

Transcript of The Fair Housing Act's Familial Status Protections

Narrator: Welcome to the US Department of Housing and Urban Development's Training on the Fair Housing Act, Familial Status Protection.

Demetria McCain: Hello, I'm Demetria McCain at the Department of Housing and Urban Development. I'm grateful you're joining us today to learn about the important topic of familial status protections under the Fair Housing Act. Here at HUD, we remain committed to the importance of fair housing issues in this nation and to moving forward in the advancement of fair housing rights and equity. I hope this is a great learning experience for you all. As the principal Deputy Assistant Secretary for the Office of Fair Housing and Equal Opportunity at HUD, I lead a cadre Fair Housing and Civil Rights public servants who are committed to enforcing our nation's fair housing laws. Sadly, discrimination related to familial status is the third most frequent type of housing discrimination complaints we receive. As the saying goes, though, an ounce of prevention is worth a pound of cure, so this training will introduce you to a wide range of discriminatory policies and practices that limit or deny families fair housing choice and access to opportunity, including the most common forms of familial status violations.

I hope that by the end of this training you will have a clear understanding of who is protected and a greater awareness of what familial status discrimination looks like from the many examples, scenarios and situations illustrated in the webinar. As you watch, I encourage you to walk in the shoes of families as they seek housing and live their daily lives in communities across our country. Families have a right to equal access to housing under the law and violating their right can have a devastating impact on their economic security and stability. To eliminate housing discrimination based on familial status, we all need to ensure that families are not treated any differently than any other tenant or prospective tenant. That work begins here and I applaud you if you are a landlord, property manager, real estate agent, mortgage lender, or HUD grantee for becoming more informed about how to comply with the familial status provisions of the Fair Housing Act. Thank you again for joining us today. Now let's begin this important training on the Fair Housing Act's familial status protections.

Narrator: Did you know that familial status was the third most frequent basis for housing discrimination complaints in 2020 with 2,276 complaints filed, or nearly 8% of all housing discrimination complaints?

Maya Reddy: Greetings, I'm Maya Reddy with the US Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity. This training is intended to inform families like yourself of your fair housing rights. We want you to understand what qualifies as illegal discrimination because of familial status and who is protected under the Fair Housing Act. We're also going to help landlords, including HUD grantees, understand how to comply with the familial status provision of the Fair Housing Act and meet their legal obligations under the law. No one wants to be discriminated against and no one wants to be held liable for discrimination. Now let's dive in and learn more about the protections afforded to families under the Fair Housing Act and the implications for housing providers and consumers. In this training, we will:

define what is prohibited and who is protected from discrimination because of familial status under the Fair Housing Act;

help housing providers to proactively comply with the familial status protections; and

provide clear actions that housing providers and consumers can take to prevent or address familial status violations.

By the end of the training, renters and homeowners will have greater awareness of familial status discrimination in housing and know how to file a discrimination complaint because of familial status. Housing providers will be better informed about what actions may violate the Fair Housing Act. Both

housing consumers and providers will learn how to connect with your local HUD field office. You will also learn how to connect with your local Fair Housing Initiative Program and Fair Housing Assistance Program agencies to receive assistance, advice or for outreach and training for your staff. Here with me today to talk about familial status discrimination is my colleague in HUD's office of fair Housing and equal opportunity, Sarale Sewell.

Sarale Sewell: It's my pleasure to talk with you, Maya, about such an important topic, housing and families.

Maya Reddy: Indeed. Let's start with some context. What is the purpose of the Fair Housing Act and how does it apply to families?

Sarale Sewell: Great place to start. The Fair Housing Act protects people from discrimination in the full spectrum of housing related transactions, whether they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing related activities. The Fair Housing Act is also known as Title eight of the Civil Rights Act of 1968. The Fair Housing Act makes it illegal to deny housing opportunities on the basis of seven protected classes, race, color, religion, national origin, sex (including gender identity and sexual orientation), familial status and disability. The Fair Housing Act applies to all housing including private housing and housing that receives federal financial assistance.

Maya Reddy: So familial status is one of the seven protected classes covered by the Fair Housing Act. What specifically does the term familial status mean and who does it protect?

Sarale Sewell: The definition of familial status is broad. It includes the presence of one or more individuals under the age of 18 in a household. It also includes legal guardians such as a grandparent or other family member, persons who are pregnant, and persons who are in the process of obtaining legal custody, for example, through adoption, divorce or foster care. It also covers persons who have written permission of the parent or legal guardian. Basically, families can come in many sizes and compositions. If you have or will have legal custody of a child under 18 years, that makes you a family under the law.

Maya Reddy: And that's an important point. It covers all families. Now that we know how the Fair Housing Act defines familial status, one example of familial status discrimination is when a landlord, property manager, leasing agent, real estate agent or property owner treats tenants or prospective tenants differently because of their familial status.

Sarale Sewell: Correct. In addition, housing providers should review your state and local laws, which may include additional protections.

Maya Reddy: Let's talk about when familial status discrimination might occur and how the Fair Housing Act protects housing consumers and what that means for housing providers.

Sarale Sewell: Sure thing, Maya. On the front end, discrimination can present as an outright denial of housing by refusing to rent or sell to families with children. It can also consist of policies and practices that limit housing choice and opportunity, such as only allowing families with children to rent first floor units. During tenancy, it oftentimes shows up as placing unreasonable occupancy restrictions or overly restrictive terms and conditions in housing policies and lease agreements such as limiting families with children from accessing the onsite amenities. Discrimination can also devastate a family's economic security and stability through lease termination or eviction because of the presence of children. In short, the Act protects families from discrimination in the full spectrum of housing related transactions.

Maya Reddy: Can you tell the viewers what are the most common types of discrimination that you see against families with children?

Sarale Sewell: Good question. Although all types of familial status discrimination occur across the spectrum, some common things we see, and we'll go into these in more detail, are rental ads that say no

children or adults only, occupancy standards that unreasonably limit the number of children who may occupy a unit, restrictive rules directed at children under the pretext of health and safety, or child related noise, and steering of families with children to separate buildings or parts of buildings.

Maya Reddy: Now we'll look more closely at some specific examples of familial status discrimination. These examples help to show what discrimination looks like.

Sarale Sewell: One of the most obvious forms of familial status discrimination is the outright refusal to rent, sell, or negotiate for housing with families with children. Another type of familial status discrimination is advertising, lease applications, or lease agreements that explicitly state adults only or no children allowed. These illegal statements can show up in rental listings, housing ads, social media or telephone answering messages. These practices are discriminatory on their face and straightforward to prove. If you are a renter, please reach out to your local HUD field office if you think you might have been discriminated against through advertising or leasing documents.

Maya Reddy: Good call Sarale. However, let's note that there's some housing for older persons, specifically people over either 55 or 62. This would not be a violation since the Fair Housing Act has exemptions for housing intended for older persons as long as they meet the requirements.

Sarale Sewell: Another common example is when housing providers deny housing to certain types of families, including persons who are pregnant, legal guardians or other persons having legal custody or to families of different sizes, compositions and children's ages. For example, they might refuse to rent or sell to large families, single parent households, adopted children or foster children, or to families with very young children or older teenagers. Sometimes jurisdictions even have laws that define family as biologically related individuals that could limit housing opportunities based on familial status protections under the Fair Housing Act. And in some cases housing owners or managers deny housing to families with the best of intentions as illustrated by this story of a well-intentioned policy that still discriminates.

Story character "Daniel": My name is Daniel. I am the owner of an apartment complex. My property borders a river. It's an old complex built in the early 1900s and the buildings were originally painted with lead paint. I have owned this complex for 15 years. I've been diligent to remove the lead pain from the apartments I put for rent, but I haven't yet gotten to every apartment. It's a big place and units closer to the river are dangerous for families with small children. What if they wandered and fell into the river? So because of my concern for families with children, I have implemented a policy in the complex. I don't rent the units in the section of the complex close to the river to families with children, nor do I lease to families with lead hazards. The risk to children is just too great. I can't rent families those units.

Narrator: These units, however, account for roughly a fourth of Daniel's units. This means that because of his policy, families with children have fewer options than families without children. One family of six, Clark and Sharon and their four children wanted to rent from Daniel, but he told them that the only available units were near the river or had lead paint. Daniel refused to rent these apartments to the family citing child safety. How does Daniel's rental policy discriminate against families with children? Despite Daniel's best intentions, his policy prevents families with children from renting the full range of units. This is discrimination because of familial status and violates the Fair Housing Act. Remember, it is not the housing provider's job to make housing selections for a family, but the family's job to decide what housing meets their own needs.

Maya Reddy: Now let's discuss some other types of familial status discrimination that limits housing choice and opportunity. Sarale, back to you.

Sarale Sewell: There is a wide range of discriminatory policies and practices that limit or deny families housing choice or access to opportunity. These types of practices can be quite underhanded or sneaky

because often they are not an outright or overt denial of housing, but in more subtle ways, they severely limit a family's choices in where they can rent or buy housing.

Maya Reddy: What kinds of examples have you seen?

Sarale Sewell: Some common examples of discouraging or dissuading families from renting before actual tenancy include misrepresenting the availability of dwellings to families with children when a unit is in fact available and steering families to certain buildings, floors, units, or away from certain properties or unit types.

Maya Reddy: We also see practices that place additional financial burdens only on renters or buyers with children.

Sarale Sewell: Yes. Another way to discourage home seekers with children is by increasing housing costs. Some examples include different terms and conditions in lending based solely or in part on familial status, charging additional rent, security deposit or fees. Because a household has children under 18 years of age and forcing families into housing units that are larger than necessary, we'll discuss occupancy limits more in a moment. Here are two examples highlighting how a lender discriminated against women who were pregnant or had recently given birth and were on maternity leave in the provision of home mortgage loans.

Narrator: In 2014, HUD reached a 5 million settlement with Wells Fargo Home Mortgage, the nation's largest provider of home mortgage loans. The settlement resolved complaints filed by six families alleging that Wells Fargo's underwriting policy for its federally insured home mortgage loans and the implementation of its policy violated the Fair Housing Act by discriminating against women on maternity leave. The complaints included allegations that Wells Fargo engaged in illegal discrimination by making loans unavailable because of sex and familial status or by forcing women applicants to sacrifice their parental leave and return to work prior to closing on their loan and by making discriminatory statements to and against women who were pregnant or who had recently given birth. In 2022, HUD announced a conciliation agreement with Bank of America and one of its loan officers. Bank of America and the loan officer allegedly refused to approve a residential mortgage for a couple until one of the applicants returned to work from maternity leave. Under the agreement, Bank of America was required to pay \$15,000 to the couple, provide fair lending training to its employees and adhere to a policy such that applicants on parental leave can be approved for a mortgage prior to returning to active work. Remember, it's unlawful to limit full and fair access to all home loan products, including all aspects of the loan organization process because of familial status, including an individual being pregnant or on parental leave.

Maya Reddy: As we mentioned earlier, unreasonable occupancy restrictions may result in familial status discrimination. It is unlawful for housing providers to place additional requirements and restrictions on housing access and use that only applies to families with children or disparately affects families with children. Sarale, let's talk about what this looks like in practice.

Sarale Sewell: Certainly. This can take the form of unreasonable occupancy limits such as a policy of each child must have their own bedroom and other occupancy restrictions directed at children on the pretext that they are protecting health and safety. Even occupancy policies that don't directly reference children may have a disparate impact upon families with children. For example, a policy that states one person per bedroom would have a discriminatory impact on families with children.

Maya Reddy: Now we should be clear on two points. First, HUD guidance suggests but does not require that two people per bedroom is a generally reasonable standard. Second, the Fair Housing Act does not limit any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling,

Sarale Sewell: Correct. The tricky part is how one defines unreasonable. What is reasonable to one person might be unreasonable to another. The Keating memorandum of 1991, which was published in the Federal Register in 1998, provides guidance landlords should consider when considering occupancy restrictions and how to interpret reasonableness. The Keating memo says, in investigating complaints, HUD should consider factors including but not limited to the number and size of bedrooms, the overall size and configuration of the unit, and the age of the child or children in relation to these other factors. Similarly, housing providers can make rules that restrict children from activities that they're building, but only if these rules are legitimately aimed at protecting their health and safety. But often what is reasonable to protect the health and safety of a child varies from child to child and is best defined by the child's parents or guardian.

Here are a couple warning signs for restrictions on families with children that violate the Act. Occupancy standards that limit the number of people allowed to live in a dwelling but are stricter than what is allowed by the local occupancy code; limits on the number of children rather than the number of people; rules that ban children from acting rowdy and making noise in common areas rather than rules banning loud, rowdy, or disruptive behavior by all residents in common areas; pool rules banning children from the pool during certain hours or designating one pool a family pool and another pool an adults only pool.

This next story illustrates a common violation during tenancy, overly restrictive policies on children's play.

Story character "Angelica": My name is on Angelica. I recently moved with my husband, Xavier, and my two daughters into an apartment complex with two pools. My daughters Erica and Vanessa ages 14 and 15 are both avid swimmers. They're both on the swim team and even compete in regional swim meets on the weekends. Initially, my daughters were super excited to move into a complex with swimming pools because they love swimming and thought this would be a great opportunity to practice swimming laps. Unfortunately, during the first visit to the pool area in our apartment complex, we discovered that the larger pool more suitable for swimming laps is prohibited to children with a sign reading adults only. The other pool is very shallow and unsuitable for swimming laps and we've noticed that it's frequently occupied by parents with their young children. We asked the manager of the apartment complex about the adults only policy and whether our daughters could use the larger pool during slower hours if we supervise them. He said no and explained that the policy was established to protect the health and safety of children. He warned us that any violation of this policy would incur \$200 fine.

Narrator: Why is this a violation of the familial status protection of the Fair Housing Act? This is against the law because the policy limits Erica and Vanessa's opportunities to use the larger pool in the apartment complex. Remember, rules that restrict families with children's access to the housing's services and amenities may violate the Fair Housing Act.

Maya Reddy: There are also familial status violations that can take the form of lease termination or evictions, which can have a devastating impact on families with children.

Sarale Sewell: That's right, Maya. Going back to the definition of familial status, recall that if a family is expecting a child either through pregnancy or adoption, they are protected under the Act. This means a landlord can't decide to evict a tenant simply because the landlord finds out she's pregnant or upon birth or adoption of a child, or if a tenant requests to add a child or grandchild in legal custody to the lease. It is also illegal to threaten or evict or terminate a tenant's lease for violating lease policies directed at children.

Maya Reddy: This last story on evicting a family after the birth of a child highlights the severe impact familial status violations can have on people's lives and why we all need to do our part to protect family's rights under the Fair Housing Act and ensure equal access to housing.

Story character “Mauricio”: I'm Mauricio and I recently moved out of the city because I wanted more space for my family. I'm a single father and my daughter Evelyn just turned one and a half. My partner Sarah, also lives with us. My new apartment is a spacious two bedroom apartment complete with a kitchen, a living room, and an in-home office. Just after we finished our move, Sarah became pregnant. One day my landlord noticed that Sarah was visibly pregnant. He pulled me aside and told me he is concerned about the apartment being overcrowded and he doesn't think it will work for our family any longer. He said The apartment is really fit for a one-child family, and two children just aren't allowed. The landlord told me I can rent a three bedroom apartment, but I explained it just wasn't in my budget. The landlord told me that if I refuse to upgrade to a three bedroom apartment, he will evict me. Given the circumstances Sarah and I felt we had no choice but to look for another place and move.

Narrator: How are the landlord's actions in violation of the Fair Housing Act? In saying he will only rent this two bedroom apartment to a one child family and not to a family with two children, Mauricio's landlord is discriminating against Mauricio's family. Remember, the familial status provision protects families that are expecting children.

Maya Reddy: Now we'll spotlight a couple more examples on familial status discrimination.

Sarale Sewell: As mentioned earlier, even occupancy policies that don't directly reference children may have a disparate impact on families with children, so for example, if a landlord has a policy that states one person per bedroom, which is more restrictive than what HUD generally accepts as reasonable occupancy standard as dictated by the Keating memo, that policy can have a disparate impact on families with children. While this policy may seem neutral on its face as it applies to all tenants, it may inadvertently limit the housing choices of families with children. Now listen to this next example of NIMBYism and how familial status discrimination might be related to housing development decisions.

Narrator: In September 2020, HUD charged the city of Arlington, Texas with discriminating because of familial status when it blocked the development of an affordable housing project for families with children. The city receives federal low income housing tax credits and had a policy of supporting LIHTC developments only for new senior housing intended for persons 55 years of age or older. As a result, proposed housing for families with children did not receive tax credits and this housing was not developed. In January of 2022, the Justice Department announced that the city of Arlington agreed to pay \$395,000 to resolve the lawsuit. The settlement also required Arlington to maintain a non-discriminatory policy for future LIHTC developments, provide fair housing training to certain city officials, and submit to compliance and reporting requirements for the term of the settlement.

Maya Reddy: Now, Sarale, we should again highlight that there are a couple exemptions where the familial status provision does not apply.

Sarale Sewell: Absolutely. Let's focus on housing designated for older persons, specifically.

Maya Reddy: The Act provides an exemption from familial status discrimination for housing for older persons such as senior housing facilities and communities. Exempt housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children only if they qualify for one of the exemptions.

Sarale Sewell: Indeed, as we referenced briefly before, to qualify a building's occupants must all be 62 and over in 100% of units, or have at least one person 55 and over in 80% of the units and comply with HUD's regulatory requirements for age verification of residents, or the building must participate in a federal, state, or local senior housing program that HUD has deemed exempt. The 55 or older exemption is the most common of the three.

Maya Reddy: In thinking of all these examples, Sarale, what can a family do?

Sarale Sewell: Yes, Maya. Across the spectrum of housing related transactions and the many forms of familial status violations, families who believe their rights have been violated can submit a complaint to HUD or they can reach out to Fair Housing Initiatives Program or Fair Housing Assistance Program participants in their area. FHEO or the appropriate agency will investigate the complaint and make efforts to help the parties reach an agreement. If the investigation shows that the law has been violated, HUD or the Department of Justice may take legal action to enforce the law. The point is for this process to work, housing consumers need to provide evidence--the what, where, when, who, and how--to substantiate the allegations made in the complaint.

Maya Reddy: Very important point. Knowing your rights and where to go is so important. Housing providers should also use HUD and HUD programs such as Fair Housing Initiative Programs and Fair Housing Assistance Programs when they have fair housing questions. These organizations are here to give housing providers education support about Fair Housing Act protections. For housing providers, it's also about being aware of the law and Fair Housing Act protections in your advertising, your lease applications and agreements, your housing rules or occupancy policies. Above all, treat households with children the same as you treat other tenants and prospective tenants. We have covered a lot of really important information and relevant examples. Let's review.

Sarale Sewell: The key takeaways are, one, the Fair Housing Act is broad in the protected classes it covers and the housing programs it applies to, and the definition of familial status under the Act is also broad. Two, the Fair Housing Act protects people from discrimination in the full spectrum of housing related transactions. Types of familial status discrimination we commonly see are refusals to rent, housing advertising, unreasonable occupancy standards, policies that treat families differently from other tenants and steering. Three, understand the difference between intent and impact. Even when well-intentioned, policies that discriminate against families are unlawful. Families have a right to equal access to housing under the law and violating those rights can have a devastating impact upon people's economic security and stability and they should be enforced and investigated accordingly.

Maya Reddy: Finally, here's how we can use what we learned from this training to apply to your situation and make sure you are complying with the familial status provisions of the Fair Housing Act.

Sarale Sewell: If you are a tenant or housing consumer and you believe you or someone you know is experiencing discrimination because of familial status, you can file a complaint with HUD's Office of Fair Housing and Equal Opportunity. You may file a Fair Housing complaint online or by phone, mail or email. You can speak directly with an FHEO intake specialist by calling 1-800-669-9777 or you can download a complaint form from the FHEO website shown here and mail or email it to your local FHEO office. You can also call your regional FHEO office to report the complaint or contact your local Fair Housing organization to assist you in filing a complaint with HUD.

Maya Reddy: You can find the phone and address information for your local FHEO office on the webpage shown here. There are time limits on when a complaint can be filed with HUD after you alleged a violation. You have one year to file an administrative complaint or two years to file a lawsuit in court. If you do have a fair housing complaint, submit it as soon as possible and be sure to include all pertinent information shown here. And if you're a housing provider such as a landlord, property manager, real estate agent, mortgage lender, and or HUD grantee, you have taken the right first step to become more informed, but do not stop here. Now this information needs to be reflected in your housing policies of your property or program and the day to day practices of your staff.

Sarale Sewell: We strongly encourage you to build relationships with your local HUD field office and connect with your local Fair Housing Initiative program and Fair Housing Assistance Program agencies for assistance with understanding Fair Housing Act protections. These organizations can also provide outreach and training for your staff on familial status or other fair housing issues. These resources are

there for you to help you comply with the Fair Housing Act and meet your legal obligations under the Act. Thank you for watching this training and taking that next step.