

An Advocate's Guide to the Fair Housing Act



June 2012

FOREWORD

This guide was produced by the South Carolina Appleseed Legal Justice Center. It is intended to give a brief overview of the federal Fair Housing Act and the South Carolina Fair Housing law. It is designed to help the housing advocate spot potential housing discrimination issues and know where else to go for more in-depth analysis. It is not exhaustive on any issue, but rather introductory in its treatment of the various topics. Other research resources and materials are available to the housing advocate and should be consulted for more detailed research or explanations.

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The South Carolina Appleseed Legal Justice Center is dedicated to advocacy for low-income people in South Carolina. We strive to effect systemic change by acting in and through the courts, the Legislature, administrative agencies, community and the media, as well as to help others do the same through education, training and co-counseling. To find out more about our organization, go to <http://www.scjustice.org> on the Internet.

If you need help with a legal problem, you may want to talk to a lawyer. If you have a low income, you may wish to seek help from South Carolina Legal Services by calling LATIS at 1-888-346-5592. If you do not have a low income, you may wish to contact the South Carolina Bar Lawyer Referral Service at 1-800-868-2284.

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United States v. C.B.M. Group, Inc.
 (complaint) No. 01-857-PA (D. Or. Filed
 June 8, 2001)

United States v. City of Blackjack F.2d 1179 (8th Cir. 1974)

United States v. City of Hayward 36 F.3d 832 (9th Cir. 1994)

*Village of Arlington Heights v. Metropolitan
 Hous. Dev. Corp.* 429 U.S. 252 (1977)

Younger v. Harris 401 U.S. 37 (1971)

I. AN INTRODUCTION TO THE FAIR HOUSING ACT

After the assassination of Martin Luther King, Jr. in 1968, Congress enacted the Civil Rights Act of 1968. Title VIII of the federal Act, known as the Fair Housing Act (FHA), was intended to combat discriminatory housing patterns which were promoting and maintaining racial segregation, as well as discrimination in the sale and rental of housing based on race, color, religion, and national origin. In 1974, gender was added as a protected class under the Act, expanding the prohibitions of the Act not only to differences in the treatment of individuals based on gender, but also to harassment based on gender.¹ The Fair Housing Act Amendments of 1988 added disability and familial status as protected classes² and expanded HUD's enforcement role in using the FHA to prevent discrimination.³

Below are six introductory questions about the FHA that an advocate must understand in order to use the FHA to help clients. Although summary answers are provided to the questions, the answers are explained in greater detail throughout this guide.

***NOTE:** The acronym "FHA" refers to both the original federal Fair Housing Act and its 1988 Amendments. For the purposes of explanation, citations to both the federal statute and regulations and also to the corresponding statute and regulations under South Carolina law are provided in the footnotes.*

1. What does the FHA do?

The FHA generally prohibits discrimination in the sale, rental, advertising and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, gender, familial status, and disability. The Act is broad in scope and application and encompasses nearly all forms of housing, from single family homes to boarding houses. The broad scope is due to the broad definition of the term "dwelling" under the Act. As defined in the Act, "dwelling" means "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof."⁴

2. Who does the FHA protect?

The FHA protects members of the classes who have historically been discriminated against in their attempts to access safe and affordable housing, such as racial and religious minorities and persons with disabilities. **Section I-A of this guide discusses in further detail the protected classes covered under the Act.**

However, a party injured in some way by housing discrimination and seeking to enforce the Act does not *have* to be a member of a protected group or even a natural person in order to enforce the provision

¹ See "Fair Housing Accessibility First - History," <http://www.fairhousingfirst.org/fairhousing/history.html>

² 42 U.S.C. §§ 3604(a), (f).

³ 24 C.F.R. § 100.1; *See also* "Fair Housing—It's Your Right," <http://www.hud.gov/offices/fheo/FHILaws/yourrights.cfm>.

⁴ 42 U.S.C. § 3602(b); for the equivalent provision under the South Carolina Code, *see* S.C. Code Ann. § 21-31-30-(5).

of the FHA. The following definition illustrate this point:

- “‘Aggrieved person’ includes any person who (1) claims to have been injured by a discriminatory housing practice, or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.”⁵ Note that this definition is not limited to protected class members or even to parties actually discriminated against; for example, white tenants living in a racially segregated apartment complex qualify as aggrieved parties injured by housing discrimination.⁶
- “‘Person’ includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.”⁷
- “‘Family’ includes a single individual.”⁸

Accordingly, the protections of the FHA are available not just to individuals who have been directly injured by the discriminatory action under the FHA, but also to organizations and other authorities set out under the law.

4. What actions are prohibited under the FHA?

The FHA prohibits discriminatory housing practices as defined under Sections 804, 805, 806, and 818 of the Act.⁹ The Act does not prohibit conduct by governmental entities only. Also included as illegal under the FHA is discrimination by private individuals against private individuals in private transactions. A few limited private transactions are exempted from coverage under the Act.¹⁰

A few examples of prohibited actions include the following actions, if the actions are done based on a person’s race, color, religion, gender, disability, familial status, or national origin:

- The refusal to rent or sell housing after making a bona fide offer, or the refusal to negotiate for the sale or rental of a dwelling¹¹
- Otherwise denying or making a dwelling unavailable¹²
- Discriminating against a person in the terms, conditions, or privileges of a sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling¹³
- Printing, publishing, or making any statements, notices or advertisements related to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on race, color, religion, gender, disability, familial status, or national origin¹⁴

⁵ 42 U.S.C. § 3602(i); *See* S.C. Code Ann. § 31-21-120(A).

⁶ *See* Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 208-210 (1972).

⁷ 42 U.S.C. § 3602(d); *See* S.C. Code Ann. § 31-21-30-(9).

⁸ 42 U.S.C. § 3602(c).

⁹ 42 U.S.C. § 3602(f).

¹⁰ 24 C.F.R. § 100.10

¹¹ 42 U.S.C. § 3604(a)

¹² *Id.*

¹³ 42 U.S.C. § 3604(b)

¹⁴ 42 U.S.C. § 3604(c)

- This includes 1) causing said statements or advertisements to be made, printed, or published, and 2) having an intention to make any such preference, limitation or discrimination
- Representing that a dwelling is not available for inspection, sale, or rental when the dwelling is available.¹⁵
- For profit, inducing or trying to induce any person to sell or rent a dwelling by making representations about the entry or the prospective entry into that neighborhood of persons of a certain race, color, religion, gender, disability, familial status, or national origin.¹⁶
- Discrimination in housing on the basis of disability, including a refusal to make reasonable accommodations or allow reasonable modifications¹⁷

Section I-B of this guide goes into greater detail about the specific prohibitions under the Fair Housing Act. Section I-C further explains the exceptions to the FHA.

5. How is the FHA enforced?

The FHA provides three means of enforcement. These enforcement mechanisms are distinct and independent.¹⁸

- A private cause of action allows actions in either federal or state court within two years of the alleged discriminatory practice.¹⁹ The South Carolina fair housing law allows actions to be brought within one year of the alleged discriminatory treatment.²⁰
- A person can also file a complaint with HUD within one year of the alleged discriminatory practice.²¹ The South Carolina fair housing law allows complaints to be made to the South Carolina Human Affairs Commission within 180 days.²²
- Finally, the U.S. Attorney General can bring an action if there is a “pattern or practice” of violations of the FHA which rise to the level of “general public importance.”²³

6. Where can I find the text of the FHA and applicable regulations?

The FHA is codified at 42 U.S.C. sections 3601 through 3631. The Department of Housing and Urban Development has promulgated detailed regulations regarding the FHA and its enforcement. These can be found at 24 C.F.R. sections 100.1 through 125.501.

South Carolina also has a state law, the South Carolina Fair Housing Law, which parallels the federal FHA. The SC Fair Housing Law can be found at S.C. Code Ann. sections 31-21-10 through 31-21-150

¹⁵ 42 U.S.C. § 3604(d)

¹⁶ 42 U.S.C. § 3604(e)

¹⁷ 42 U.S.C. § 3604(f)

¹⁸ 42 U.S.C. § 3613(a)(1)(B)(2).

¹⁹ 42 U.S.C. § 3613(a)(1)(A).

²⁰ S.C. Code Ann. § 31-21-140(A).

²¹ 42 U.S.C. § 3610(a)(1)(A)(i).

²² S.C. Code Ann. § 31-21-120(B).

²³ 42 U.S.C. § 3614(a); See also U.S. Department of Justice, “A Pattern or Practice of Discrimination” - http://www.justice.gov/crt/about/hce/housing_pattern.php

and is enforced by the South Carolina Human Affairs Commission (SCHAC). The SCHAC has promulgated regulations regarding the Fair Housing Law, which can be found at S.C. Code Ann. Regs. 65-210 through 65-246.

The U.S. Department of Housing And Urban Development (HUD) has a website that serves as a good source of information about the FHA and other federal laws that protect against housing discrimination. This website is located at <http://www.hud.gov>. The HUD guide “Fair Housing – It’s Your Right” provides basic information about the FHA and recent changes to the law. It can be found at <http://www.hud.gov/offices/fheo/FHLaws/yourrights.cfm>.

In addition to the FHA, there are other federal statutes and laws that provide individuals with additional protections against housing discrimination. Some of these laws are provided in the chart located at the end of this guide. This chart can be found in Section V.

I-A. The Protected Classes

The FHA protects individuals from housing discrimination based on their:

- Race;
- Color;
- Religion;
- Sex;
- Familial Status;
- Handicap (disability); and
- National Origin.

“Familial status” is also defined in the FHA. This definition makes clear that discrimination based on familial status is a violation of the FHA.

- “Familial status” means one or more individuals (who have not attained the age of 18 years) being domiciled with
 - (1) a parent or another person having legal custody of such individual or individuals; or
 - (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.²⁴

The protection also extends to “any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.”²⁵ The key is whether or not the discrimination is based on the presence or the anticipated presence of a person under the age of 18 in the household.

²⁴ 42 U.S.C. § 3602(k), 24 C.F.R. 100.20; *See* S.C. Code Ann. § 31-21-30(6) and S.C. Code Ann. Regs. 65-210(D).

²⁵ *Id.*

“Handicap” is defined in the FHA as

- having a physical or mental impairment which substantially limits one or more of such person’s major life activities (e.g., walking, talking, breathing, learning, working, etc.)²⁶, or
- having a record of such an impairment (i.e., a history of having or being misclassified as having said impairment)²⁷, or
- being regarded as having such an impairment

Under 24 C.F.R. § 100.201(d), an individual is “regarded as having such an impairment” if the person:

- Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation; or
- Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or
- Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

The federal regulations also help to flesh out specific examples of conditions that qualify as disabilities under the FHA.²⁸ Such examples include diseases like diabetes, cancer and HIV, as well as mental or psychological disorders such as mental retardation, past drug addiction, and alcoholism.²⁹

The current, illegal use of or addiction to a controlled substance is exempted from the definition of disability for the purposes of the FHA.³⁰ Additionally, in a joint statement from HUD and the US Department of Justice, it has been explicitly stated that sex offenders, people with criminal records, and juvenile offenders are not considered to have a disability under the FHA by virtue of that status.³¹

“**National Origin**” is not specifically defined under FHA. However, the US Department of Justice has indicated that the term can be applied to situations where discrimination is based on the country of that individual’s birth and in situations where discrimination is based on where an individual’s ancestors were born.³²

I-B. The Prohibited Actions

²⁶ 24 C.F.R. § 100.201(a),(b)

²⁷ 24 C.F.R. § 100.201(c)

²⁸ 24 C.F.R. § 100.201

²⁹ 24 C.F.R. § 100.201(a)

³⁰ 24 C.F.R. § 100.201

³¹ See “Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act”, http://www.justice.gov/crt/about/hce/final8_1.php.

³² See U.S. Department of Justice, “Discrimination in Housing Based Upon National Origin” - http://www.justice.gov/crt/about/hce/housing_coverage.php#nat.

The FHA is not limited in application to governmental actions. The FHA also prohibits discrimination by private individuals against private individuals in private conduct. Only very limited conduct is exempted under the Act.

The FHA contains four separate code sections that list the prohibited discriminatory housing practices. The four sections are:

- 42 U.S.C. § 3604 – Discrimination in sale or rental of housing and other prohibited practices
- 42 U.S.C. § 3605 – Discrimination in residential real estate-related transactions
- 42 U.S.C. § 3606 – Discrimination in provision of brokerage services
- 42 U.S.C. § 3617 – Interference, coercion, or intimidation; enforcement by civil action

Accompanying federal regulations to those federal code sections can be found in 24 C.F.R. Part 100.

The South Carolina Fair Housing Law mirrors the FHA’s prohibited housing practices in the following four sections:

- SC Code Ann. § 31-21-40 – Unlawful to discriminate in relation to sale or rental of property
- SC Code Ann. § 31-21-50 – Unlawful to discriminate in relation to membership or participation in multiple listing service (MLS), real estate brokers’ organization, or related service, organization or facility
- SC Code Ann. § 31-21-60 – Unlawful to discriminate in relation to residential real estate-related transactions
- SC Code Ann. § 31-21-80 – Unlawful to interfere with the exercise of any right under this chapter

Accompanying regulations to those state code sections can be found at S.C. Code Ann. Regs. Chapter 65, Subchapter 2 (§§ 65-210 – 65-246).

The most common prohibited actions under the FHA include, but are not limited to, the following:

1. Refusal of Sale or Rental

It is unlawful to refuse to rent or sell housing after the making of a bona fide offer, as well as to refuse to negotiate for sale or rental, on the basis of a person’s protected class status.³³ The HUD regulations provide a non-exhaustive list of qualifying actions at 24 C.F.R. § 100.60(b). Examples include using different qualification standards for applications, imposing different sale or rental prices, or initiating an eviction based on the protected class status.

With respect to persons with disabilities (used interchangeably with handicap), these protections are separately provided in 42 U.S.C. § 3604(f)(1) and 24 C.F.R. § 100.202(a). Note that the protection for

³³ 42 U.S.C. § 3604(a), 24 C.F.R. §§ 100.50(b)(1), 100.60; *See* S.C. Code Ann. § 31-21-40(1) and S.C. Code Ann. Regs. 65-211(A)(2).

individuals with disabilities extends beyond the applicant to any other person who may reside in the dwelling or any person with whom the applicant is associated.³⁴

2. Discriminatory Terms or Conditions in a Sale or Lease

It is unlawful to discriminate against a protected class in the terms, conditions, privileges, services, or facilities provided for in a sale or lease.³⁵ Additional examples of these terms can be found at 24 C.F.R. § 100.65(b).

Protections for persons with disabilities from discriminatory terms or conditions in a sale or lease are separately provided in 42 U.S.C. § 3604(f)(2) and 24 C.F.R. § 100.202(b). Again, the protection for individuals with disabilities extends beyond the applicant to any other person who may reside in the dwelling or any person the applicant is associated with.³⁶

3. Discriminatory Evictions

It is unlawful to evict a tenant on the basis of the protected class status of either the tenant or the protected class status of the tenant's guests.³⁷

4. Discriminatory Advertising

It is unlawful to “make, print, or publish” any “notice, statement, or advertisement, with respect to the sale or rental of a dwelling,” that indicates any preference, limitation, or discrimination on the basis of a person's protected class status.³⁸ This is perhaps the most broadly prohibited action, because it is the only action not subject to the private property-owner exemptions to the FHA listed in 24 C.F.R. § 100.10(c). Therefore, the prohibition against discriminatory advertising applies to the sale and rental of all types of dwellings. **Section I-C of this guide discusses the private property-owner exemptions in more detail.**

Note that wide variety of documents covered under the terms “notice, statement, or advertisement. Specifically listed are deeds, flyers, applications, brochures, signs, banners, posters, billboards, and “any other documents used with respect to the sale or rental of a dwelling.”³⁹ In addition to written statements, oral statements are also covered under the prohibition.⁴⁰

5. Perpetuation of Segregated Housing Patterns, “Steering,” and Misrepresentation of the Availability of Housing

The FHA prohibits actions that perpetuate segregated housing patterns,⁴¹ and the HUD regulations provide a non-exhaustive list of qualifying actions at 24 C.F.R. § 100.70(c). These actions are generally known as “steering,” and often involve real estate agents discouraging non-minority applicants from renting or buying in areas with minorities. This is often done by exaggerating the drawbacks of a certain

³⁴ 42 U.S.C. § 3604(f)(1), 24 C.F.R. § 100.202(a); *See* S.C. Code Ann. § 31-21-40(6) and S.C. Code Ann. Regs. 65- 215(C).

³⁵ 42 U.S.C. § 3604(b), 24 C.F.R. §§ 100.50(b)(2), 100.65; *See* S.C. Code Ann. § 31-21-40(2), S.C. Code Ann. Regs. 65-211(A)(2).

³⁶ 42 U.S.C. § 3604(f)(1), 24 C.F.R. § 100.202(b); *See* S.C. Code Ann. § 31-21-40(7), S.C. Code Ann. Regs. 65-215(C)(2).

³⁷ 24 C.F.R. § 100.60(b)(5); *See* S.C. Code Ann. Regs. 65-211(A)(2)(e).

³⁸ 42 U.S.C. § 3604(c), 24 C.F.R. §§ 100.50(b)(4), 100.75; *See* S.C. Code Ann. § 31-21-40(3), S.C. Code Ann. Regs. 65-211(B)(2).

³⁹ 24 C.F.R. § 100.75(b); *See* S.C. Code Ann. Regs. 65-211(B)(1).

⁴⁰ *Id.*

⁴¹ 24 C.F.R. § 100.70(a); *See* S.C. Code Ann. Regs. 65-211(A)(2)(k)-(n).

neighborhood or community or by failing to inform someone of the desirable features of a community⁴², by telling someone he or she would not be comfortable in a given area or compatible with the people in an area because of his or her protected class status⁴³, or attempting to assign a person to a specific community or neighborhood, or even floor or area of a building because of their protected class status.⁴⁴ It is also unlawful to falsely represent that a dwelling is not available for inspection, sale, or rental because of the protected class status of the person of the potential tenant or purchaser.⁴⁵

6. “Blockbusting”

“Blockbusting” is the act of, for a profit, inducing property owners to rent or sell their property by making representations about the threatened encroachment of protected class members into the neighborhood. This practice is unlawful under the FHA.⁴⁶ One way this prohibited practice is accomplished is through encouraging someone to rent or sell a dwelling by conveying to a person that his or her neighborhood is undergoing or will undergo a change regarding the protected class status of its inhabitants.⁴⁷ It can also be accomplished by encouraging any person to sell or rent a dwelling by claiming that the entry of persons of a certain protected class status will have a deleterious effect on the person’s community or neighborhood.⁴⁸ Other methods of “blockbusting” also exist.

It is not necessary that an *actual* profit be made in order to establish that a discriminatory housing practice has occurred under this section of the FHA. It is enough that the potential of a profit was a factor leading to the discriminatory conduct.⁴⁹

7. Discriminatory Zoning and Restrictive Covenants

Discriminatory zoning is prohibited under the FHA.⁵⁰ It is unlawful to “make unavailable or deny a dwelling to any person” due to the person’s protected class status,⁵¹ and “any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under [the FHA] shall to that extent be invalid.”⁵² HUD and the DOJ have issued a joint statement regarding the FHA and zoning.⁵³

Discriminatory restrictive covenants are also prohibited under the FHA.⁵⁴ Restrictive covenants are contractual terms that govern the use of or changes to a property in a particular place. In recent years in

⁴² 24 C.F.R. § 100.70(c)(2); *See* S.C. Code Ann. Regs. 65-211(A)(2)(l).

⁴³ 24 C.F.R. § 100.70(c)(3); *See* S.C. Code Ann. Regs. 65-211(A)(2)(m).

⁴⁴ 24 C.F.R. § 100.70(c)(4); *See* S.C. Code Ann. Regs. 65-211(A)(2)(n).

⁴⁵ 42 U.S.C. § 3604(d), 24 C.F.R. §§ 100.50(b)(5), 100.80; S.C. Code Ann. § 31-21-40(4), S.C. Code Ann. Regs. 65-211(C).

⁴⁶ 42 U.S.C. § 3604(e), 24 C.F.R. §§ 100.50(b)(6), 100.85; *See* S.C. Code Ann. § 31-21-40(5), S.C. Code Ann. Regs. 65-211(D).

⁴⁷ 24 C.F.R. § 100.85(c)(1); *See* S.C. Code Ann. Regs. 65-211(D)(2)(a).

⁴⁸ 24 C.F.R. § 100.85(c)(2); *See* S.C. Code Ann. Regs. 65-211(D)(2)(b).

⁴⁹ 24 C.F.R. § 100.85(b); *See* S.C. Code Ann. Regs. 65-211(D)(1).

⁵⁰ 24 C.F.R. § 100.70(d)(2); S.C. Code Ann. Regs. 65-211(A)(2)(p).

⁵¹ 42 U.S.C. § 3604(a); S.C. Code Ann. § 31-21-40(1).

⁵² 42 U.S.C. § 3615; *see* County of Charleston v. Sleepy Hollow Youth, Inc., 530 S.E.2d 636, 641 (S.C. Ct. App., 2000).

⁵³ *See* “Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act”, http://www.justice.gov/crt/about/hce/final8_1.php.

⁵⁴ 24 C.F.R. §§ 100.80(b)(2), (b)(3); *See* Rhodes v. Palmetto Pathway Homes, Inc., 400 S.E.2d 484 (S.C., 1991); S.C. Code Ann. Regs. 65-211(C)(2), (3).

South Carolina, cases regarding discriminatory zoning and restrictive covenants have often involved discrimination against group homes for the individuals with disabilities.⁵⁵

8. Discrimination in the Provision of Brokerage Services

It is unlawful to deny a person access, membership, or participation in any “multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting dwellings,” on the basis of that person’s protected class status.⁵⁶ This practice include activities such as charging different fees to members or participants⁵⁷, denying or limiting benefits of members or participants⁵⁸, imposing different criteria or standards for membership or participation⁵⁹, and establishing geographic boundaries or residency requirements that exclude members or participants based on an individual’s protected class status⁶⁰.

9. “Redlining” and Discrimination in Residential Real Estate-Related Transactions and Financing

The FHA prohibits discrimination in “residential real estate-related transactions,” which are defined as either:

- The making or purchasing of loans, or providing of other financial assistance that is either secured by residential real estate or used for “purchasing, constructing, improving, repairing, or maintaining a dwelling.”

or

- The selling, brokering, or appraising of residential real property.⁶¹

The practice of *redlining* is prohibited under these provisions. The term is used to describe a general practice of denying certain services or increasing the cost of certain services to residents in a certain area. The residents of the redlined area are usually members of a certain protected class status. Commonly, redlining results in mortgage discrimination, or the discriminatory refusal to provide loans or other financing to people in certain neighborhoods, often because of the racial makeup of that neighborhood (although other protected classes may be at issue).

The regulations at 24 C.F.R. §§ 100.115 - 100.135 provide examples of the types of practices that are considered to be discrimination in residential real estate-related transactions.⁶²

10. Interference, Coercion, or Intimidation

Under the FHA, it is unlawful to coerce, intimidate, threaten, or interfere with parties who:

- Exercise or enjoy the rights protected by the FHA, or have done so in the past.

or

⁵⁵ See Rhodes, 400 S.E.2d 484; Sleepy Hollow Youth, 530 S.E.2d 636.

⁵⁶ 42 U.S.C. § 3606, 24 C.F.R. §§ 100.50(b)(7), 100.90; S.C. Code Ann. § 31-21-50, S.C. Code Ann. Regs. 65-211(E).

⁵⁷ 24 C.F.R. § 100.90(b)(1); See S.C. Code Ann. Regs. 65-211(E)(1).

⁵⁸ 24 C.F.R. § 100.90(b)(2); See S.C. Code Ann. Regs. 65-211(E)(2).

⁵⁹ 24 C.F.R. § 100.90(b)(3); See S.C. Code Ann. Regs. 65-211(E)(3).

⁶⁰ 24 C.F.R. § 100.90(b)(4); See S.C. Code Ann. Regs. 65-211(E)(4).

⁶¹ 42 U.S.C. § 3605, 24 C.F.R. §§ 100.115-100.135; S.C. Code Ann. § 31-21-60, S.C. Code Ann. Regs. 65-213.

⁶² See S.C. Code Ann. Regs. 65-213.

- Aid or encourage any other persons in the exercise and enjoyment of their rights as protected by the FHA.⁶³

Actions that may violate this provision of the FHA are provided at 24 C.F.R. § 100.400. Such actions include coercing a person to deny or limit benefits in violation of the FHA,⁶⁴ threatening to fire or sanction employees or agents who help individuals to obtain equal access to housing or to enforce their rights under the FHA⁶⁵, and retaliating against *any* person because of a complaint under the FHA or because they have participated in or assisted with a matter under the FHA.⁶⁶

11. Sexual Harassment

Federal regulations specifically prohibit the denial or limitation of services or access to facilities related to a sale or rental of a dwelling due to a person’s failure or refusal to provide sexual favors.⁶⁷

12. Separate Prohibitions Against Discrimination Against the Persons with Disabilities

While all the protections of the FHA apply to persons with disabilities, there are also separate anti-discrimination provisions in the FHA that apply only to persons with disabilities, to individuals in the household of the person with disabilities, and to other persons associated with purchasers or tenants with disabilities.⁶⁸ These provisions are summarized as follows:

- **Failure to Make Reasonable Accommodations or Modifications for Persons with Disabilities**

Landlords must allow reasonable accommodations and reasonable modifications in order to comply with the FHA.⁶⁹

1. *Reasonable accommodations* are changes in the rules, policies, practices, or services that are necessary to ensure the person with disabilities has an equal opportunity to use a dwelling, including any public and common use areas.⁷⁰ A landlord making an exception to a “no-pets” policy to allow a blind tenant to have a seeing-eye dog is one example of a reasonable accommodation.⁷¹
2. *Reasonable modifications* are physical changes to a dwelling that are necessary for a person with disabilities to obtain “full enjoyment of the premises.”⁷² An example of a reasonable modification is the installation of a grab bar in the shower of existing premises where such modifications were not previously

⁶³ 42 U.S.C. § 3617, 24 C.F.R. § 100.400(b); *See* S.C. Code Ann. § 31-21-80, S.C. Code Ann. Regs. 65-219.

⁶⁴ 24 C.F.R. § 100.400(c)(1); *See* S.C. Code Ann. Regs. 65-219(3)(a).

⁶⁵ 24 C.F.R. § 100.400(c)(3); *See* S.C. Code Ann. Regs. 65-219(3)(c).

⁶⁶ 24 C.F.R. § 100.400(c)(5); *See* S.C. Code Ann. Regs. 65-219(3)(e); *See also* United States v. City of Hayward, 36 F.3d 832 at 835 (9th Cir. 1994) (holding that a mobile-home park owner who terminated an adults-only policy to comply with the FHA was protected under the Act when the city forced a reduction in rental rates as a consequence of the changed policy. The court further held that the city’s actions interfered with the park owner’s efforts to comply with the FHA and encourage families with children to live in the park).

⁶⁷ 24 C.F.R. § 100.65(b)(5); *See* S.C. Code Ann. Regs. 65-211(A)(2)(j).

⁶⁸ 42 U.S.C. § 3604(f), 24 C.F.R. §§ 100.200-100.205; *See* S.C. Code Ann. §§ 31-21-70(G),(H), S.C. Code Ann. Regs. 65-215.

⁶⁹ 42 U.S.C. §§ 3604(f)(3)(A),(B), 24 C.F.R. §§ 100.203, 100.204; *See* S.C. Code Ann. §§ 31-21-70(G)(1)(2), S.C. Code Ann. Regs. 65-215(D),(E).

⁷⁰ 24 C.F.R. § 100.204, *See* S.C. Code Ann. Regs. 65-215(E).

⁷¹ 24 C.F.R. § 100.204(b).

⁷² 24 C.F.R. § 100.203, *See* S.C. Code Ann. Regs. 65-215(D).

required by law. Reasonable modifications are made *at the expense of the person with disabilities*, however. Additionally, the landlord may require that the tenants with disabilities agree to pay to restore the premises to the pre-modified condition at the end of the tenancy and that any modifications be done in “workmanlike manner” with all required building permits.⁷³

- **Failure to Design/Construct Housing Accessible to People with Disabilities**

Covered multi-family housing that was designed for first occupancy after March 13, 1991 must be designed and built so that there are accessible routes into and through the dwellings and common-use areas. This includes accessible routes running from accessible parking into the building or the unit entrance. The housing must also be useable and maneuverable for persons in wheelchairs and other persons with disabilities.⁷⁴ Note that these requirements only apply to “covered multifamily dwellings,” which means the ground floor units of all buildings with 4 or more separate units and all other units in similar buildings that also have at least one elevator.⁷⁵

- **Inquiries Regarding Individuals With Disabilities**

It is unlawful to inquire about the existence, nature, or severity of the disability of an applicant who intends to occupy a dwelling or of any person in that household or with whom the person with disabilities associates. However, landlords are allowed to make certain inquiries uniformly of all applicants, including inquiries regarding current illegal drug use or the qualifications of an applicant to meet the requirements of ownership or tenancy.⁷⁶

I-C. Exceptions to Certain Provisions of the FHA

Despite the broad scope and application of the FHA, there are certain exemptions as to the applicability of the Act. These exemptions are found in 42 U.S.C. §§ 3603 and 3607 and 24 C.F.R. §§ 100.10 and 100.300-100.307.⁷⁷ The following are the exemptions:

1. Specific Types of Private Property Owners

With the exception of the prohibitions against discriminatory advertising, the FHA does not apply to the following:

- The sale or rental of a single family house by the owner, provided that the owner does not own or have any interest in more than three single-family homes at any one time and the house is sold or rented without the help of a real estate broker, agent, salesperson, or the facilities of any person in the business of renting or selling dwellings. If the owner was not the current or most recent resident at the time of sale, this exemption applies to only one sale in any 24-month period.⁷⁸

⁷³ 24 C.F.R. §§ 100.203; *See* S.C. Code Ann. Regs. 65-215(D)

⁷⁴ 42 U.S.C. § 3604(f)(3)(C), 24 C.F.R. § 100.205; *See* S.C. Code Ann. § 31-21-70(G)(3), S.C. Code Ann. Regs. 65-219(F).

⁷⁵ 42 U.S.C. § 3604(f)(7), 24 C.F.R. § 100.201; *See* S.C. Code Ann. §§ 31-21-30(G)(3), (H), S.C. Code Ann. Regs. 65-215(B)(8).

⁷⁶ 24 C.F.R. § 100.202(c); *See* S.C. Code Ann. Regs. 65-215(C)(3).

⁷⁷ *See* S.C. Code Ann. §§ 31-21-70, S.C. Code Ann. Regs. 65-210(C) and 65-217

⁷⁸ 42 U.S.C. § 3603(b)(1), 24 C.F.R. § 100.10(c)(1); *See* S.C. Code Ann. § 31-21-70(B), S.C. Code Ann. Regs. 65-210(C)(3)(a).

- The sale or rental of units in a single location where the units are intended to be occupied by no more than four families living independently of each other and the owner occupies one of those units as his or her residence.⁷⁹

Note: The language of the SC Fair Housing statute does not expressly state that the prohibitions against discriminatory advertising apply to these exemptions, but the state regulations do include this statement.⁸⁰

2. Religious Organizations in Certain Contexts

The FHA does not prohibit religious organizations from limiting the sale, rental, or occupancy of dwellings they own or operate for a non-commercial purpose to members of the same religion, or from giving preference to members of the same religion.⁸¹ However, for the exception to apply, membership in the religion must not be restricted because of race, color, or national origin.⁸²

3. Private Clubs in Certain Contexts

The FHA does not prohibit a private club from limiting the rental or occupancy of lodgings to its own members or from giving its members preference, provided that the lodgings are provided incident to the club's primary purpose and not for a commercial purpose.⁸³

4. Housing for the Elderly in Certain Contexts

Dwellings designated as "Housing for Older Persons" does not violate the FHA's prohibitions against discrimination based on familial status, so long as certain criteria are met⁸⁴ In other words, families with children can be excluded from qualified housing for the elderly on the basis of that familial status. Dwellings qualify as "housing for older persons" if they satisfy any one of the following criteria:

- The housing is designed and operated to assist the elderly under a state or federal program.⁸⁵
- The housing is intended for, and solely occupied by, persons 62 years of age or older.⁸⁶
- The housing is intended and operated for occupancy by person 55 years of age or older, and at least 80% of the units are occupied by at least one person who is 55 years of age or older.⁸⁷

⁷⁹ 42 U.S.C. § 3603(b)(2), 24 C.F.R. § 100.10(c)(2); *See* S.C. Code Ann. § 31-21-70(A), S.C. Code Ann. Regs. 65-210(C)(3)(b).

⁸⁰ *Compare* S.C. Code Ann. §§ 31-21-70(A), (B) and S.C. Code Ann. Regs. 65-210(C)(3).

⁸¹ 42 U.S.C. § 3607(a), 24 C.F.R. § 100.10(a)(1); *See* S.C. Code Ann. § 31-21-70(D), S.C. Code Ann. Regs. 65-210(C)(1)(a).

⁸² *Id.*

⁸³ 42 U.S.C. § 3607(a), 24 C.F.R. § 100.10(a)(2); *See* S.C. Code Ann. § 31-21-70(D), S.C. Code Ann. Regs. 65-210(C)(1)(b).

⁸⁴ 42 U.S.C. § 3607(b)(1), 24 C.F.R. §§ 100.10(b), 100.301(a); *See* S.C. Code Ann. § 31-21-70(L), S.C. Code Ann. Regs. 65-210(C)(2), and 65-217(B).

⁸⁵ 42 U.S.C. § 3607(b)(2)(A), 24 C.F.R. § 100.302; *See* S.C. Code Ann. § 31-21-30(8)(a), S.C. Code Ann. Regs. 65-217(C).

⁸⁶ 42 U.S.C. § 3607(b)(2)(B), 24 C.F.R. § 100.303; *See* S.C. Code Ann. § 31-21-30(8)(b), S.C. Code Ann. Regs. 65-217(C).

⁸⁷ 42 U.S.C. § 3607(b)(2)(C), 24 C.F.R. §§ 100.304, 100.305; *See* S.C. Code Ann. § 31-21-30(8)(c), S.C. Code Ann. Regs. 65-217(D).

I-D. Aggrieved Parties and Standing to Sue

Under the FHA, the definition of “aggrieved person” includes any person who claims to have been injured by a discriminatory housing practice or believes that he or she will be injured by discrimination that is about to occur.⁸⁸ This definition has been determined to include a wide variety of individuals and entities. Even property owners, managers, and employees can be aggrieved parties under the FHA because of the prohibition on interference, coercion, and intimidation under 42 U.S.C. § 3617.⁸⁹

The following are aggrieved parties that could potentially have a claim arising under the FHA:

1. Parties Directly Discriminated Against

Parties directly discriminated against in any of the ways proscribed in the FHA are aggrieved parties.

2. Residents Deprived of an Integrated Community

The United States Supreme Court has held that non-minority residents of an apartment complex that screened tenants based on race were considered aggrieved parties and had standing to sue because they were injured by being deprived of an integrated community and the “important benefits from interracial associations.”⁹⁰ However, while aggrieved party status extends to residents of an apartment complex or “relatively compact neighborhood,” it does not extend to all residents in the same city or county.⁹¹

3. Associations/Organizations

The US Supreme Court has also held that fair housing organizations devoted to ensuring equal access to housing have standing to sue if the organization can show the discrimination has caused “concrete and demonstrable injury to the organization’s activities” and drains its resources.⁹² The Court of Appeals of South Carolina has held that sponsors of group homes for people with disabilities have standing to bring FHA claims for discrimination that prevents them from providing housing for the people with disabilities, even if the sponsors “are not themselves [disabled].”⁹³

4. “Testers”

“Testers” are “individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful steering practices.”⁹⁴ The Supreme Court held that testers have standing to sue if they are deliberately given false or misleading information about housing availability because of their status in one of the protected classes.⁹⁵ 42 U.S.C.

⁸⁸ 42 U.S.C. § 3602(i), 24 C.F.R. § 100.20; *See* S.C. Code Ann. § 31-21-120(A).

⁸⁹ 42 U.S.C. § 3617, 24 C.F.R. § 100.400(b); *See* S.C. Code Ann. § 31-21-80, S.C. Code Ann. Regs. 65-219.

⁹⁰ *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 208-210 (1972).

⁹¹ *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 377 (1982) (citing *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979) and *Warth v. Seldin*, 422 U.S. 490 (1975)).

⁹² *Id.* at 379.

⁹³ *County of Charleston v. Sleepy Hollow Youth, Inc.*, 530 S.E.2d 636, 640 (S.C. Ct. App., 2000).

⁹⁴ *Havens Realty*, 455 U.S. at 373.

⁹⁵ *Id.* at 373-374.

§ 3604(d) “establishes an enforceable right to truthful information concerning the availability of housing,” and makes no requirement of a bona fide offer or sincere interest in the housing.⁹⁶

The aggrieved party standing of testers is important because of the strategic advantage they provide in proving discrimination.

5. Parties who are Intimidated, Coerced, or Interfered With

As previously discussed, the FHA makes it unlawful to coerce, intimidate, threaten, or interfere with parties who:

- Exercise or enjoy rights protected by the FHA, or have done so in the past.
- Aid or encourage any other person in the exercise and enjoyment of rights protected by the FHA.⁹⁷

The federal fair housing regulations specify certain types of parties who are protected by this provision. In addition to parties who actually rent or purchase housing, the FHA protects other parties such as agents or employees who attempt to assist another person in obtaining equal access to housing⁹⁸ and any person that has made a complaint or participated in any manner with a proceeding under the FHA⁹⁹.

⁹⁶ *Id.* at 373.

⁹⁷ 42 U.S.C. § 3617, 24 C.F.R. § 100.400(b); *See* S.C. Code Ann. § 31-21-80, S.C. Code Ann. Regs. 65-219(2).

⁹⁸ 24 C.F.R. § 100.400(c)(3); *See* S.C. Code Ann. Regs. 65-219(3)(c), (d).

⁹⁹ 24 C.F.R. § 100.400(c)(5); *See* S.C. Code Ann. Regs. 65-219(3)(e).

II. WAYS TO PROVE VIOLATIONS OF THE FHA

As discussed in Section I of this manual, the FHA protects individuals from housing discrimination in many ways. To better explain how the FHA works, the following section discusses the legal theories under which the FHA is used in court.

Judicial interpretation of the FHA is extensive. In 1972, the United States Supreme Court provided significant guidance for interpreting the FHA in the case *Trafficante v. Metropolitan Life Insurance Company*.¹⁰⁰ *Trafficante* involved the rights of current tenants in a large apartment complex to sue their landlord over discrimination of minority applicants. Finding the plaintiffs had standing, the Court offered four tenets of statutory construction for the FHA¹⁰¹:

1. The FHA should be construed broadly;¹⁰²
2. Integration is an important goal of the FHA;¹⁰³
3. Courts may, when appropriate, rely on case law under Title VII of the Civil Rights Act (prohibiting employment discrimination) to interpret the FHA;¹⁰⁴ and
4. HUD interpretations of the FHA are entitled to substantial weight.¹⁰⁵

Violations of the FHA are actionable under many theories. Three types of FHA actions are:

- **Disparate Treatment (Discriminatory Conduct)** - An action based on disparate treatment requires a showing of discriminatory conduct and generally requires some evidence of discriminatory intent. This evidence can be either direct or indirect. An example of disparate treatment would be refusing to rent to single women, but not to single men.
- **Disparate Impact (Discriminatory Impact)** - Courts also allow the theory of disparate impact from Title VII employment cases to be used to prove FHA violations.¹⁰⁶ Disparate impact cases involve policies and practices that, although not facially discriminatory, have a discriminatory effect on a protected class. Often, the FHA violation that has a disparate impact on members of a protected class has a *disproportionately adverse* impact on members of that protected class. An example of a practice with a disparate impact that could potentially violate the FHA would be a “one-strike” policy of evicting victims of domestic violence, because the majority of such victims are female.
- **Mixed Motive-** A mixed motive case will have both legitimate and discriminatory reasons for the disparate treatment of a class member.

¹⁰⁰ 409 U.S. 205 (1972).

¹⁰¹ Crystal B. Ashley, *An Introduction to Fair Housing Law*, POVERTY LAW MANUAL FOR THE NEW LAYWER (National Center on Poverty Law, 2002), available at <http://www.povertylaw.org/poverty-law-library/research-guides/poverty-law-manual/index.html>.

¹⁰² *Trafficante*, 409 U.S. 205 at 209.

¹⁰³ *Id.* at 211.

¹⁰⁴ *Id.* at 209.

¹⁰⁵ *Id.* at 210.

¹⁰⁶ *See, e.g., Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977).

The critical distinction between disparate treatment and disparate impact cases is that the former requires some proof of discriminatory *intent*, whereas disparate impact cases do not. Also, disparate treatment cases are more likely to involve unofficial practices and actions, such as using racial steering to avoid renting to African-Americans. Disparate impact cases, on the other hand, generally involve official policies or open practices that are not facially discriminatory.

II-A. Disparate Treatment (Discriminatory Conduct)

Disparate treatment litigation involves a three-part burden shifting process:

- **First**, the party claiming discrimination must establish a prima facie case. A prima facie case of disparate treatment in violation of the FHA requires the plaintiff to establish that:
 - The plaintiff is a member of a protected class;
 - The plaintiff applied for and was qualified to rent or purchase the property;
 - The plaintiff was rejected for or denied housing; and
 - The housing opportunity remained available thereafter.¹⁰⁷
- **Second**, the landlord/seller charged with discrimination bears the burden of producing a legitimate nondiscriminatory reason for alleged discriminatory conduct. This burden is substantial, and if the landlord/seller can show no legitimate nondiscriminatory reason for the alleged conduct, the plaintiff prevails.
- **Third**, if the landlord/seller is able to offer legitimate nondiscriminatory reasons for the alleged conduct, the burden shifts back to the renter/purchaser to prove the reasons offered by the landlord/seller are not substantial enough to justify the discriminatory effect or that the reasons are merely pretextual.

Disparate treatment cases also require that the plaintiff show proof of discriminatory intent or motive.¹⁰⁸ Proof of discriminatory intent is “critical, although it can in some situations be inferred from the mere fact of differences in treatment.”¹⁰⁹

II-B. Disparate Impact (Discriminatory Impact)

Disparate impact litigation involves facially neutral policies and practices which have an uneven impact on a protected class with no justifiable rationale. The Supreme Court first described the disparate impact theory in 1971 in *Griggs v. Duke Power Company*,¹¹⁰ a Title VII employment case. The Court found Title VII prohibited hiring practices which were “fair in form, but discriminatory in operation.”¹¹¹ Intent was not required. The result is that a facially neutral practice with an unjustified adverse impact on a protected class was determined to be unconstitutional.

¹⁰⁷ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

¹⁰⁸ *Teamsters v. United States*, 431 U.S. 324 (1977)

¹⁰⁹ *Id.*

¹¹⁰ 401 U.S. 424 (1971).

¹¹¹ *Id.* at 431-432.

Courts have recognized the use of disparate impact to prove violations of the FHA as well. *Metropolitan Housing Development Corp. v. Village of Arlington Heights*¹¹² is the seminal fair housing case recognizing that the FHA does not require proof of discriminatory intent for the plaintiff to prevail. In *Arlington Heights*, the Seventh Circuit held that a facially neutral zoning law that had the adverse effect of restricting the integrated housing opportunities of racial minorities violated the FHA. Statistics which show an unequal treatment of a class protected under the FHA may be enough to establish a prima facie case and allow an action to proceed under the disparate impact theory. Statistics can prove to be critical to the case; national statistics can be helpful but the theory is best supported by local statistics.¹¹³

After a prima facie case of disparate impact has been established, the Fourth Circuit applies different tests depending on whether the parties alleged to have violated the FHA are public or private. The *Arlington Heights* court identified four factors to consider when determining whether an agency's action violated the FHA under the disparate impact analysis.¹¹⁴ The Fourth Circuit has adopted *Arlington Heights*' four-pronged balancing test for cases involving *public* defendants.¹¹⁵ The test requires consideration of:

- the strength of the plaintiff's showing of prima facie discriminatory effect;
- whether there was some evidence or even suggestion of discriminatory intent ("the least important of the four factors")¹¹⁶;
- the defendant's interest in taking the action in question; and
- whether the plaintiff seeks to compel the defendant to take some affirmative action or merely to restrain the defendant from taking some action.¹¹⁷

However, in disparate impact cases involving *private* defendants, the Fourth Circuit applies a more straightforward two-part burden shifting analysis.¹¹⁸ This two-part test requires consideration of:

- whether prima facie discriminatory impact can be proved; and if so,
- whether there existed a business necessity "sufficiently compelling to justify the challenged practice."¹¹⁹

This analysis is similar to that used in Title VII disparate impact employment discrimination cases. The Fourth Circuit Court of Appeals noted that this business necessity standard is more difficult to meet than the "legitimate non-discriminatory reason" standard used in discriminatory conduct litigation.¹²⁰ Other circuits have adopted this two-prong disparate impact analysis, but apply different standards of

¹¹² 558 F.2d 1283 (7th Cir. 1977).

¹¹³ Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, CLEARINGHOUSE REVIEW, March-April 2002, at 708, available at <http://www.legalmomentum.org/assets/pdfs/housingdiscriminationclearinghouse.pdf>.

¹¹⁴ *Arlington Heights*, 558 F.2d at 1290 (7th Cir. 1977).

¹¹⁵ *Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982).

¹¹⁶ *Arlington Heights*, 558 F.2d at 1292.

¹¹⁷ *Id.* at 1290.

¹¹⁸ *Betsey v. Turtle Creek Assoc's*, 736 F.2d 983 (4th Cir. 1984).

¹¹⁹ *Id.* at 988.

¹²⁰ *Id.* at 988 (quoting *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)).

“business necessity.”¹²¹ Other circuits have also developed slightly different overall tests for analyzing disparate impact cases.¹²²

II-C. Mixed Motive Cases

A mixed motive case will involve defendants with both legitimate and discriminatory reasons for the disparate treatment of a protected class member.¹²³ If the defendant can show that his conduct would have been the same even in the absence of a discriminatory reason, (e.g., a denial of a rental applicant with insufficient financial resources who is also a member of a protected class) the claim of discriminatory treatment will fail.¹²⁴ The use of a tester can often help to tease out this treatment.¹²⁵

¹²¹ See United States v. City of Blackjack, 508 F.2d 1179, 1185 (8th Cir. 1974); Resident Advisory Board v. Rizzo, 564 F.2d 126, 149 (3rd Cir. 1977); Pfaff v. Unites States Dept. of Hous. & Urban Dev., 88 F.3d 739, 748 (9th Cir. 1996).

¹²² The Sixth and Tenth Circuits exclude the step requiring some evidence of intent (see Arthur v. City of Toledo, 782 F.2d 565 (6th Cir. 1986); Mountain Side Mobile Home Estates Partnership v. HUD, 56 F.3d 1243 (10th Cir. 1995)). The Second and Third Circuits adopted a “pure effect” test (see Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926 (2d Cir. 1988), *review denied in part and judgment aff'd*, 488 U.S. 15 (*per curiam*); Resident Advisory Bd. v. Rizzo, 564 F.2d 126 (3d Cir. 1977), *cert. denied*, 435 U.S. 908 (1978)).

¹²³ Crystal B. Ashley, *An Introduction to Fair Housing Law*, POVERTY LAW MANUAL FOR THE NEW LAYWER (National Center on Poverty Law, 2002), available at <http://www.povertylaw.org/poverty-law-library/research-guides/poverty-law-manual/index.html>.

¹²⁴ *Id.*

¹²⁵ Testing for housing discrimination involves individuals (testers) posing as prospective tenants replicating a housing search. Testers are common in FHA litigation. **See Section I-D of this manual.**

III. CHOOSING THE ACTION TO BRING

In South Carolina, the principle methods for asserting rights under the FHA include:

- Filing an Administrative complaint with HUD’s Regional Office;
- Filing an Administrative complaint with the Compliance Division of the South Carolina Human Affairs Commission (SCHAC);
- Filing an FHA claim in federal or state court; and
- S.C. Fair Housing Law (SCFHL) claims in state court.

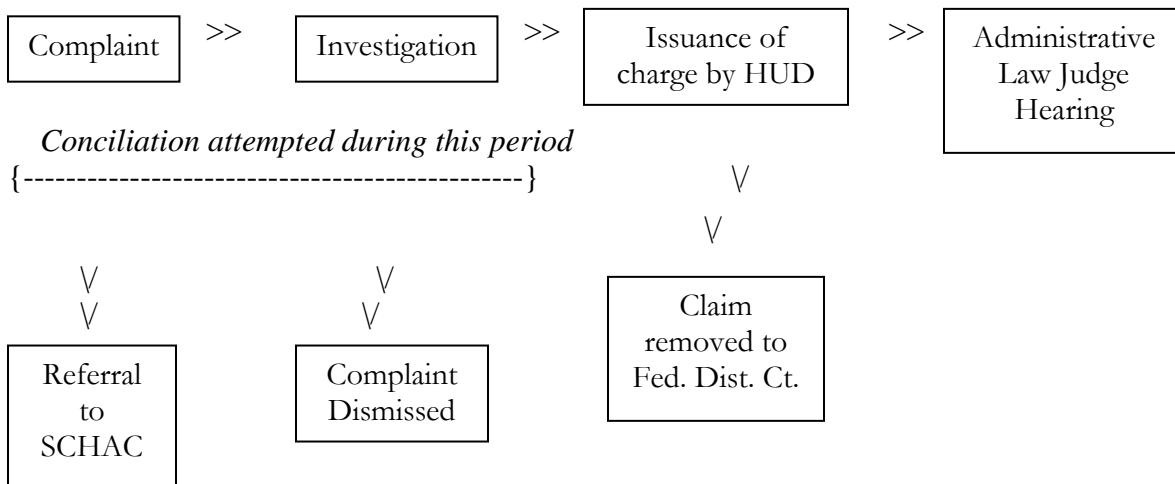
The timeline below illustrates the time limitations for filing state and federal fair housing complaints and actions.

Discriminatory Conduct Occurs	SCHAC Complaint (180 days)	HUD Complaint (1 year)	FHA Claim (2 years)
X	X	X	X
<div style="display: flex; justify-content: center; align-items: center; gap: 100px;"> <div style="text-align: center;"> S.C. FHL Claim (1 year) </div> </div>			

III-A. Administrative Complaints with HUD

The FHA contains the process for filing HUD complaints at 42 U.S.C. §§ 3610 through 3612. HUD regulations regarding complaint processing are found at 24 C.F.R. §§ 103.1 through 103.515.

The flowchart below illustrates the basic structure of HUD complaints processing, from the initial complaint through adjudication in either an administrative or federal judicial hearing.



The Complaint

The FHA allows one year from the date of the alleged discrimination to file an administrative complaint with HUD.¹²⁶ The complaint must be in writing,¹²⁷ and may be “reasonably and fairly amended at any time”¹²⁸ The complaint can be a letter that contains the following:

- Complainant’s name, address, and telephone number;
- The name and address of the persons, businesses, or organizations the complaint is made against;
- The address and physical description of the house, apartment, or property where the alleged discriminatory action occurred;
- The date when the incident occurred; and
- A short description of what happened, including why the complainant believes he or she was discriminated against because of race, color, religion, national origin, gender, disability, or familial status.¹²⁹

There is also an official HUD complaint form, which may be either mailed or filed on the Internet.¹³⁰

If mailed, complaints should be sent to the Fair Housing Hub at:

Atlanta Regional Office of FHEO
U.S. Department of Housing and Urban Development
Five Points Plaza
40 Marietta Street, 16th Floor
Atlanta, Georgia 30303-2806

The regional Fair Housing Hub for SC claims can be contacted at either (404) 331-5140 or 1-800-440-8091. Note that complaints can also be made to the Fair Housing Hub by telephone.¹³¹

Referral to the South Carolina Human Affairs Commission (SCHAC)

Under the FHA, the S.C. Human Affairs Commission is “substantially equivalent” to HUD in the rights it protects, the procedures it follows, and the remedies it provides under the S.C. Fair Housing Law.¹³² When a complaint alleges discriminatory conduct that is a violation of the S.C. FHL, HUD is required to refer the complaint to the SCHAC.¹³³ HUD cannot take any further action on the complaint unless

¹²⁶ 42 U.S.C. § 3610(a)(1)(A)(i), 24 C.F.R. § 103.35.

¹²⁷ 42 U.S.C. § 3610(a)(1)(A)(ii).

¹²⁸ 42 U.S.C. § 3610(a)(1)(C), *See* 24 C.F.R. § 103.40

¹²⁹ 24 C.F.R. § 103.25.

¹³⁰ Available at <http://www.hud.gov/complaints/housediscrim.cfm>.

¹³¹ 24 C.F.R. § 103.30.

¹³² 42 U.S.C. § 3610(f), 24 C.F.R. § 103.100.

¹³³ 42 U.S.C. § 3610(f), 24 C.F.R. § 103.100.

SCHAC consents or fails either to commence processing of the complaint within 30 days or to promptly carry the proceedings forward.¹³⁴

Investigation by HUD

HUD is generally required to investigate a complaint within 100 days of its filing, but this is not an enforceable time frame.¹³⁵ HUD commonly notifies the aggrieved party that conducting the investigation within 100 days would be impracticable and then takes additional time. HUD may join additional respondents to the complaint if they are identified during the course of the investigation.¹³⁶ At the completion of the investigation, HUD will prepare a final investigative report,¹³⁷ which may be obtained by parties to the dispute.¹³⁸

Attempt at Conciliation

From the time that the complaint is filed to the time that HUD either files a charge or dismisses the complaint, HUD will attempt to arrange a conciliation agreement between the aggrieved party and the respondent(s).¹³⁹ The agreement may provide for, among other things, binding arbitration to settle the dispute.¹⁴⁰ The HUD regulations specify which types of relief may be sought in conciliation for aggrieved persons and for the public interest at 24 C.F.R. §§ 103.315 and 103.320.

The regulations also specify that nothing said or done during the process of conciliation may be used in a subsequent administrative hearing or FHA civil action without the consent of the party concerned.¹⁴¹ Conciliation agreements must be reduced to writing and must protect both the aggrieved person and the public interest.¹⁴² If a conciliation agreement is breached, HUD is required to refer the matter to the Department of Justice with a recommendation that a civil action be filed under 42 U.S.C. § 3614.¹⁴³

Immediate Judicial Action

If HUD's general counsel determines that a complaint requires immediate judicial action, HUD may authorize the Department of Justice to initiate a civil action for temporary or preliminary relief pending final disposition of the complaint.¹⁴⁴

Also, if it is determined that the respondent may be engaged in a "pattern or practice" of discriminatory conduct in housing, the Attorney General can commence a civil action in federal court.¹⁴⁵

In certain situations in the complaint process (the breach of a conciliatory agreement or a dispute over the legality of a state or local law/ordinance), HUD is required to refer a dispute to the Department of

¹³⁴ 42 U.S.C. § 3610(f)(2), 24 C.F.R. § 103.110.

¹³⁵ 42 U.S.C. §§ 3610(a)(1)(B)(iv), (C); *See* 24 C.F.R. § 103.225.

¹³⁶ 42 U.S.C. § 3610(a)(2)(A).

¹³⁷ 42 U.S.C. § 3610(b)(5), 24 C.F.R. § 103.230.

¹³⁸ 42 U.S.C. § 3610(d)(2).

¹³⁹ 42 U.S.C. § 3610(b)(1), 24 C.F.R. § 103.300.

¹⁴⁰ 42 U.S.C. § 3610(b)(3), 24 C.F.R. § 103.315(b).

¹⁴¹ 24 C.F.R. § 103.330(a).

¹⁴² 24 C.F.R. § 103.310

¹⁴³ 42 U.S.C. § 3610(c), 24 C.F.R. § 103.335.

¹⁴⁴ 42 U.S.C. § 3610(e), 24 C.F.R. § 103.500(a).

¹⁴⁵ 42 U.S.C. § 3614, 24 C.F.R. § 103.500(b).

Justice with a recommendation that a civil action be filed under 42 U.S.C. § 3614.¹⁴⁶ In such a civil action, the relief that may be granted includes:

- Preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this title;
- Other relief deemed appropriate, including monetary damages to the aggrieved party;
- A civil penalty of up to \$100,000 in order to “vindicate the public interest”; and
- At the court’s discretion, a reasonable attorney’s fee and costs for prevailing parties other than the United States.¹⁴⁷

Dismissal of Complaints/ Issuance of a Charge

If HUD determines that there is reasonable cause to believe that a violation of the FHA has occurred or is about to occur, it is required to immediately issue a charge.¹⁴⁸ (However, if the matter involves the legality of a state or local zoning or other land use law or ordinance, HUD is required to refer the dispute to the DOJ for action under 42 U.S.C. § 3614.¹⁴⁹). On the other hand, if HUD finds no such cause the complaint will be dismissed and the parties so notified.¹⁵⁰ If the aggrieved party commences a civil action under S.C. or federal law regarding the same discriminatory practice, HUD cannot issue a charge after the start of the trial.¹⁵¹ Once the charge has been issued, HUD cannot resolve it prior to a final administrative order without the consent of the aggrieved party on whose behalf it was issued.¹⁵²

Adjudication

After the charge is issued, any of the parties involved, including the Assistant Secretary of HUD if HUD filed the complaint, may elect within 20 days to have the claims moved to federal district court.¹⁵³ Otherwise, HUD will provide an opportunity for an administrative law judge hearing within 120 days in the vicinity of the place where the violation is alleged to have occurred.¹⁵⁴ At the hearing, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas.¹⁵⁵ However, if the aggrieved party commences a civil action under S.C. or federal law regarding the same discriminatory practice, the administrative hearing cannot proceed after the start of the trial.¹⁵⁶

If an administrative hearing takes place, the administrative law judge (ALJ) shall make a determination including findings of facts and conclusions within 60 days after the end of the hearing.¹⁵⁷ If the ALJ determines that unlawful discrimination has occurred or is about to occur, it will issue an order for appropriate relief. This relief may include:

- Actual damages suffered by the aggrieved person;

¹⁴⁶ 42 U.S.C. §§ 3610(c), (g)(2)(C).

¹⁴⁷ 42 U.S.C. §3614(d).

¹⁴⁸ 42 U.S.C. § 3610(g)(2)(A), 24 C.F.R. §§ 103.400, 103.405.

¹⁴⁹ 42 U.S.C. § 3610(g)(2)(C), 24 C.F.R. § 103.400(a)(3).

¹⁵⁰ 42 U.S.C. § 3610(g)(3).

¹⁵¹ 42 U.S.C. § 3610(g)(4), 24 C.F.R. § 103.400(b).

¹⁵² 42 U.S.C. § 3612(e).

¹⁵³ 42 U.S.C. § 3612(a), 24 C.F.R. §§ 103.410(a), (b), (d), (e).

¹⁵⁴ 42 U.S.C. §§ 3612(b),(g)(1), 24 C.F.R. §§ 103.410(c), 180.600(a).

¹⁵⁵ 42 U.S.C. § 3612(c).

¹⁵⁶ 42 U.S.C. § 3612(f).

¹⁵⁷ 42 U.S.C. § 3612(g)(2).

- Injunctive relief;
- Other equitable relief; and
- Civil penalties of up to \$50,000 in order to “vindicate the public interest”.¹⁵⁸

At the ALJ’s discretion, a reasonable attorney’s fee and costs may be awarded to prevailing parties other than the United States.¹⁵⁹

HUD is required to take further action if the respondent found to have engaged in discriminatory practice is engaged in a business subject to licensing or regulation by a governmental agency¹⁶⁰ or if the respondent has been issued another order for a FHA violation within the preceding 5 years¹⁶¹. Parties may obtain review of an administrative order from both the Secretary of HUD and the judicial circuit in which the discriminatory housing practice is alleged to have occurred.¹⁶² HUD and any person entitled to relief may petition the U.S. Court of Appeals for the circuit where the violation is alleged to have occurred for enforcement of the ALJ’s order.¹⁶³

III-B. Administrative Complaints with the SCHAC

Under the FHA, the S.C. Human Affairs Commission is “substantially equivalent” to HUD in the rights it protects, the procedures it follows, and the remedies it provides under the S.C. Fair Housing Law.¹⁶⁴ When a complaint made to HUD alleges discriminatory conduct that is a violation of the S.C. FHL, HUD is required to refer the complaint to the SCHAC.¹⁶⁵ HUD cannot take any further action on the complaint unless SCHAC consents or fails either to commence processing of the complaint within 30 days or to promptly carry the proceedings forward.¹⁶⁶

As earlier discussed, South Carolina also has a state Fair Housing Law, which can be found at S.C. Code Ann. §31-21-10 *et. seq.* The S.C. FHL is substantially equivalent to the federal FHA, except that the state FHL only allows a victim of a Fair Housing violation 180 days to file an administrative complaint.¹⁶⁷ Parties who think they have been discriminated against can make complaints directly to the SCHAC.

The S.C. FHL details the process for SCHAC complaints at S.C. Code Ann. §31-21-10 through §31-21-130. SCHAC regulations regarding complaint processing are found at Chapter 65 of the S.C. Code Ann. Regs. 230 through 237.

The flowchart below illustrates the basic structure of SCHAC complaints processing, from the initial complaint or referral through adjudication in either a SCHAC panel hearing or a state court hearing.

¹⁵⁸ 42 U.S.C. § 3612(g)(3).

¹⁵⁹ 42 U.S.C. § 3612(p).

¹⁶⁰ 42 U.S.C. § 3612(g)(5).

¹⁶¹ 42 U.S.C. § 3612(g)(6).

¹⁶² 42 U.S.C. § 3612(h), (i).

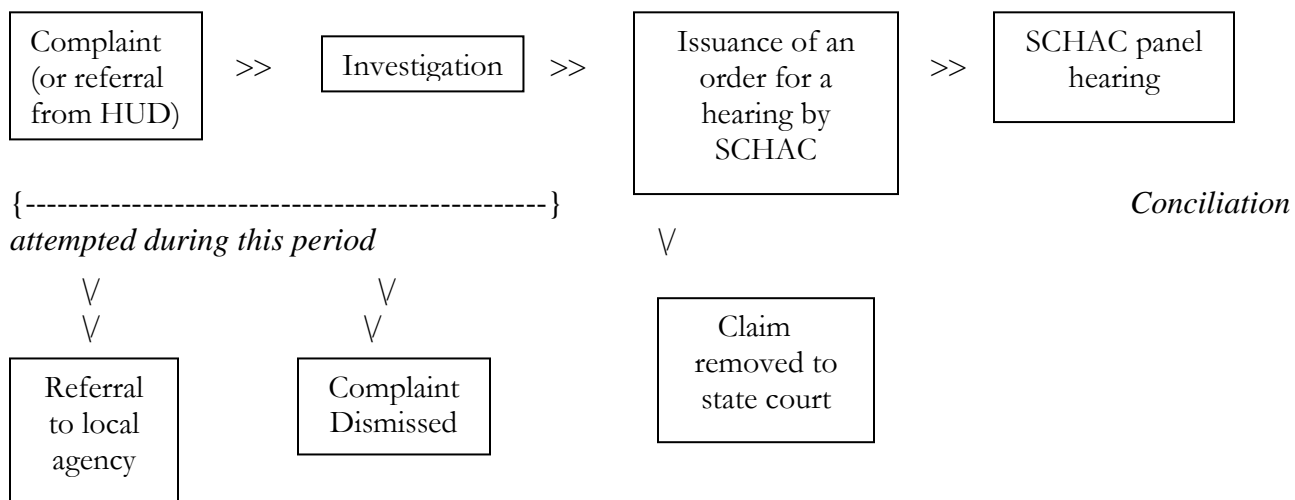
¹⁶³ 42 U.S.C. § 3612(j)(1),(m).

¹⁶⁴ 42 U.S.C. § 3610(f), 24 C.F.R. § 103.100.

¹⁶⁵ 42 U.S.C. § 3610(f), 24 C.F.R. § 103.100.

¹⁶⁶ 42 U.S.C. § 3610(f)(2), 24 C.F.R. § 103.110.

¹⁶⁷ S.C. Code Ann. § 31-21-120(B)



The Complaint

The S.C. FHL allows **180 days** from the date of the alleged discrimination to file an administrative complaint with the SCHAC.¹⁶⁸ Complaints may be made by phone, by e-mail, or in writing. The complaint may be “reasonably and fairly amended at any time”¹⁶⁹ For more information about filing complaints, contact the SCHAC at (803)737-7800, toll free at 1-800-521-0725, or by e-mail at information@schac.state.sc.us. The SCHAC website (<http://www.state.sc.us/schac/index.html>) also includes useful information. The SCHAC can be contacted by mail at either of the following addresses:

P.O. Box 4490
Columbia, SC 29240

2611 Forest Drive, Suite 200
Columbia, SC 29204

The SCHAC is generally required to make final administrative disposition of a complaint within 1 year. However, if this is impracticable, the SCHAC may notify the complainant and then take additional time.¹⁷⁰

Referral to Local Agencies

If a local agency within the state has a fair housing law provides rights and remedies which are substantially equivalent to those under the S.C. FHL, the SCHAC is required to notify the appropriate local agency of any complaint alleging conduct that violates the local law.¹⁷¹ However, according to the SCHAC, there are currently no substantially equivalent local fair housing agencies or laws in South Carolina.

Investigation by the SCHAC

¹⁶⁸ S.C. Code Ann. § 31-21-120(B).

¹⁶⁹ S.C. Code Ann. §§ 31-21-120(A), (B).

¹⁷⁰ S.C. Code Ann. § 31-21-120(F).

¹⁷¹ S.C. Code Ann. § 31-21-120(C).

The SCHAC is required to begin investigating a complaint within 30 days of its filing, as well as to inform the aggrieved person whether it intends to resolve the complaint.¹⁷² The SCHAC is required to complete investigation of a complaint within 100 days of its filing, and must inform the concerned parties in writing if the investigation cannot be completed within this time.¹⁷³

Attempt at Conciliation

If the SCHAC decides to resolve a complaint, it will “try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. . . if practicable, conciliation meetings must be held in the cities or other localities where the discriminatory housing practices allegedly occurred.”¹⁷⁴ Conciliation agreements arising out of conciliation efforts by the SCHAC are subject to the agency’s approval.¹⁷⁵ SCHAC regulations detail the types of relief which may be sought at S.C. Code Ann. Regs. 65-225(C). Such relief includes damages, attorneys’ fees, equitable relief, and injunctive relief.¹⁷⁶

If the aggrieved party commences a civil action regarding the same discriminatory practice, no more attempts at conciliation will be made after the start of the trial.¹⁷⁷ Nothing said or done during the process of conciliation may be used in a subsequent administrative hearing or civil action without the consent of the party concerned.¹⁷⁸

Dismissal of Complaints/ Order for a Hearing

If no conciliation is reached by the time the investigation is completed, the SCHAC will issue an order for either dismissal of the complaint or a hearing by a panel of SCHAC members.¹⁷⁹

If the complaint is dismissed, the aggrieved party may bring a civil action regarding the alleged discrimination in circuit court within 90 days of the date of the dismissal or within 1 year from the date of the violation alleged, whichever occurs later.¹⁸⁰

Adjudication

After the SCHAC issues an order for a hearing, either party may elect within 20 days to have the claim decided in a civil action in state court.¹⁸¹ If either party elects to have the claims decided in a civil action, the SCHAC is required to commence the action within 30 days.¹⁸²

Otherwise, the SCHAC Commissioner will request that the Chairman appoint a panel of three SCHAC members to hear the complaint.¹⁸³ If a party believes that a panel member should be disqualified, the party may file a motion to recuse.¹⁸⁴ Hearings are held within the vicinity of where the alleged violation

¹⁷² S.C. Code Ann. § 31-21-120(A).

¹⁷³ S.C. Code Ann. § 31-21-120(E).

¹⁷⁴ S.C. Code Ann. § 31-21-120(A).

¹⁷⁵ S.C. Code Ann. § 31-21-120(D).

¹⁷⁶ S.C. Code Ann. Regs. 65-225(C).

¹⁷⁷ S.C. Code Ann. § 31-21-120(H).

¹⁷⁸ S.C. Code Ann. § 31-21-120(A).

¹⁷⁹ S.C. Code Ann. §§ 31-21-130(A), (G).

¹⁸⁰ S.C. Code Ann. § 31-21-130(B).

¹⁸¹ S.C. Code Ann. § 31-21-130(C)(2), S.C. Code Ann. Regs. 65-233(F)(1).

¹⁸² S.C. Code Ann. § 31-21-130(C)(2).

¹⁸³ S.C. Code Ann. §§ 31-21-130(A), (G), S.C. Code Ann. Regs. 65-231(A).

¹⁸⁴ S.C. Code Ann. Regs. 65-231(C)(2).

occurred or is about to occur.¹⁸⁵ SCHAC regulations detail the rules regarding pleadings, motions, and discoveries in S.C. Code Ann. Regs. 65-233 and 65-237. Regulations governing hearing procedures are found at S.C. Code Ann. Regs. 65-235. These hearings are also subject to all other provisions of the *Administrative Procedures Act*, found at S.C. Code Ann. §1-23-10 *et. seq.*¹⁸⁶

If a hearing occurs, the case in support of the complaint must be presented by agents or employees of the SCHAC or by legal representatives of the complaining party.¹⁸⁷ The burden of proof is on the complainant.¹⁸⁸ Each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas.¹⁸⁹ Ex parte communications with panel members are prohibited, except for communications made for the sole purpose of scheduling hearings, requesting time extensions, or requesting information case status.¹⁹⁰ Other aggrieved parties may request to intervene.¹⁹¹

If the aggrieved party commences a civil action under S.C. or federal law regarding the same discriminatory practice, the SCHAC hearing cannot proceed after the start of the trial.¹⁹² However, the hearing is not affected by a civil action for temporary or preliminary relief.¹⁹³

The panel makes its decisions by a majority vote.¹⁹⁴ If the panel determines that unlawful discrimination has occurred or is about to occur, it will issue an order for appropriate relief which may include:

- Injunctive or other equitable relief;
- Actual damages, including damages caused by humiliation and embarrassment;
- A civil penalty of up to \$50,000; and
- At the SCHAC's discretion, a reasonable attorney's fee.¹⁹⁵

The Commission may retain jurisdiction of the case until it is satisfied of compliance with the order.¹⁹⁶ If the panel finds that the alleged violation did not occur, the prevailing respondent may apply for an award of reasonable attorney's fees and costs.¹⁹⁷ Parties can apply for review of the order by the SCHAC, as well as introduce new evidence, within 14 days of the order; the panel can also reconsider the order on its own initiative.¹⁹⁸ Parties can also appeal to the Administrative Law Court within 30 days of receiving notice of the order by mail.¹⁹⁹ Unless otherwise specified by the ALJ, the appeal operates as

¹⁸⁵ S.C. Code Ann. Regs. 65-235(A)(2).

¹⁸⁶ S.C. Code Ann. § 31-21-130(K).

¹⁸⁷ S.C. Code Ann. § 31-21-130(H), S.C. Code Ann. Regs. 65-235(B)(1).

¹⁸⁸ S.C. Code Ann. § 31-21-120(G).

¹⁸⁹ S.C. Code Ann. §§ 31-21-130(E)-(J), S.C. Code Ann. Regs. 65-232(A)(4).

¹⁹⁰ S.C. Code Ann. Regs. 65-231(D).

¹⁹¹ S.C. Code Ann. Regs. 65-232(A)(3), (D).

¹⁹² S.C. Code Ann. Regs. 65-234(B).

¹⁹³ *Id.*

¹⁹⁴ S.C. Code Ann. Regs. 65-235(D)(1).

¹⁹⁵ S.C. Code Ann. § 31-21-130(L) (*referring to* 42 U.S.C. § 3612), S.C. Code Ann. Regs. 65-235(D)(2).

¹⁹⁶ S.C. Code Ann. § 31-21-130(L).

¹⁹⁷ S.C. Code Ann. § 31-21-130(M).

¹⁹⁸ S.C. Code Ann. § 31-21-130(O)(1), S.C. Code Ann. Regs. 65-235(F).

¹⁹⁹ S.C. Code Ann. § 31-21-130(O)(2).

a supersedeas staying the order for thirty days.²⁰⁰ After that, the respondent is required to comply with the order.²⁰¹

Parties aggrieved by the order can also seek judicial review within 30 days in the Court of Common Pleas in the county where either the panel hearing took place or the discrimination is alleged to have occurred.²⁰² Unless otherwise ordered by the court, a petition for such review will operate as a supersedeas staying the order for thirty days.²⁰³

The SCHAC can institute a proceeding for enforcement of an order in state circuit court after thirty days from the date of the order; the circuit court should be in the county where the hearing took place or where the party against whom the order was made lives or transacts business.²⁰⁴ The SCHAC can also obtain a court decree of enforcement of the order upon showing that the party subject to the order was given a copy of the petition for enforcement.²⁰⁵

III-C. FHA Claims in Federal Court

The FHA also authorizes a private cause of action at 42 U.S.C. § 3613. The FHA generally allows **two years** to file a civil action in either federal district court or state court.²⁰⁶ The limitations period begins running at the occurrence or termination of the alleged discrimination or at the breach of a conciliation agreement, whichever occurs last, but does not include any time during which an administrative proceeding is pending regarding the same complaint or charge.²⁰⁷

Filing an administrative complaint with HUD is not a prerequisite for bringing a private civil action, and the filing and status of such a complaint does not in any way affect an aggrieved person's ability to bring an action.²⁰⁸ However, if a party has entered into a conciliatory agreement with respect to alleged discrimination, that party cannot bring a private action except to enforce the agreement.²⁰⁹ An aggrieved party also cannot commence a civil action once an ALJ has commenced a hearing on a HUD charge based on the same alleged discrimination.²¹⁰ The court may appoint an attorney to any of the parties in the action, as well as authorize the continuance of the action without the payment of fees, costs, or security.²¹¹

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² S.C. Code Ann. Regs. 65-235(G)(A).

²⁰³ S.C. Code Ann. Regs. 65-235(G)(C)(2).

²⁰⁴ S.C. Code Ann. § 31-21-130(O)(3), S.C. Code Ann. Regs. 65-235(G)(C)(1).

²⁰⁵ S.C. Code Ann. § 31-21-130(O)(4), S.C. Code Ann. Regs. 65-235(G)(C)(3).

²⁰⁶ 42 U.S.C. § 3613(a)(1)(A).

²⁰⁷ 42 U.S.C. § 3613(a)(1), 24 C.F.R. § 103.100(b).

²⁰⁸ 42 U.S.C. § 3613(a)(2).

²⁰⁹ 42 U.S.C. § 3613(a)(2).

²¹⁰ 42 U.S.C. § 3613(a)(3).

²¹¹ 42 U.S.C. § 3613(b).

If the Attorney General has commenced an action under section 814 of the FHA (i.e., under 42 U.S.C. § 3614), any aggrieved party may intervene in the action.²¹² Likewise, the Attorney General can intervene in an action commenced by a private party.²¹³

If the complaining party prevails on the FHA claim and the court finds that unlawful housing discrimination has occurred or is about to occur, it may grant the following remedies:

- Actual and punitive damages;
- Permanent or temporary injunctions;
- Temporary restraining orders; and
- Other orders, including orders to refrain from certain action or take certain affirmative action.²¹⁴

The court may also award reasonable attorney's fees and costs to prevailing parties; note that the United States may not be awarded such fees, but is liable for paying them to the same extent that a private party would be.²¹⁵

III-D. S.C. Fair Housing Law Claims in State Court

The S.C. FHL also authorizes a private cause of action at S.C. Code Ann. § 31-21-140. The S.C. FHL generally allows a victim of housing discrimination **one year** to file a civil action in state court.²¹⁶ If an aggrieved party makes an administrative complaint which is dismissed by the SCHAC, the party is allowed to bring an action within 1 year of the alleged discrimination or within 90 days of the date of the dismissal of the administrative complaint, whichever is later.²¹⁷

Filing an administrative complaint with SCHAC is not a prerequisite for bringing a private civil action.²¹⁸ However, when such a complaint has been made, the start of the trial of a civil action brought by the same aggrieved party, regarding the same alleged discrimination, will cause the SCHAC to terminate conciliation efforts.²¹⁹ Also, the start of such a trial will prevent SCHAC from issuing a complaint against a party accused of discrimination.²²⁰

If the court finds that unlawful housing discrimination has occurred or is about to occur, it may grant the following remedies:

- Actual and punitive damages;
- Permanent or temporary injunctions;
- Temporary restraining orders; and

²¹² 42 U.S.C. § 3614(e).

²¹³ 42 U.S.C. § 3613(e).

²¹⁴ 42 U.S.C. § 3613(c)(1).

²¹⁵ 42 U.S.C. § 3613(c)(2).

²¹⁶ S.C. Code Ann. § 31-21-140(A).

²¹⁷ S.C. Code Ann. § 31-21-130(B).

²¹⁸ S.C. Code Ann. § 31-21-140(A).

²¹⁹ S.C. Code Ann. § 31-21-120(H).

²²⁰ S.C. Code Ann. Regs. 65-227(A)(2).

- Other orders.²²¹

The court may also award reasonable attorney’s fees and court costs to prevailing parties if it determines that a prevailing party is not financially able to assume the attorney’s fees.²²²

III-E. FHA as a Counterclaim in Eviction Cases

In some instances, FHA claims arise as a counterclaim in an eviction action. The South Carolina Residential Landlord Tenant Act (SCRLTA) specifically allows defenses and counterclaims to a tenant facing an eviction action.²²³ Further, the FHA regulations mandate that an eviction proceeding must not be discriminatory.²²⁴

1. Jurisdictional Amount

Magistrate Courts and Circuit Courts in South Carolina both have concurrent civil jurisdiction over “matters between landlord and tenant and the possession of the land.”²²⁵ Landlord-tenant cases involving evictions are frequently heard in Magistrates’ Court because of the relative ease of bringing a case in that forum and because the parties can generally represent themselves adequately without the need for legal counsel. However, because of the jurisdictional limitation of \$7,500²²⁶ on Magistrates’ Court, bringing a counterclaim on an eviction case in that forum becomes more difficult. Staying in Magistrate’s Court requires the defendant to waive any potential excess award. If the tenant does not want to waive the monetary damages over the jurisdictional limit of Magistrates’ Court, then the entire action is transferred to Circuit Court.²²⁷ It is also possible that the counterclaim could be dismissed by the court if the exception to the jurisdictional limit is not met.

Under S.C. Code Ann. § 22-3-10(12), however, a counterclaim may involve a sum over \$7,500 if it involves landlord-tenant issues *and* possession of the land.²²⁸ In Mosseri v. Austin’s at the Beach, Inc., Op. No. 4215 (SC Ct. App. Filed March 12, 2007), the SC Court of Appeals implied that the provision of the statute requiring that possession of the land be an issue in the case to avoid to jurisdictional limit to mean that possession of the property must be an underlying issue in either the case or in the counterclaims.²²⁹ If a defendant in a Magistrates’ court case who brings an FHA or SC Fair Housing Law counterclaim and cannot show that possession of the land is an issue, that defendant will have to either waive the potential excess award amount or have the case transferred to Circuit Court.

²²¹ S.C. Code Ann. § 31-21-140(B).

²²² *Id.*

²²³ S.C. Code Ann. § 27-40-790.

²²⁴ 24 C.F.R. § 100.60(b)(5).

²²⁵ S.C. Code Ann. § 22-3-10(10)

²²⁶ S.C. Code Ann. § 22-3-10(3),(12)

²²⁷ S.C. Code Ann. § 22-3-30, *see also* S.C. R. Civ. P. 13(j) (“In an action brought in a court of limited jurisdiction, in the event the counterclaim or cross-claim tendered for filing is in excess of the jurisdictional amount or otherwise beyond the jurisdiction of said court, ... the action shall be transferred to the circuit court of the county to be there considered and tried as if the action had been there originally filed. ...”).

²²⁸ S.C. Code Ann. § 22-3-10(12).

²²⁹ Mosseri v. Austin’s at the Beach, Op. No. 4215 (SC Ct. App. Filed March 12, 2007).

2. Removal Issues

FHA counterclaims to an eviction proceeding will not generally trigger the option to remove to federal court. *Townline Associates v. Turner*,²³⁰ provides a good illustration of this. In *Townline*, a landlord filed an eviction complaint against a couple who had failed to vacate their apartment when their lease expired. The couple filed a counterclaim under the FHA and the Civil Rights Act, alleging non-renewal of the lease due to racial discrimination and then removed the case to federal court. The federal court sent the case back to the state court, reasoning the federal court would not have had original jurisdiction over the claim because the federal question was raised only in the counterclaim, and therefore removal to federal court could not be justified. The federal court also ruled that removal under 28 U.S.C. § 1443(1) was not appropriate because, while the right at issue did arise under a civil rights law (1443(1)'s first requirement), the defendants had not shown they were unable to enforce that right in state court (1443(1)'s second requirement). Finally, the court found that the mere pendency of the state court action did not violate the couple's federal civil rights; the act which allegedly violated the couple's civil rights was the landlord's refusal to renew the lease, not the landlord's decision to sue to enforce a lease validly terminated.

Townline shows how raising the FHA as a defense to an eviction proceeding can force the case to remain in state court. Because some state courts are less sympathetic than federal courts to fair housing claims, this type of decision could make it more difficult for individuals experiencing discrimination to use the FHA as a counterclaim to an eviction proceeding. However, *Townline* stands in contrast to *Sofarelli v. Pinellas County*,²³¹ which permitted a defendant who had raised racial discrimination under the FHA as a counterclaim to remove the case to federal court under § 1443(1).

The test generally used to allow removal to federal court based on a counterclaim comes from the case of *Georgia v. Rachel*. The two-part test requires a showing that:

- First, the right the defendant relies on is a “right under and law providing for ... civil rights”; and
- Second, the defendant cannot enforce these rights in the state court action.²³²

This second prong seems to defeat any effort to remove a case to federal court in South Carolina because counterclaims *are* allowed in an eviction action in this state.

3. Independent Claims

A tenant served with an eviction notice still has the right to file a *separate* action addressing the FHA violation rather than bring a counterclaim. One issue to consider when filing an independent action during the pendency of the eviction action in federal court involves abstention doctrines. These are discussed below.

²³⁰ Fair Hous.-Fair Lending 16,312, No. 98-3270 (E.D. Pa. 1998).

²³¹ 931 F.2d 718, 724-25 (11th Cir. 1991).

²³² *Georgia v. Rachel*, 384 U.S. 780 (1966).

Generally, the filing of a separate legal action based on the same facts after the eviction action concludes would give rise to preclusion concerns. However, as explained below, this does not happen in South Carolina. At the same time, injunctions to delay the eviction are generally not available, as explained below.

It is possible that the independent claim can afford the tenant a stronger venue to litigate the FHA violations. Federal court is typically the better forum for litigating FHA claims and, while an injunction is typically not possible, filing an action in federal court may allow leverage to convince the landlord to delay the eviction action. The independent claim does not need to be filed in federal court. State court and administrative complaints are still viable during and after the eviction action.

As previously discussed, removal as a means to get to federal court generally will not be possible since federal jurisdiction lies only in the counterclaim.

4. Preclusion

Preclusion does not attach to a possible FHA violation that is not raised as a counterclaim during the eviction process in Magistrate's Court in South Carolina. In Magistrate's Court, "the defendant *may* assert a counterclaim which grows out of the same transaction or occurrence as the plaintiff's claim."²³³

The permissiveness of counterclaims in South Carolina's Magistrates' Courts would allow a subsequent suit for damages in either state or federal court. However, any subsequent legal action in federal court cannot seek to reclaim possession of the housing, if lost during the eviction action, because of the *Rooker-Feldman* Doctrine. This federal common law preclusion doctrine provides that lower federal courts may not exercise jurisdiction over claims that require the review of a final state court judgment.²³⁴

5. Federal and State Court Jurisdictional Interplay

The federal courts use a variety of doctrines to avoid becoming involved in an eviction proceeding.

A. The Anti-Injunction Act

The Anti-Injunction Act limits when a federal court can enjoin a state action. The three exceptions to the limitations are when an injunction is:

- "expressly authorized" by Congress;
- necessary in aid of the court's jurisdiction; or
- necessary to protect or effectuate judgments of the court.²³⁵

The "**expressly authorized**" exception has been applied by the Supreme Court in only one statute, 42 U.S.C. § 1983 ("Civil Action for Deprivation of Rights"). On the other hand, lower courts have found other statutes with express authorization. Although the First Circuit has found

²³³ S.C. MAGISTRATE R. 8 (emphasis added).

²³⁴ See *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). This doctrine does not apply if the state court from which the final judgment is rendered does not allow a federal claim.

²³⁵ 28 U.S.C. § 2283 ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.").

that the FHA does not have the necessary language, there is no Fourth Circuit ruling on the issue.²³⁶

The second exception, “**in aid of its jurisdiction**,” has led to the staying of eviction proceedings.²³⁷ In these cases, the courts relied on the ineffectiveness of the state courts as a setting for litigating the FHA claims. The courts recognized that refraining from issuing an injunction would result in an eviction. The Fourth Circuit ruled on this issue in a case from North Carolina.²³⁸ The eviction process at that time in North Carolina did not allow a federal claim. Because South Carolina allows a federal claim in an eviction action, use of this exception would instead require establishing the South Carolina courts as an ineffective forum to litigate a FHA action. This might prove to be a tough argument.

The third exception, which requires **protection of a federal judgment**, is usually applied in situations where a federal court enjoins state court lawsuits that will interfere with the federal court’s final judgment. This exception is also known as the “relitigation exception”, and it is limited to final judgments on issues that have actually been decided by the federal court rather than matters that the court could decide later.²³⁹

B. Abstention Doctrines

There are a variety of other federal-state court doctrines that potentially limit the use of a federal court action during an eviction action. These include the abstention doctrines of *Younger v. Harris*,²⁴⁰ *Colorado River Water Conservation Dist. v. United States*,²⁴¹ *Pullman*²⁴² and *Burford*.²⁴³ These doctrines could potentially be used by a landlord-defendant in a federal action to force an FHA claim into a pending eviction proceeding.

In general, **Younger abstention** requires a federal court to abstain from enjoining a state action that includes important state interests. However, since landlord/tenant actions rarely include important state interests, *Younger* does not appear to be a likely defense a defendant landlord will use in a federal FHA action brought by a tenant.

Colorado River abstention requires a federal court to abstain from hearing a claim parallel to an ongoing state action. Similar to the *Rooker-Feldman* doctrine, *Colorado River* acts as a preclusion doctrine. Because Magistrate’s Court allows all counterclaims to be permissive, it is arguable that preclusion has not attached to the arguments presented in a parallel federal court action. However, seeking relief such as possession in the federal action is likely to trigger abstention from the federal court.

²³⁶ *Casa Marie Inc. v. Superior Court of P.R.*, 998 F.2d 252 (1st Cir. 1993).

²³⁷ See e.g. *Caulder v. Durham Housing Auth.*, 433 F.2d 998 (4th Cir. 1970).

²³⁸ *Id.*

²³⁹ *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988).

²⁴⁰ 401 U.S. 37 (1971).

²⁴¹ 424 U.S. 800 (1976).

²⁴² *Railroad Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941).

²⁴³ *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

Pullman abstention allows a federal court to stay the federal action pending the outcome of the state action. If the federal action is seeking to challenge the eviction itself, this doctrine is likely to defeat the attempt.

Burford abstention is triggered by state actions that are administrative in nature. Because Magistrate's Court allows a full and fair hearing, this doctrine is not likely to succeed for the landlord in a parallel federal FHA claim.

If the landlord defendant in the federal action attempts to use one of the abstention doctrines, a good resource for the advocate is *Unfair Evictions: Where Fair Housing and Landlord-Tenant Law Intersect* by Geoffrey Heeren.²⁴⁴

Regardless of the viability of a FHA counterclaim in an eviction action, the best option for a tenant may be to file an action in state or federal court **before** the eviction procedure formally begins when possible. If the tenant is aware of a likely eviction action and the possibility of a FHA defense, filing an action in court avoids abstention and anti-injunction issues (discussed later in this guide) triggered by the tenant filing a federal action after the eviction begins. Additionally, filing an administrative complaint with HUD or SCHAC before the eviction action commences may provide different and possibly additional protections for the tenant

²⁴⁴ Geoffrey Heeren, *Unfair Evictions: Where Fair Housing and Landlord-Tenant Law Intersect*, CLEARINGHOUSE REVIEW, Nov./Dec. 2003, at 418.

IV. EMERGING ISSUES

IV-A. Limited English Proficiency

Limited English Proficiency (LEP) persons are people who, as a result of their national origins, do not speak English as their primary language and who have a limited ability to speak, read, write, or understand English. LEP persons are not a protected class under the FHA or S.C. FHL.

However, Title VI of the Civil Rights Act of 1964 does prohibit discrimination based on a person's national origin in programs and activities that receive federal financial assistance²⁴⁵, including HUD housing programs. Executive Order 13166, issued in 2000, directs all federal agencies, including HUD, to ensure that such programs provide meaningful access to LEP persons; failure to do so constitutes national origin discrimination under Title VI of the 1964 act.²⁴⁶ Note that at HUD, the office of Fair Housing and Equal Opportunity takes the lead on enforcing Executive Order 13166.

According to the Final LEP Guidance from the DOJ, "meaningful access" for LEP persons in housing programs is determined using a four-part analysis, which balances:

- The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
- The frequency with which LEP individuals come into contact with the program;
- The nature and importance of the program, activity, or service provided by the program to people's lives; and,
- The resources available to the grantee/recipient and costs.²⁴⁷

Note: In a 2001 case, the U.S. Supreme Court held that private parties have no right to bring a cause of action to enforce HUD's disparate impact regulations under Title VI of the 1964 Act.²⁴⁸

For more information on LEP, see the federal LEP website at www.lep.gov, the HUD LEP website at <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>, and the DOJ LEP website at <http://www.ojp.gov/ocr/lep.htm>. HUD has also published Final LEP Guidance.²⁴⁹

IV-B. Post-9/11 Housing Discrimination

²⁴⁵ 42 U.S.C. § 2000d.

²⁴⁶ E.O. 13166, available on the HUD website at <http://www.hud.gov/offices/fheo/FHLaws/EXO13166.cfm>.

²⁴⁷ 67 Fed. Reg. 41455, 41459 (June 18, 2002); also available at <http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.htm>.

²⁴⁸ *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001); discussed on the HUD LEP website at <http://www.hud.gov/offices/fheo/promotingfh/lep-faq.cfm#q24>.

²⁴⁹ 72 Fed. Reg. 2732 (Jan. 22, 2007); also available at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-217.pdf>.

In the wake of the 9/11 terrorist attacks, there were reports of increased discrimination against Muslims and people of Middle Eastern and South Asian descent. The FHA and S.C. FHL prohibit such discrimination in housing to the extent that it is based on race, color, religion, or national origin. Note, however, that these laws do not protect people from discrimination based on citizenship status. On the other hand, applying such citizenship status screening unevenly against people of a certain race, color, religion or national origin would be a violation.

IV-C. Sexual Orientation

While some state fair housing laws include “sexual orientation” as a protected class, the FHA and S.C. FHL do not. However, discriminating against a person because the person’s sexual orientation created a perception of HIV infection would be a violation, because HIV infection is protected as a disability under the FHA and S.C. FHL.²⁵⁰

IV-D. Age

Discrimination on the basis of age is not a violation of the FHA or S.C. FHL. However, the Age Discrimination Act of 1975 prohibits discrimination in programs and activities receiving federal financial assistance.²⁵¹ Complaints about age discrimination in HUD funded housing can be made to HUD’s office of Fair Housing and Equal Opportunity, and the Act also allows a private cause of action for an injunction and a reasonable attorney’s fee for prevailing plaintiffs.²⁵²

IV-E. Criminal Activity & Sex Offenders

People who have criminal convictions or who engage in criminal activity are not protected on that basis under the FHA or S.C. FHL. It is not a violation of either of these laws to evict tenants or screen applicants based on criminal convictions. Likewise, convicted sex-offenders are not protected against housing discrimination under the FHA or S.C. FHL.

²⁵⁰ 24 C.F.R. 100.201(a)(2); S.C. Code Ann. Regs. 65-215(B)(14)(a)(iii).

²⁵¹ 42 U.S.C. §§ 6101-6107.

²⁵² *Id.*, § 6104(e)(1).

V. OTHER FEDERAL LAWS PROTECTING HOUSING RIGHTS

In addition to the Fair Housing Act, several other federal laws and executive orders are used to prevent housing discrimination against certain groups of people. Attorneys representing victims of housing discrimination will often combine their clients' claims arising from the violations of these other laws with their clients' FHA claims, as applicable. The following chart contains a non-exhaustive list of some of these laws and relevant information about the protections they provide:

CHART 1: Federal Statutes Protecting Housing Rights

SOURCE OF LAW	PROTECTED CLASSES	SUMMARY	ENFORCEMENT/ LIMITATIONS PERIOD	PRIVATE CONDUCT INCLUDED
<u>AGE DISCRIMINATION ACT OF 1975</u> (42 U.S.C. § 6102)	Age	Prohibits discrimination in programs and activities receiving federal financial assistance. (Note: This does not extend to private housing)	Administrative complaints w/ HUD available.	No
<u>AMERICANS WITH DISABILITIES ACT OF 1990 (TITLE II)</u> (42 U.S.C. §12101 <i>et. seq.</i>)	Disability	Prohibits discrimination in programs, services, and activities provided or made available by public entities. HUD enforces Title II when it relates to state and local public housing, housing assistance, and housing referrals.	180 days to file complaints with the DOJ; 180 days for complaints w/ HUD; private action available, adopts the remedies provisions from § 504 of the Rehabilitation Act of '73 ²⁵³	No
<u>ARCHITECTURAL BARRIERS ACT OF 1968</u> (42 U.S.C. §4151 <i>et. seq.</i>)	Disability	Requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds must be accessible to and usable by persons with disabilities.	No limitations period for administrative complaints to the U.S. Access Board; Complaints w/ HUD also available.	No
<u>CIVIL RIGHTS ACT OF 1866</u> (42 U.S.C. §1981, 1982)	Race and Color	Prohibits all racial discrimination, with no exceptions, but only in the sale and rental of housing. (see <i>Jones v. Alfred H. Mayer Co.</i> , 392 U.S. 409 (1968).		Yes

<p><u>CIVIL RIGHTS ACT OF 1964 (TITLE VI)</u> (42 U.S.C. §2000d <i>et. seq.</i>)</p>	Race, Color, and National Origin.	Prohibits discrimination in programs and activities receiving federal financial assistance.	Administrative complaints w/ HUD available.	No
<p><u>EDUCATION AMENDMENTS ACT OF 1972 (TITLE IX)</u> (20 U.S.C. § 1681 <i>et. seq.</i>)</p>	Gender	Prohibits discrimination in education programs or activities that receive federal financial assistance.	Administrative complaints w/ HUD available.	No
<p><u>FAIR HOUSING ACT/ S.C. FAIR HOUSING LAW</u> (42 U.S.C. §3601 <i>et. seq.</i>)/ SC Code Ann. §31-21-10 <i>et. seq.</i>)</p>	Race, Color, Religion, Sex, National Origin, Familial Status, and Disability	Broadly prohibit discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, all as discussed in this manual, and with certain exceptions.	-FHA- 2 yrs. for claims, 1 yr. for admin. complaints. -S.C. FHL- 1 yr. for claims, 180 days for admin. complaints	Yes
<p><u>HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 (TITLE I, § 109)</u> (42 U.S.C. §5309)</p>	Race, Color, Religion, National Origin, and Sex	Prohibits discrimination in programs and activities receiving financial assistance from HUD’s Community Development Block Grant Program.	Administrative complaints w/ HUD available	No
<p><u>HOUSING FOR OLDER PERSONS ACT OF 1995 (HOPA)</u> (42 U.S.C. §3607)</p>	Relates to Familial Status	Amended the FHA’s housing for older persons exemption against familial status discrimination: eliminates “services and facilities” requirement, requires age verification procedures, and provides a good faith defense against monetary damages. ²⁵⁴	N/A, amends FHA.	Yes
<p><u>REHABILITATION ACT OF 1973 (§ 504)</u> (29 U.S.C. §794)</p>	Disability	Prohibits discrimination in programs and activities receiving federal financial assistance or conducted by executive agencies.	180 days for complaints w/ HUD; private action available, adopts the remedies provisions from Title VI of the Civil Rights Act of ’64	No

²⁵⁴ See HUD regulations and information under at <http://www.hud.gov/offices/fheo/library/index.cfm#Guidance> “Policy and Guidance.”

CHART 2: Executive Orders Affecting Fair Housing

EXECUTIVE ORDER NO.	PROTECTED CLASSES	SUMMARY	PRIVATE CONDUCT INCLUDED?
<u>No. 11063</u> (Nov. 20, 1962)	Race, Color, Creed, and National Origin	Prohibits discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.	No
<u>No. 12892</u> (Jan. 17, 1994)	Race, Color, Religion, Sex, National Origin, Familial Status, and Disability	As amended, requires federal agencies to affirmatively further fair housing in their programs and activities, and provides that the Secretary of HUD will be responsible for coordinating the effort. Also, establishes the President's Fair Housing Council, which will be chaired by the Secretary of HUD.	No
<u>No. 12898</u> (Feb. 11, 1994)	Race, Color, and National Origin	Requires that each federal agency conduct its program, policies, and activities that substantially affect human health or the environment in a manner that does not discriminate.	No
<u>No. 13166</u> (Aug. 11, 2000)	Language Proficiency	Eliminates, to the extent possible, limited English proficiency (LEP) as a barrier to full and meaningful participation by beneficiaries in all federally-assisted and federally-conducted programs and activities.	No
<u>No. 13217</u> (Jun. 18, 2001)	Disability	Requires federal agencies to evaluate their policies and programs to determine if any can be revised or modified to improve the availability of community-based living arrangements for persons with disabilities.	No

VI. INDEX

VI-A. Fair Housing Laws and Regulations

1. **The Fair Housing Act**
- <http://www.justice.gov/crt/about/hce/title8.php>
2. **HUD Fair Housing Regulations**
- http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=b47b44208041512cf3602c5c2f9f8369&c=ecfr&tpl=/ecfrbrowse/Title24/24cfrv1_02.tpl#100
3. **South Carolina Fair Housing Law**
- <http://www.scstatehouse.gov/code/t31c021.php>
4. **South Carolina Fair Housing Regulations**
- <http://www.scstatehouse.gov/coderegs/c065.php>
5. **HUD Brochure: “Are You A Victim of Housing Discrimination?”**
- http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12150.pdf
6. **South Carolina Human Affairs Commission Fair Housing Brochure**
- http://www.state.sc.us/schac/pdf_forms/FHbrochure1.pdf

VI-B. National Fair Housing Resources

1. **U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity:**
- <http://www.hud.gov/offices/fheo/>
2. **U.S. Department of Justice Civil Rights Division – Housing and Civil Enforcement Section**
- http://www.justice.gov/crt/about/hce/housing_main.php
3. **National Fair Housing Advocate Online**
- <http://www.fairhousing.com/index.cfm/board/index.cfm>
4. **National Fair Housing Alliance**
- <http://www.nationalfairhousing.org/>
5. **Bazelton Center for Mental Health Law**
- <http://www.bazelton.org/issues/housing/index.htm>

6. **The John Marshall Fair Housing Legal Support Center**
- <http://www.jmls.edu/fairhousingcenter/index.shtml>
7. **Sargent Shriver National Center on Poverty Law**
- <http://www.povertylaw.org/poverty-law-library/category.html?catid:int=1690100>

VI-C. Articles and Publications

1. “An Outline of Principles, Authorities, and Resources Regarding Housing Discrimination and Segregation” - **National Housing Law Project**
- <http://www.nhlp.org/html/fair/outline.htm>
2. “Housing Discrimination Against Victims of Domestic Violence” by Wendy R. Weiser and Geoff Boehm - **Clearinghouse Review** (March-April 2002)
- <http://www.legalmomentum.org/issues/vio/HousingDiscrimAgainstDVVictims-Clearinghouse.pdf>
3. “An Introduction to Fair Housing Law” by Crystal B. Ashley – **National Center on Poverty Law (Poverty Law Manual for the New Lawyer)**
- <http://www.povertylaw.org/poverty-law-library/research-guides/poverty-law-manual/ashley.pdf>
4. “Handling Fair Housing Act Disability Claims in the Context of an Imminent or Pending Eviction Action” – **The Bazelon Center for Mental Health Law**
- <http://www.bazelon.org/LinkClick.aspx?fileticket=HxFJ6uskzps%3D&tabid=245>
5. “What Fair Housing Means for People with Disabilities” – **Bazelon Center for Mental Health Law**
- <http://www.bazelon.org/News-Publications/Publications/CategoryID/17/List/1/Level/a/ProductID/19.aspx?SortField=ProductNumber%2cProductNumber>