



PAINE | BICKERS ^{LLP}
ATTORNEYS AT LAW

RMA LEGAL UPDATE

FAIR HOUSING ISSUES

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Legal Update

Fair Housing Issues

- Source of Income Discrimination
- Accommodation vs. Modification
- Assistive Animals

Evictions By The Numbers

- Following Data Courtesy of Apartment List
- 2017 Survey

Eviction Rates – 152 Cities

City	Overall	Low Income	Middle Income	High Income
(109) Knoxville	2.6%	3.7%	1.9%	0.9%
(114) Nashville	2.4%	3.7%	2.4%	1.1%
(4) Memphis	6.1%	8.4%	5.1%	2.8%
(89) Chattanooga	3.1%	3.7%	2.6%	2.2%

Eviction Rates - Comparison

City	Overall	Low Income	Middle Income	High Income
(109) Knoxville	2.6%	3.7%	1.9%	0.9%
(152) Ames, IA	0.9%	1.1%	0.5%	0.3%
(1) Kileen, TX	8.1%	9.5%	5.3%	4.4%
(77) Syracuse, NY	3.3%	4.8%	2.1%	1.3%

Eviction Rates – More Comparisons

City	Overall	Low Income	Middle Income	High Income
(109) Knoxville	2.6%	3.7%	1.9%	0.9%
(7) Atlanta, GA	5.7%	8.3%	6.1%	2.7%
(27) Charlotte, NC	4.6%	6.8%	4.6%	2.2%
(77) Birmingham, AL	2.8%	4.1%	2.3%	0.5%

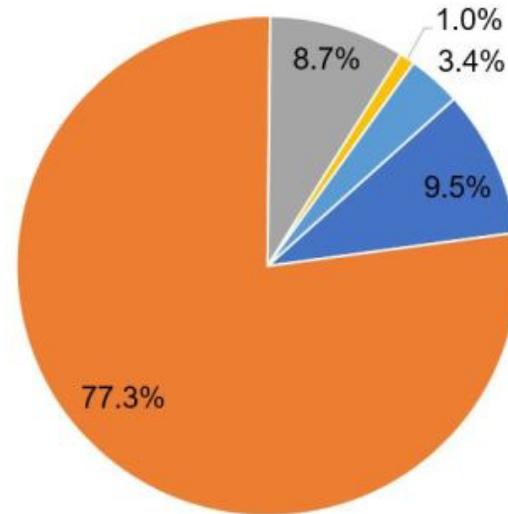
Evictions for Clients

	ANDERSON	BLOUNT	HAMBLEN	JEFFERSON	KNOX	LOUDON	ROANE	SEVIER
2013	12	8			666			5
2014	144	31	1		975		16	10
2015	139	40	2	6	947	9	4	4
2016	70	46	17	6	1,031	11	4	4
2017	30	50	13		833	11	20	
2018	11	21	4		274	6	3	
Grand Total	406	196	37	12	4,726	37	47	23

Reasons for Eviction

Most evictions are due to non-payment of rent

What was the primary reason for threatened eviction?



- Lease violation
- Non-payment
- Home being put to other use
- Demolition
- Foreclosure

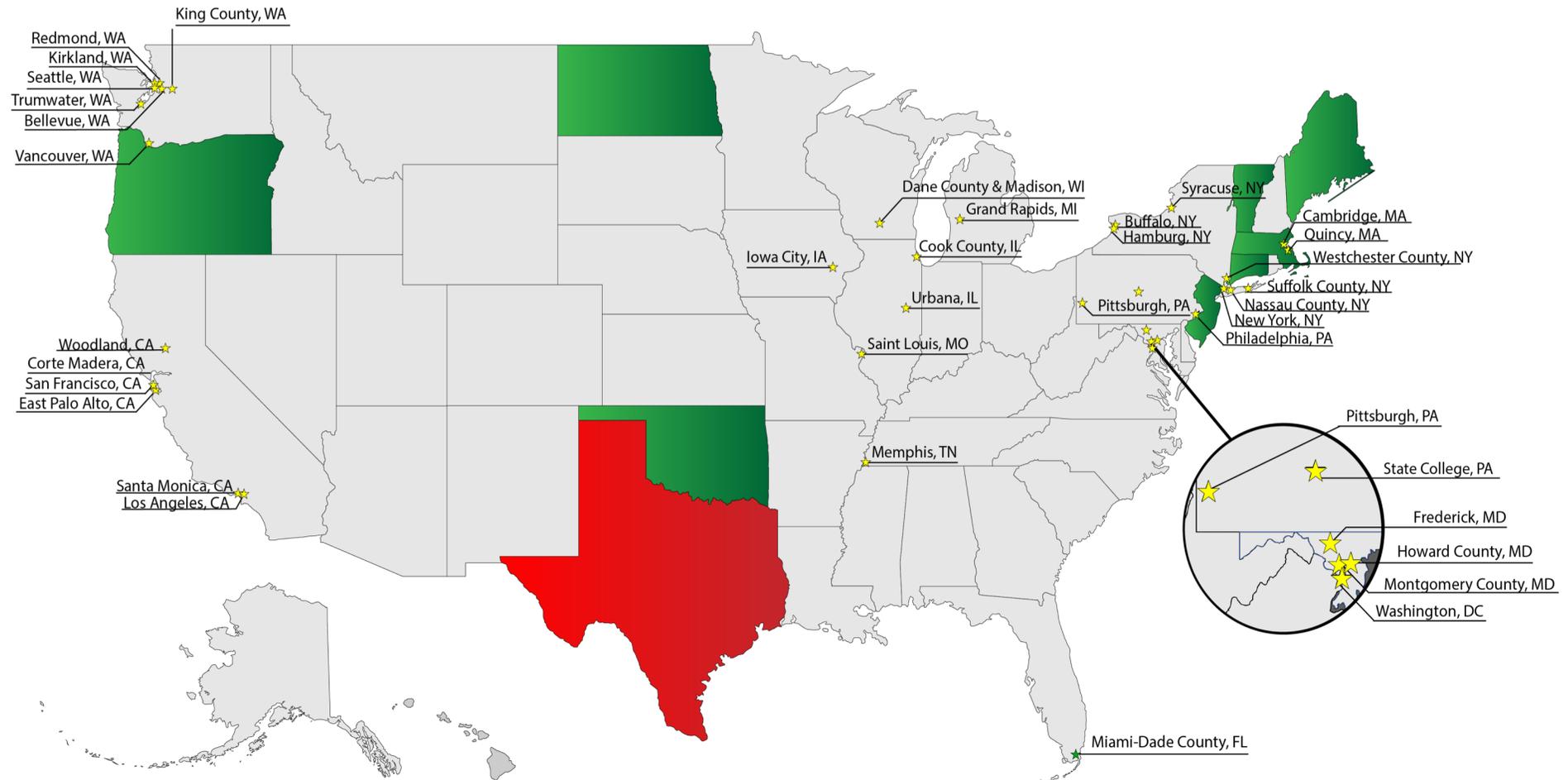
Source of Income Discrimination

Shelby County 2011

Analysis of Impediments to Fair Housing

Impediment # 1. There is an inadequate supply of decent, affordable housing for people of low and moderate income in Shelby County, as a whole, and particularly in areas outside the City of Memphis.

Source of Income Discrimination Laws as of November 2016



What Does Source of Income Discrimination Mean?

A property owner cannot choose to reject an applicant based on where his income comes from as long as it is a lawful source (e.g., alimony, child support or other compensation).

[This includes Section 8 housing subsidies.](#)

Source of Income Discrimination Issues for Conventional Housing

Apartment elected to not participate in the Section 8 voucher program.
Forced Participation? - Congress specifically made the program voluntary.

Compliance with Section 8 bureaucratic requirements.

Mandatory unit inspections, resident eligibility certification and limitations on lease termination.

Extra expense to owners/management.

Status of Source of Income Claims in TN

Memphis recognizes source of income discrimination by ordinance

No other city or county in Tennessee has adopted a similar ordinance (yet)

Future of Source of Income Claims

Disparate Impact

National Fair Housing Alliance v. Travelers

- Travelers had a policy of refusing to provide insurance policies for landlords that rent to tenants who receive Housing Choice Vouchers, (Section 8 vouchers).
- NHFA through the use of testers “advised each broker that the complex was currently occupied by tenants participating in the Housing Choice Voucher program.”
- In each instance, the broker explained to the tester that “Travelers would not underwrite the policy because of the presence of voucher recipients in the building.”

National Fair Housing Alliance v. Travelers

- Travelers argued that NFHA has failed to plead sufficient facts to show a causal connection between its policy and any disparate impact.
- The Court held that NFHA had sufficiently pleaded a causal connection between Travelers' policy and a disparate impact based on race and sex to make out a prima facie claim under the FHA.
- Case currently on appeal

Future of Source of Income Claims

- Several cases have approved these types of claims where state law or local ordinance recognized source of income discrimination
- At this time, source of income discrimination is NOT specifically set out under the FHA or by Tennessee statute

QUESTION

Will “disparate impact” cases cause source of income discrimination to be recognized as an area to be protected under the FHA in the future?

MODIFICATION VS. ACCOMMODATION

THE IMPORTANT DIFFERENCES IN THE LANDLORD'S RESPONSIBILITIES

MODIFICATIONS

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas.

Joint Statement of HUD and DOJ on Reasonable Modifications - 2008

When is a reasonable modification necessary under the Fair Housing Act?

(1) The person must have a disability defined as:

(i) individuals with a physical or mental impairment that substantially limits one or more major life activities;

(ii) individuals who are regarded as having such an impairment;
and

(iii) individuals with a record of such an impairment.

When is a reasonable modification necessary under the Fair Housing Act?

- (2) There must be an identifiable relationship, or nexus, between the requested modification and the individual's disability.
- (3) Further, the modification must be "reasonable."

Proof of Disability?

DISABILITY OBVIOUS - NO PROOF

NOT OBVIOUS - ASK FOR PROOF

Proof of Disability?

DISABILITY OBVIOUS

If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.

Proof of Disability?

DISABILITY NOT OBVIOUS

- (1) Information necessary to verify that the person meets the Act's definition of disability,
- (2) Information that describes the needed modification, and
- (3) Information that shows the relationship between the person's disability and the need for the requested modification.

Who Pays For A Modification?

The Fair Housing Act provides that while the housing provider must permit the modification, **the tenant** is responsible for paying the cost of the modification.

Who Pays For A Modification?

BUT...

If any of the structural changes needed by the tenant should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes.

Denial of Modification Request?

A person with a disability must have the housing provider's approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?

Under the Fair Housing Act, a *reasonable modification* is a structural change made to the premises whereas a *reasonable accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service.

Reasonable Accommodation

Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification

Parking

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider.

Parking

For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Parking

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

Denial of a reasonable accommodation request?

Yes – If:

- The request was not made by or on behalf of a person with a disability
- If there is no disability-related need for the accommodation.
- If providing the accommodation is not reasonable – i.e., if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations.

Reasonable Accommodation?

The determination of undue financial and administrative burden must be made on a case-by-case basis

Reasonable Accommodation?

Non-Exclusive Factors

The cost of the requested accommodation;

The financial resources of the provider;

The benefits that the accommodation would provide to the requester;

The availability of alternative accommodations that would effectively meet the requester's disability-related needs.

Reasonable Accommodation?

When a housing provider refuses a requested accommodation because it is not reasonable

Discuss with requester whether an alternative accommodation would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden.

Reasonable Accommodation?

When a housing provider refuses a requested accommodation because it is not reasonable

If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it.

Proof of Disability??

Disability Not Obvious

- (1) Information necessary to verify that the person meets the Act's definition of disability
- (2) Information that describes the needed accommodation, and
- (3) Information that shows the relationship between the person's disability and the need for the requested accommodation.

Proof of Disability??

Disability Obvious

- If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation.

Proof of Disability??

Disability Obvious

- If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Request Must Be Made

A housing provider is only obligated to provide a reasonable accommodation or modification to a resident or applicant if a request for the accommodation has been made.

ASSISTIVE ANIMALS





SERVICE/SUPPORT ANIMALS

Reasonable Accommodation

Emotional Support, Therapy, Comfort and Companion Animals

Breed irrelevant

SERVICE/SUPPORT ANIMALS

Types of Animals

May NOT restrict based on breed, size or weight

Lions, Tigers & Bears

Cats, Birds, Fish, Snakes

SERVICE/SUPPORT ANIMALS

Denials Based on Type of Animal

Specific Animal Poses Threat To Health or Safety

Specific Animal Would Cause Substantial Physical Damage to Property of Others

Question To Be Answered – What is this animal's history?

SERVICE/SUPPORT ANIMALS

NOT OBVIOUS – Verify!

FORMS AVAILABLE:

NAA

Paine Bickers

NOT OBVIOUS

-

ASK FOR PROOF

SERVICE/SUPPORT ANIMALS – NOT PROOF!!!



Recommendations

Develop a Process for Handling Requests for Modifications/Accommodations

Develop and Use Written Forms

Use Interactive Process With Requester

Apply Process Consistently and Uniformly

YOUR TURN!!!

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