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More than Just Race: Proliferation of Protected Groups and the Increasing Influence of the Act

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The Fair Housing Act of 1968

- Kerner Commission warned that the nation was “moving toward two societies, one black, one white—separate and unequal.”
 - Key findings focused on segregated living patterns.
- Martin Luther King, Jr. was assassinated, followed by riots in the capital and across the country.
- Congress passed legislation prohibiting housing discrimination based on race, color, national origin, and religion.



The Many Forms of Sex Discrimination

- ECOA was enacted in 1973 – originally limited to sex discrimination in credit transactions.
 - Congressional hearings revealed blatant sex stereotypes.
- Sex was added as a protected classification under the Fair Housing Act as part of the 1974 Housing and Community Development Act.
- Early cases focused on gender stereotypes, *e.g.* safety, motherhood.



Sex Discrimination cont'd

- Sex Harassment
 - Borrowed from Title VII case law
 - *Shellhammer v. Lewallen*, 770 F.2d 167 (6th Cir. 1985) – sex harassment
 - Courts now recognize sex, race, religion, disability, and national origin harassment
 - Private fair housing groups received almost 1,700 complaints of harassment from 2012 to 2014
 - 2016 HUD Rule, 24 C.F.R. § 100.600



Sex Discrimination cont'd

- Sexual Orientation
 - Again borrowing from Title VII
 - *Smith v. Avanti*
 - HUD Guidance: “Ending Housing Discrimination Against Lesbian, Gay, Bisexual and Transgender Individuals and Their Families (2010)”
 - Equality Act

- Maternity Leave Lending Discrimination
 - HUD received 150 complaints between 2010 and May 2017
 - Frequent terms – applicant has to return to work in order to close, bank will not consider income earned on leave or liquid assets



Sex Discrimination cont'd

- Domestic Violence
 - 85% of domestic violence survivors are women; women of color are overrepresented in this group
 - Domestic violence survivors face pervasive housing discrimination
 - *Bouley v. Young-Sabourin; Dickinson v. Zanesville Metro. Hous. Auth.*

- Chronic Nuisance Ordinances
 - *Briggs v. Borough of Norristown*
 - *Metro. St. Louis Equal Hous. & Opportunity Council v. Maplewood*



Familial Status

- Familial status classification was added in 1988, with an expansive definition:
 - One or more individuals under 18 who live with a parent or person with legal custody, the designee of such parent or other person with legal custody; includes people who are pregnant and who are in the process of securing legal custody of an individual under the age of 18.
- Congress recognized that private housing providers were using familial status restrictions as a proxy for race discrimination.
 - *Tolliver v. Amici*



Familial Status cont'd

- Today 11% of all administrative complaints are familial status claims, ahead of sex, national origin, and color.

- Types of challenges:
 - Discriminatory rules
 - Occupancy limits
 - Nexus of familial status and sexual orientation
 - Challenging stereotypes about what constitutes a family (*Smith v. Avanti*)



Religion

- Successful challenges to exclusion and differential treatment
 - *LeBlanc-Sternberg v. Fletcher*
- Unsuccessful cases seeking to reinforce an existing preference or to recognize a right to be segregated
 - *Hack v. President and Fellows of Yale College*
- Post September 11, 2011
 - Increased reports of housing discrimination against Muslims
 - *DOJ v. San Francisco Hous. Auth.*



Disability

- Fair Housing Amendments Act of 1988
 - Intended as a “clear pronouncement of a national commitment to end the necessary exclusion of persons with handicaps from the American mainstream.”
 - “[A] regime of state-mandated segregation and degradation soon emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow.” *City of Cleburne v. Cleburne Living Ctr.* (1985) (Marshall, J.).
- Since 2001, disability discrimination complaints have outnumbered all other types of administrative complaints.



Disability cont'd

- Zoning and land use
 - *Pac. Shores Props. v. City of Newport Beach*

- Lending and insurance
 - *United States v. Mass. Industrial Fin. Agency*
 - *Wai v. Allstate Ins. Co.*



Disability cont'd

- Independent living and integration
 - *Pac. Shores Props. v. City of Newport Beach*
 - *Groome Resources, Ltd. L.L.C. v. Parish of Jefferson*

- Reasonable accommodations
 - *Simmons v. T.M. Assocs. Mgmt., Inc.* – criminal record screening.

 - HUD conciliation with Housing Authority of the County of Contra Cost and Vallejo Housing Authority – extension of time to search for housing that would accept Housing Choice Voucher.



Disability cont'd

- Design and construction
 - *NFHA v. A.G. Spanos Construction* – standing to sue over violations in 123 complexes in 16 states including buildings completed 15 years before complaint filed.
 - *Sec'y of HUD v. Epcon Cmty., Inc.*
 - *Equal Rights Ctr. v. Equity Residential*