating on the basis of disability, including failing to make reasonable accommodations and modifications, and failing to take appropriate steps to ensure effective communication with individuals with disabilities.

Under the settlement, the housing authority agreed to pay \$51,000 to the woman and to cover \$5,000 in costs to monitor its compliance with the agreement over the next three years. The housing authority also agreed to communicate with the resident via American Sign Language or telephonic video relay communications and to provide a device to allow for a video relay system in her unit. Finally, the housing authority agreed to consult with disability experts in addressing the needs of deaf tenants and to incorporate the recommendations of the most recent fire safety requirements specifically for the deaf and hard-of-hearing.

“Today’s agreement reaffirms HUD’s commitment to ensuring that all housing providers, including housing authorities, understand their obligations under the law and take steps to meet that obligation so that every person has an equal chance to use and enjoy their housing,” Gustavo Velasquez, HUD Assistant Secretary for Fair Housing and Equal Opportunity, said in a statement.

### **Student Notes**



## How to Be a Better Guardian in this new Clash of Clans

**NEW TREND  
ALERT**

### **HOA's & Homeowner Liability Regarding a Group Home**

HUD recently announced that it has reached a \$630,000 agreement with a group of Illinois property owners and a management company using rental screening policies that prevented applicants with mental disabilities from living in a supportive living complex that the group owned. The community was accused of violating the Fair Housing Act as well as Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability by any program or activity receiving federal financial assistance.

The case came to HUD's attention after several individuals with mental disabilities filed complaints alleging they were denied residency at the property due to their disabilities. The complaints were filed with the assistance of a fair housing organization, which conducted fair housing testing and also filed a HUD complaint.

Under the settlement agreement, the owners and managers agreed to pay \$630,000 in damages and attorneys' fees. In addition, the community agreed to make significant policy changes, including revising its admissions manual and handbook; updating its non-discrimination statement; establishing a reasonable accommodation policy; and conducting fair housing training for employees. The company also agreed to develop a protocol to apply objective admissions criteria, notify all applicants of their due process rights, and refrain from asking applicants about the existence of mental disabilities or prescriptions during tours of the facility.

"Discriminatory practices that target persons with disabilities not only violate their rights, they lock them out of decent, safe and affordable housing," said Gustavo Velasquez, HUD Assistant Secretary for Fair Housing and Equal Opportunity. "HUD remains committed to taking action when property owners and managers fail to meet their obligations under the Fair Housing Act."



### How to Be a Better Guardian in this new Clash of Clans

#### Student Notes

**NEW TREND  
ALERT**

## Student Housing & Assistive Animals

Kent State University recently agreed to settle a fair housing case filed by the Justice Department alleging that the university had maintained a policy of not allowing students with psychological disabilities to keep emotional support animals in university-operated student housing. Under the settlement agreement, the university agreed to:

- Pay \$100,000 to two former students who were allegedly denied a reasonable accommodation to keep an emotional support dog in their university-operated apartment;
- Pay \$30,000 to the fair housing organization that advocated on behalf of the students;
- Pay \$15,000 to the United States; and
- Adopt a housing policy that will allow persons with psychological disabilities to keep animals with them in university housing when such animals provide necessary therapeutic benefits to such students and it would not fundamentally alter the nature of the housing.

“This settlement shows the department’s continued and strong commitment to ensuring that students in university housing are afforded the protections of the Fair Housing Act,” Principal Deputy Assistant Attorney General Vanita Gupta, head of the Civil Rights Division, said in a statement. “Those protections include accommodations for students with disabilities who need assistance animals in order to have an equal opportunity to enjoy the benefits of university housing.”

The lawsuit alleged that the university violated fair housing law when, in 2010, it denied a request to allow a student with a psychological disability and her husband to keep an emotional support dog in their university-operated student apartment. Under the proposed settlement, KSU has agreed to change its policy to accommodate similar requests going forward.



### How to Be a Better Guardian in this new Clash of Clans

**Student Notes****NEW TREND  
ALERT****The Trend Toward Disabilities That  
Cannot Be Seen**

A HUD Administrative Law Judge recently ruled against a Minnesota property manager accused of refusing to rent to prospects because of their disabilities. The judge ordered the manager to pay \$27,000 to the prospects, \$16,000 as a civil penalty, and \$1,000 in other court sanctions.

The ruling stems from a HUD charge, filed last year, accusing the property manager of violating fair housing law by making discriminatory statements to the prospect and her roommate, and refusing to rent to them because they have mental disabilities.

The complaint alleged that the prospect tried to rent a single family home for herself and a roommate, each of whom had mental disabilities. Before the manager knew about their disabilities, she said that he agreed to rent them the home and gave them a key. She said she went to the home, along with her parents and roommate, to give him a security deposit and begin the process of moving in, but the manager allegedly said that they couldn't rent the property because of their disabilities. Among other things, he allegedly said that the owner "did not want a bipolar in the house."

"Refusing to rent to someone simply because they have a disability is not only wrong, it's illegal," Gustavo Velasquez, HUD Assistant Secretary for Fair Housing and Equal Opportunity, said in a statement. "This order sends a clear message to housing providers that HUD remains committed to ensuring that they abide by the nation's fair housing laws."

**Student Notes**



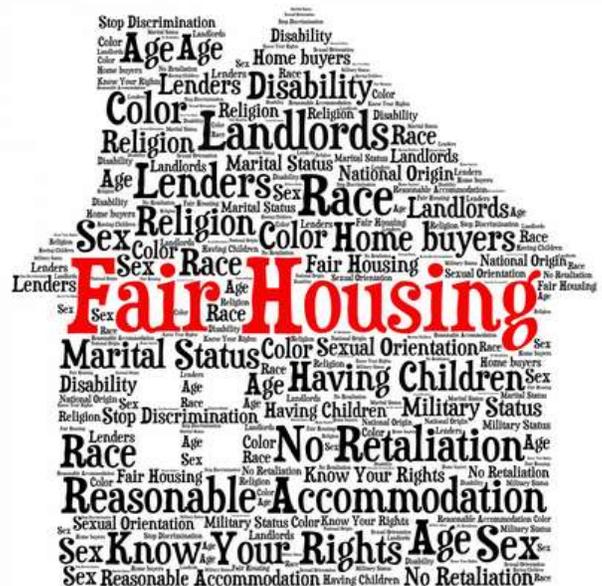
## Fair Housing in the State of North Carolina

In North Carolina the Human Relations Commission (HRC) advocates, enforces, and promotes equality of opportunities in the areas of housing, fair employment practices, public accommodations, education, justice and governmental services.

The Commission also enforces the North Carolina state fair housing act which is substantially equivalent with the division of fair housing within the US Department of Housing and Urban Development. The Commission also serves as a resource to community development block grant recipients and helps them develop adequate fair housing plans. The Commission supports and works with 57 local autonomous commissions throughout the state of North Carolina.

As mentioned earlier in this course, HUD authorizes local Fair Housing Assistance Program (FHAP) Agencies to investigate and enforce fair housing complaints. In North Carolina the following entities all work in conjunction with HUD and HRC in regard to fair housing violations:

- City of Charlotte/Mecklenburg County Community Relations Committee
- Durham Human Relations Commission
- Greensboro Human Relations Department
- High Point Human Relations Commission
- Orange County Human Relations Commission
- Winston-Salem Human Relations Commission





## The Elimination of the “For Sale by Owner” Exemption in North Carolina

Chapter 41(A) of the North Carolina Gen. statutes contains the state fair housing law. It is substantially similar to the 1968 federal fair housing act and its 1988 amendments. One important distinction between North Carolina state law and the federal fair housing law is that the state of North Carolina does not include an exemption for a for sale by owner. The federal fair housing act provides that an owner of real estate is exempt from compliance with fair housing when:

- **selling their own home without the assistance of a licensed real estate professional or brokerage, and**
- **does not own more than three homes at the time of sale, and**
- **makes no discriminatory comments in their advertising**

No such “for sale by owner” exemption exists in North Carolina.

### Student Notes



## North Carolina Fair Housing Cases



### **\$350,000 Settlement Regarding Disabilities & Accessibility**

The Justice Department recently announced that the owners and developers of 71 multi-family housing complexes in four states with more than 2,500 ground-floor units have agreed to pay \$350,000 to settle claims that they violated the Fair Housing Act and the Americans with Disabilities Act by building apartment complexes that were inaccessible to persons with disabilities. As part of the settlement, the companies also agreed to make substantial retrofits to remove accessibility barriers.

Under the terms of the agreement, which was approved by the U.S. District Court for the Northern District of Alabama, Alabama-based developers Allan Rappuhn, Gateway Construction Corporation, Gateway Development Corporation and other affiliated companies must take extensive actions to make the complexes accessible to persons with disabilities. These corrective actions include replacing excessively sloped portions of sidewalks, installing properly sloped curb walkways to allow persons with disabilities to access units from sidewalks and parking areas, replacing cabinets in bathrooms to provide sufficient room for wheelchair users and removing accessibility barriers in public and common use areas at the complexes. The defendants will pay \$300,000 to establish a settlement fund for the purpose of compensating individuals with disabilities who have been impacted by the accessibility violations and \$50,000 as a civil penalty.

“Our country prohibits discrimination because of an individual’s disability, and our laws guarantee all people the right to access housing of their choice,” said Principal Deputy Assistant Attorney General Vanita Gupta, head of the Justice Department’s Civil Rights Division. “We will continue aggressively enforcing the Fair Housing Act and the Americans with Disabilities Act to ensure that residential multi-family housing is built with the required accessible features.”

“Because of the Fair Housing Act and the Americans with Disabilities Act, persons with disabilities, like all Americans, have the right to live in housing free of discrimination” said U.S. Attorney Joyce White Vance of the Northern District of Alabama. “My office remains committed to aggressively protecting the housing and other rights of individuals with disabilities.”

The agreement also requires the defendants to receive training about the Fair Housing Act and Americans with Disabilities Act to ensure that all future multifamily housing construction complies with these laws and to provide periodic reports to the Justice Department.

Of the 71 complexes affected, nine of them are located in North Carolina. The affected communities include the following which were built with financial assistance from the federal government’s Low-Income Housing Tax Credit program:

- Autumn Ridge Apartments, Jacksonville, North Carolina
- Bailey Springs Apartments, Lincolnton, North Carolina
- Blue Springs Apartments, Jacksonville, North Carolina
- Bradbury Apartments, Newton, North Carolina
- Canebreak Apartments, Wilmington, North Carolina
- Lenox Station Apartments, Rockingham, North Carolina
- Oakland Mill Apartments, Lincolnton, North Carolina
- Sterling Oaks Apartments, Spindale, North Carolina
- Stoney Creek Apartments, Laurinburg, North Carolina

The federal Fair Housing Act prohibits discrimination in housing based on disability, race, color, religion, national origin, sex and familial status. Among other things, the Fair Housing Act requires all multifamily housing constructed after March 13, 1991, to have basic accessibility features, including accessible routes without steps to all ground floor units, and units accessible to wheelchair users and others with disabilities. Enacted in 1990, the Americans with Disabilities Act requires, among other things, that places of public accommodation, such as rental offices at multifamily housing complexes designed and constructed for first occupancy after Jan. 26, 1993, be accessible to persons with disabilities.

### Student Notes



## The SkyHouse Apartments Case A \$1.8 Million Settlement

On September 26, 2016, Legal Aid of North Carolina (LANC) announced that it had settled housing discrimination complaints against the architects, builders and owners of the SkyHouse apartment buildings in Raleigh, Charlotte, and eight cities in other states. The complaints, which were filed with the U.S. Department of Housing and Urban Development (HUD), alleged that the balconies in the buildings were in violation of the Fair Housing Act because the sliding door thresholds were too high, making them inaccessible for people with disabilities. The respondents in the cases denied that the buildings were inaccessible or in violation of the Fair Housing Act.

As a result of the conciliation agreement signed by the parties and approved by HUD on September 13, 2016, the respondents will provide \$1.8 million to help fund accessibility modifications for low-income individuals in North Carolina, Georgia, Florida, and Texas, where SkyHouse properties with similar features are located. The fund will be managed by the R.L. Mace Universal Design Institute, a non-profit organization dedicated to promoting the concept and practice of accessible and universal design.



In addition, to make units more accessible, the owners of the buildings will offer ramps and decking for the balconies, and make other accessibility modifications upon request from residents with disabilities. The respondents will further pay \$50,000 for Legal Aid's damages and attorneys' fees. George Hausen, executive director of Legal Aid of North Carolina, praised the respondents for working to achieve a positive resolution of the cases, stating:

**We appreciate the effort that the respondents made to address the issues raised in our complaints. The modification fund will help hundreds of low-income people with disabilities remain in their homes by making them more accessible.**

Jeffrey Dillman, co-director of the Fair Housing Project, noted that the accessibility provisions of the Fair Housing Act are of great importance to people with disabilities, stating:

**Accessible housing is an essential means of ensuring that people with disabilities are able to fully participate in the community. Designers and builders must ensure that housing meets these modest federal accessibility requirements, in addition to state and local codes.**

The cases, *Legal Aid of North Carolina v. SkyHouse Raleigh, LLC, et al.*, and *Legal Aid of North Carolina v. SkyHouse Charlotte, LLC, et al.*, were filed with HUD in December 2015. The cases arose from accessibility testing performed by Legal Aid’s Fair Housing Project, which uncovered the alleged violations.

The Fair Housing Act requires all multi-family housing built since 1991 to include certain accessibility features in common areas and individual units to allow people with disabilities to use and enjoy the property.

There are 17 SkyHouse buildings currently completed or under construction. Eleven of them have the high door thresholds that are subject to the agreement. The respondents are SkyHouse Raleigh, LLC; SkyHouse Charlotte, LLC; SkyHouse Charlotte II, LLC; Smallwood, Reynolds, Stewart, Stewart & Associates, Inc., in Atlanta; Batson-Cook Company in West Point, Ga.; Novare Group Holdings, LLC, in Atlanta; Beacon Partners, Inc., in Charlotte; and NGI Investments, LLC, in Atlanta.



## The Seven Standards for Compliance with the Fair Housing Act

In order to be in compliance with the Fair Housing Act, there are seven basic design and construction requirements that must be met. These requirements are:

### 1. An accessible building entrance on an accessible route.

All covered multifamily dwellings must have at least one accessible building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. An accessible route means a continuous, unobstructed path connecting accessible elements and spaces within a building or site that can be negotiated by a person with a disability who uses a wheelchair, and that is also safe for and usable by people with other disabilities. An accessible entrance is a building entrance connected by an accessible route to public transit stops, accessible parking and passenger loading zones, or public streets and sidewalks.

### 2. An Accessible public and common use areas.

Covered housing must have accessible and usable public and common-use areas. Public and common-use areas cover all parts of the housing outside individual units. They include -- for example -- building-wide fire alarms, parking lots, storage areas, indoor and outdoor recreational areas, lobbies, mailrooms and mailboxes, and laundry areas.

**3. Usable doors (usable by a person in a wheelchair).**

All doors that allow passage into and within all premises must be wide enough to allow passage by persons using wheelchairs.

**4. Accessible route into and through the dwelling unit.**

There must be an accessible route into and through each covered unit.

**5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.**

Light switches, electrical outlets, thermostats and other environmental controls must be in accessible locations.

**6. Reinforced walls in bathrooms for later installation of grab bars.**

Reinforcements in bathroom walls must be installed, so that grab bars can be added when needed. The law does not require installation of grab bars in bathrooms.

**7. Usable kitchens and bathrooms.**

Kitchens and bathrooms must be usable - that is, designed and constructed so an individual in a wheelchair can maneuver in the space provided.

## Justice Department Settles Fair Housing Lawsuit Against Town of Garner, North Carolina

The Justice Department announced that it has settled its suit against the town of Garner, N.C., and the town's Board of Adjustment alleging that they violated the Fair Housing Act when refused to allow up to eight men recovering from drug and alcohol addictions to live together as a reasonable accommodation.



Oxford House Inc., the non-profit organization that chartered the home, sponsors the development of self-governing houses in which recovering addicts support each other's determination to remain sober. The case began when Garner refused to consider requests by Oxford House to increase the number of residents in the home from six to eight. Oxford House filed a complaint with the U.S. Department of Housing and Urban Development, which referred the matter to the Justice Department. After conducting an independent investigation, the Justice Department filed suit in May 2009, and Oxford House subsequently intervened. In June 2010, the district court denied the defendants' motion to dismiss the lawsuit, ruling that Oxford House had taken the legal steps necessary to have Garner consider its request for a reasonable accommodation.

"The Fair Housing Act requires equal access to housing for persons with disabilities," said Thomas E. Perez, Assistant Attorney General for the Civil Rights Division. "The Justice Department will continue to ensure the right of people with disabilities to live in housing appropriate for their needs."

"This settlement demonstrates the high priority that our office gives to enforcement of all federal civil rights statutes, including the Fair Housing Act," stated George E.B. Holding, U.S. Attorney for the Eastern District of North Carolina.

Under the terms of the settlement, which must still be approved by the U.S. District Court in Raleigh, N.C., the defendants will pay \$105,000 in monetary damages to Oxford House and \$9,000 to the government as a civil penalty. The settlement requires the town to grant the reasonable accommodation requested by Oxford House to submit periodic reports to the government, and to train town officials on the requirements of the Fair Housing Act. In December 2010, in connection with the parties' proposed settlement, the town amended its zoning code to establish a procedure for addressing future requests for reasonable accommodations.



## The Raleigh Homeowners Association Case

On March 23, 2015, the Fair Housing Project of Legal Aid of North Carolina announced that a Raleigh homeowner's association and their property manager have agreed to pay \$20,000 to settle a housing discrimination lawsuit that accused them of discriminating based on disability. The lawsuit was filed by North Carolina Human Relations Commission (NCHRC) in Wake County Superior Court in January 2013. The NCHRC had previously determined that reasonable grounds existed to believe that the Defendants had engaged in unlawful discriminatory housing practices. Private homeowners Cindy and Ian Block, represented by Legal Aid's Fair Housing Project, subsequently joined in the case. The NCHRC and the Blocks alleged that the Defendants violated the Fair Housing Act when they imposed discriminatory terms and conditions on the Blocks' request to retain a handicap ramp they had previously constructed at their home as an accommodation for a family member's disability.

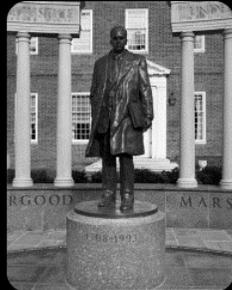
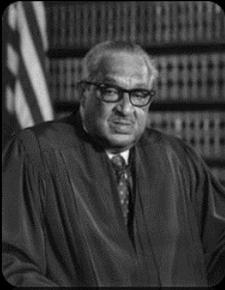
Dr. Cindy Block, who has a congenital visual impairment, is legally blind and needed the use of a ramp to accommodate her disability. The lawsuit alleged Defendants violated federal and state fair housing laws by demanding that the Blocks remove the ramp from their property at their own expense should the Blocks' home cease to include someone who is disabled or if they sold their property to a buyer who did not have a "certifiable disability." Such a condition would have required the Blocks to interview any prospective buyer to determine his or her disability status.

Under the settlement, the Defendants — Carriages at Allyn’s Landing Owners Association, VPJ Enterprises, and Mr. Victor Jones — agreed to pay \$20,000, to participate in approved fair housing training, and formally acknowledged that their conduct and actions are subject to state and federal fair housing laws. Five thousand dollars of the settlement will be donated to Operation FINALLY HOME, a charitable organization chosen by the Blocks that builds mortgage-free homes for wounded and disabled veterans. The remainder will cover Legal Aid of North Carolina’s attorney fees and costs related to litigation of the case.

“Homeowners associations are obligated to follow fair housing laws and must grant reasonable accommodations that enable individuals with disabilities to fully use and enjoy their homes,” said Jack Holtzman, Co-Director of Legal Aid of NC’s Fair Housing Project and one of the Blocks’ attorneys. “We will continue to assist homeowners and tenants in North Carolina seeking to protect their right to housing free of discrimination.”

### Student Notes

## The Legacy of Thurgood Marshall



## A Lesson from the Legend, Thurgood Marshall

Thurgood Marshall served as a United States Supreme Court Justice from 1967 until 1991. When I was in school I had the opportunity to spend some time with the legendary Thurgood Marshall at a Supreme Court internship program. The story I am about to share with you was the story Thurgood Marshall told me one day at lunch in the Supreme Court cafeteria. I am not anyone special and I was not singled out by Thurgood

Marshall in any way. I have since learned that the following story was Thurgood Marshall's favorite story. He told it to every law lawyer and law student who ever got within 100 feet of him.

His first claim to fame was not as a Supreme Court Justice, but as an attorney. In the early 1950s a little girl named Linda walked into Thurgood Marshall's office with her mother. Linda had been told she was not good enough to go to school with the other children. In case you are wondering who could be so cruel as to tell that to a five-year-old child, it was the Topeka Board of Education. Linda's last name was Brown and you know the case as the country's leading discrimination case Brown versus Board of Education.



The case worked its way all the way through the court system to the United States Supreme Court. The United States Supreme Court in Washington DC is a place of much protocol, procedure and rules. In the United States Supreme Court people are not allowed to speak without first being addressed by the Justices and there is a very proper and detailed procedure and protocol for responding to questions. In 1954 the United States Supreme Court was hearing oral arguments in the Brown versus Board of Education case. The

Justices asked the attorney for the school board if they could define the word discrimination. The school board's lawyer responded:

"The Topeka Board of Education would find discrimination as treating people differently because they are different."

That's when it happened. Thurgood Marshall rose to his feet without being granted proper permission and in violation of the procedure and protocol of the court and said:

What the hell does that mean? We are all different. There are no two of us the same. I am no more like the people you are grouping me with than you are counselor. However, you and your school board insist on putting us into arbitrary groups and classifications based on the color of our skin, the god we worship or the country in which we were born. We are all just individuals. The sooner you and your school board can get that through your thick heads that no two of us are alike and we are all entitled to be treated as individuals, then the sooner we can be done with this whole thing you call discrimination.

If any other attorneys had made such an outburst in the United States Supreme Court, we would probably be still locked up for contempt. However, we know with the vision of hindsight that Thurgood Marshall did not go to jail that day. In fact, he went on to win the case and later sat as a Justice on that very court. There is an explanation. On that day the United States Supreme Court chambers heard a sound it had never heard and a sound it has never heard since. The entire room gave Thurgood Marshall a standing ovation. It is the one and only standing ovation ever given in the United States Supreme Court. And the rest as they say is history. A few months later in 1955 the United States Supreme Court issued its landmark decision in *Brown versus Board of Education*.

If you never met her, after over 50 years, it's about time. This is Linda Brown on the day she was told, "yes" they said you can go to school with the other children.

If you wonder if it all made a difference, today Linda Brown, a college graduate holds several honorary doctorate degrees as well. She speaks regularly regarding fair housing and discrimination. She is often asked to give speeches about her experience in 1955. She will be first to tell you she was a kid at five years old. She didn't even know she was being discriminated against. She didn't know she had rights. Then she explains that some stranger for reasons still not clear to her decided she was worth his time, offered to help fight for her and protect those rights. Thurgood Marshall changed her life and the lives of thousands.



So the way I look at it is this: Someday in the real estate business if you're lucky, I mean really lucky you may get your own Linda Brown to protect. Today she may show up practicing a religion you don't believe in from a country you've never heard of or in a wheelchair with a handicap or disability. I only hope when that day comes that we will be as good a protector of their rights as Thurgood Marshall was of Linda Brown's.

Thurgood Marshall died in 1993, but if he were here today I hope he would be proud of us and say that we are working to figure it all out. I hope he would know that we have come to realize that no matter who you are, no matter where you come from, sometimes we all need somebody to stand by us.