

FAIR HOUSING LAW RIGHTS & RESPONSIBILITIES

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*Portions of presentation have been adapted from Metro
Housing Boston and MetroWest Home Consortium and
Regional Housing Services Office

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SUFFOLK
UNIVERSITY
BOSTON

AGENDA

February 28, 2019



What is Fair Housing?

Overview of FHA History



Fair Housing Law

- Protected Classes
- Prohibited Conduct
- Discrimination
- Lead Laws
- Reasonable Accommodations



Fair Housing Quizzes

Were you Listening?



Case Study

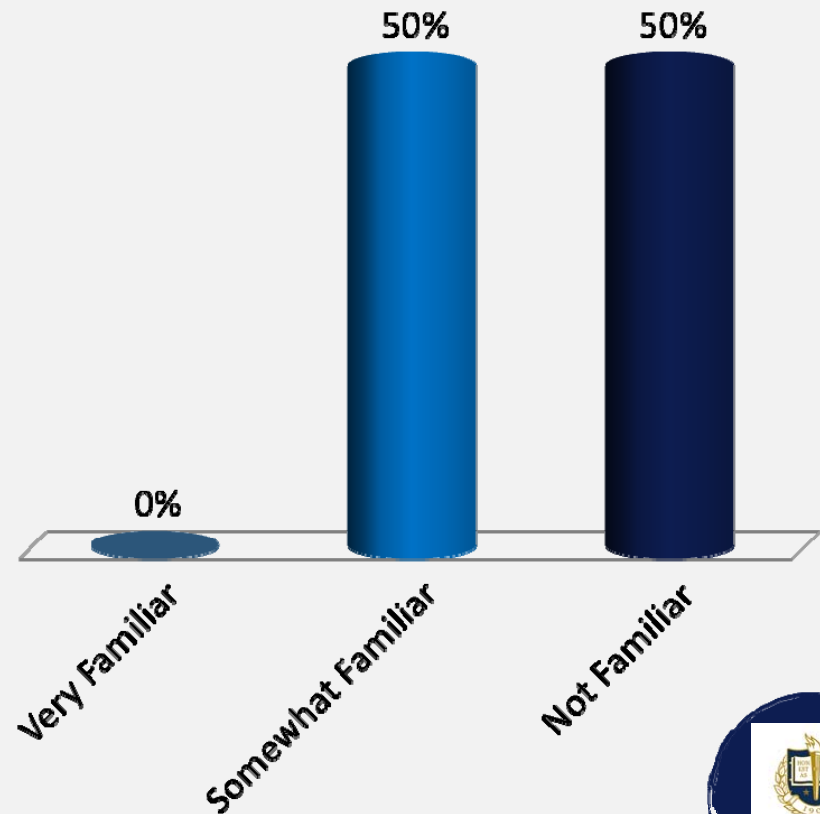


Questions



How familiar are you with fair housing requirements as it relates to rental and sales practices?

- A. Very Familiar
- B. Somewhat Familiar
- C. Not Familiar



Jones v. Mayer Held:

Section 1982 (Civil Rights Act of 1866) “bars all racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment.”

Jones v. Mayer, 392 U.S. 409 at 413 (1968).

“[W]hen racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.”

Jones v. Mayer, 392 U.S. 409, 442-43 (1968).



1866 Civil Rights Act

“All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof: to inherit, purchase, lease, sell, hold and convey real and personal property.” 42 U.S.C. § 1982

“[N]ot a comprehensive open housing law.” Jones v. Mayer, 392 U.S. 409, 413 (1968)



Government Policy Explicitly Designed to Racially Segregate Metropolitan Areas

1930s > New Deal

Public Works Administration

1) Segregated public housing by race

Federal Housing Administration

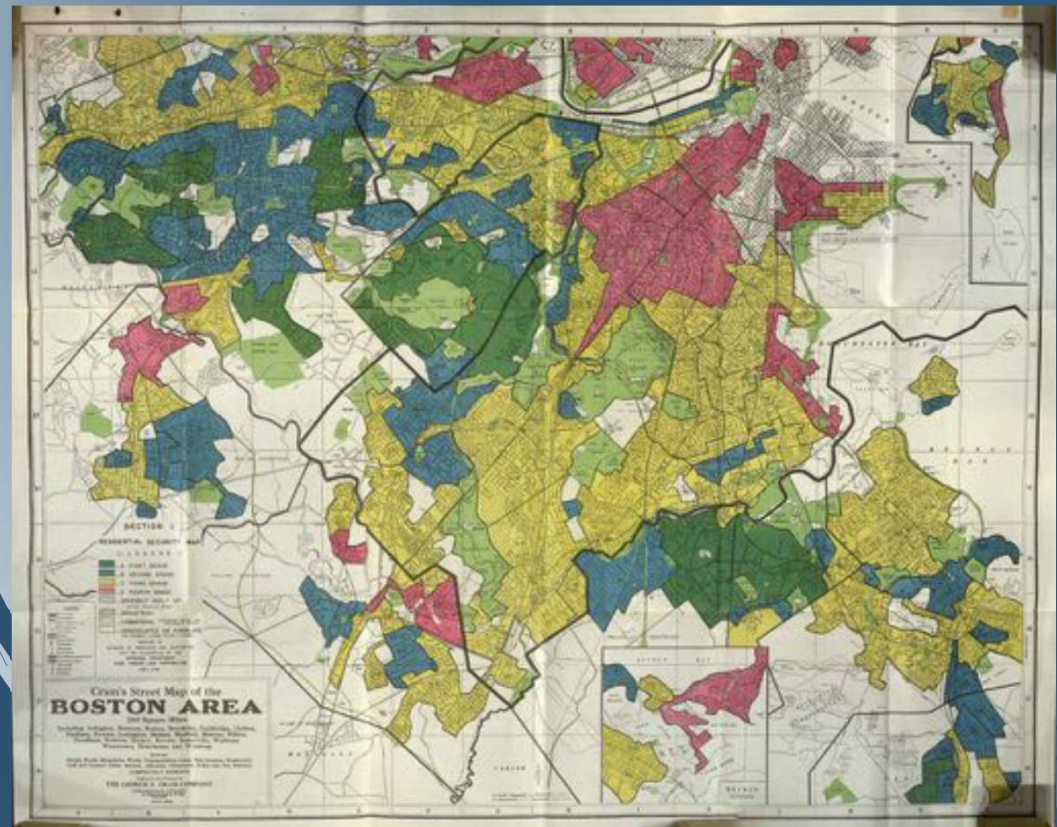
1) Redlining – to determine where to invest federal \$

2) Suburban investment required racial covenants

1940s > GI Bill

Veterans Administration Adopts

FHA standards – Whites Only



Government Policies Reinforce Segregation and Lead to Civil Unrest

1950s

1954 - Housing Act (Urban Renewal)
1956 Federal Highway Act
Restrictive Suburban Zoning

1960s

July 1967 - Detroit Race Riots
Kerner Commission



The Kerner Commission... cited white racism, discrimination, and poverty as among the causative factors of the riots and warned that “our nation is moving toward two societies, one black, one white - separate and unequal.”



April 3, 1968



April
4
1968



April 11, 1968

“It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”

Fair Housing Act, Sec. 801

Signed by Lyndon B. Johnson Administration



Well, I don't know what will happen now. We've got some difficult days ahead. But it really doesn't matter with me now, because I've been to the mountaintop. And I don't mind.

Like anybody, I would like to live a long life. Longevity has its place. But I'm not concerned about that now. I just want to do God's will. And He's allowed me to go up to the mountain. And I've looked over. And I've seen the Promised Land. I may not get there with you. But I want you to know tonight, that we, as a people, will get to the promised land!

And so I'm happy, tonight.
I'm not worried about anything.
I'm not fearing any man!
Mine eyes have seen the glory of the coming of the Lord!!





Have Things Changed?

Watts, Los Angeles
(August 1965)



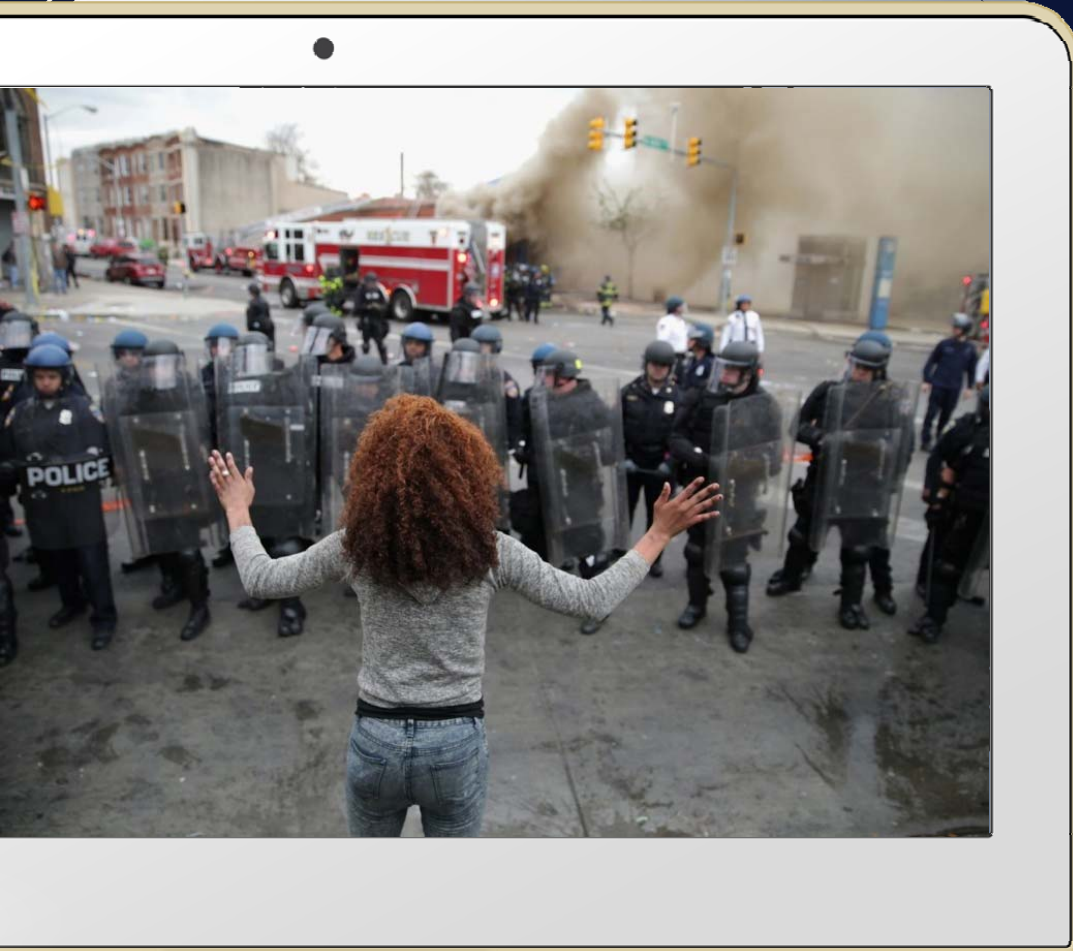
Have Things Changed?

Ferguson, Missouri
(August 2014)



Have Things Changed?

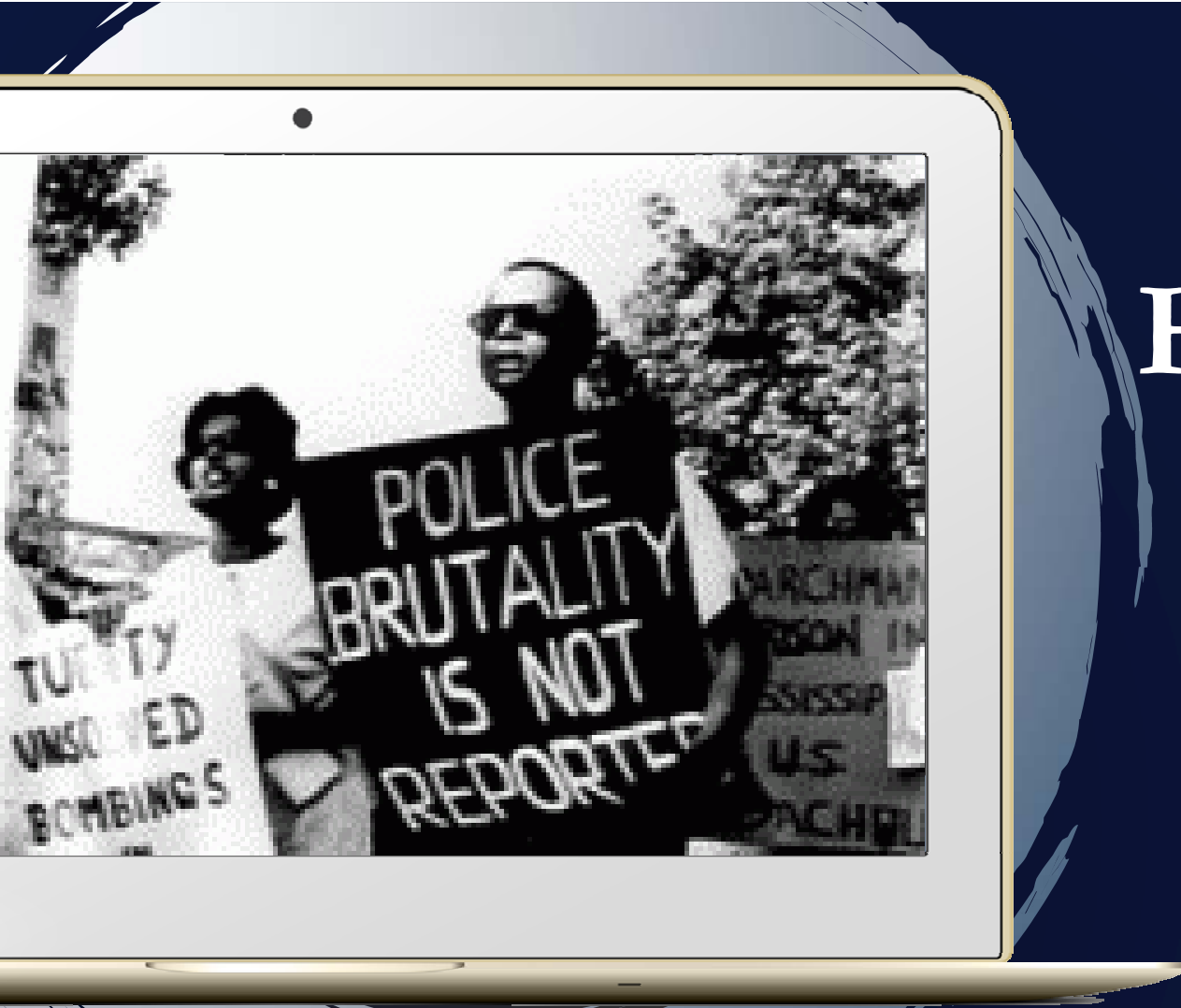
Newark, New Jersey
(July 1967)



Have Things Changed?

Baltimore, Maryland
(April 2015)





Have Things Changed?

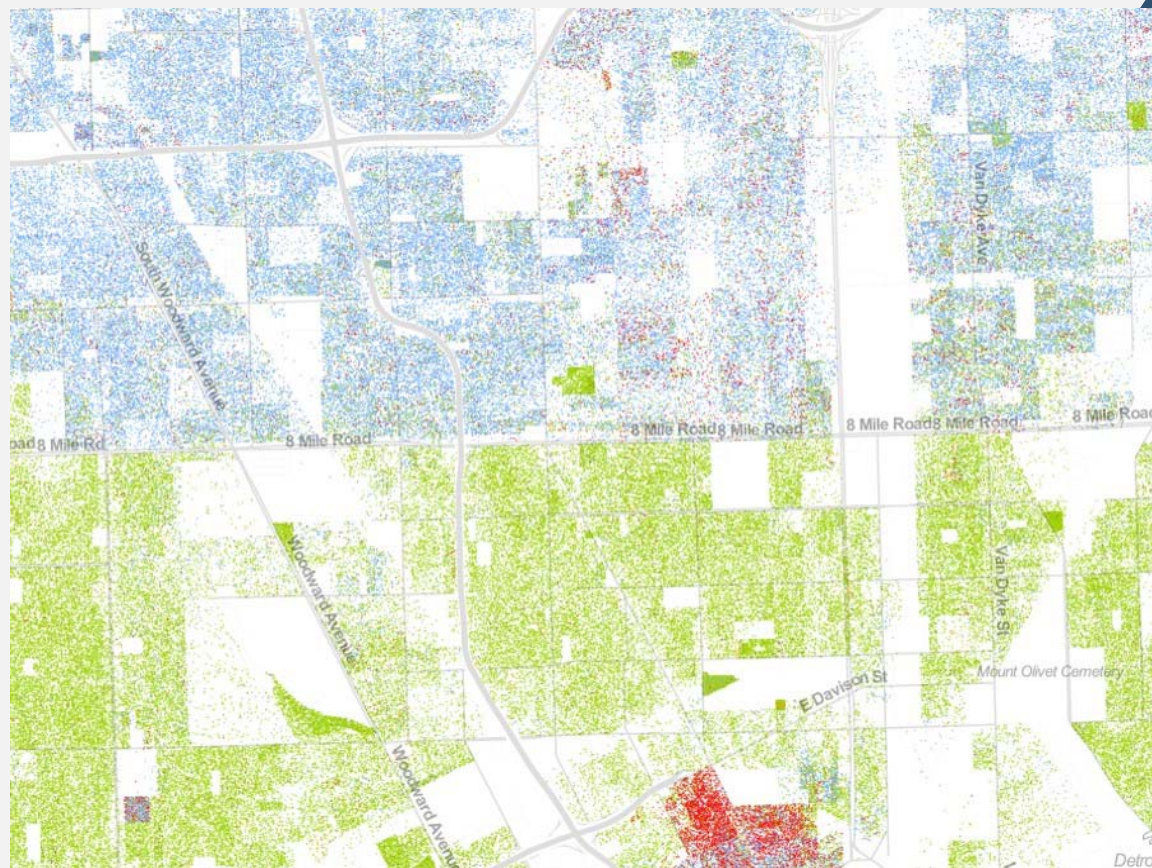
Location & Year
Unknown



Have Things Changed?

McKinney, Texas
(June 2015)

Lasting Effect of Past Policies

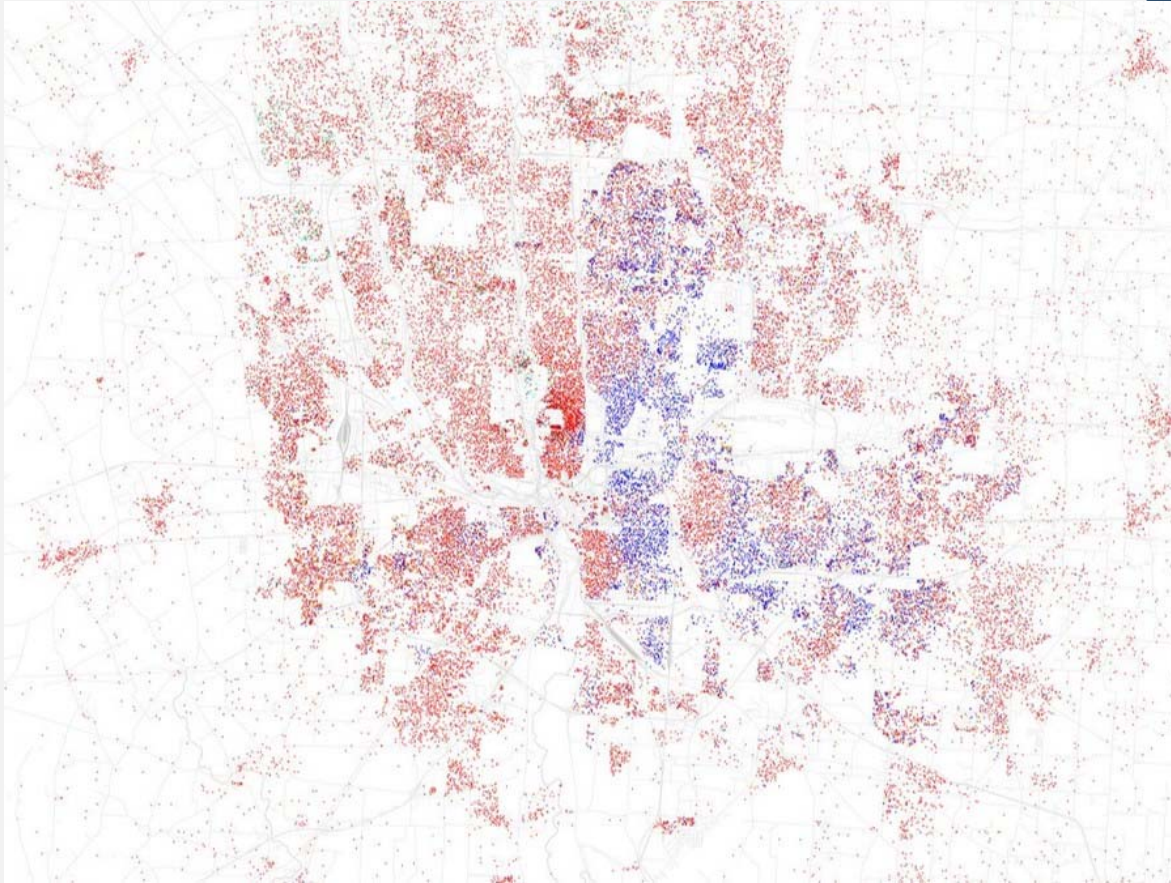


Metropolitan Cities 2010 U.S. Census Data

8 Mile Road – Detroit

Blue = White residents

Green = Black residents



Metropolitan Cities 2010 U.S. Census Data Columbus, Ohio

Red dots = White residents

Blue dots = Black residents



Metropolitan Cities 2010 U.S. Census Data

Boston, MA

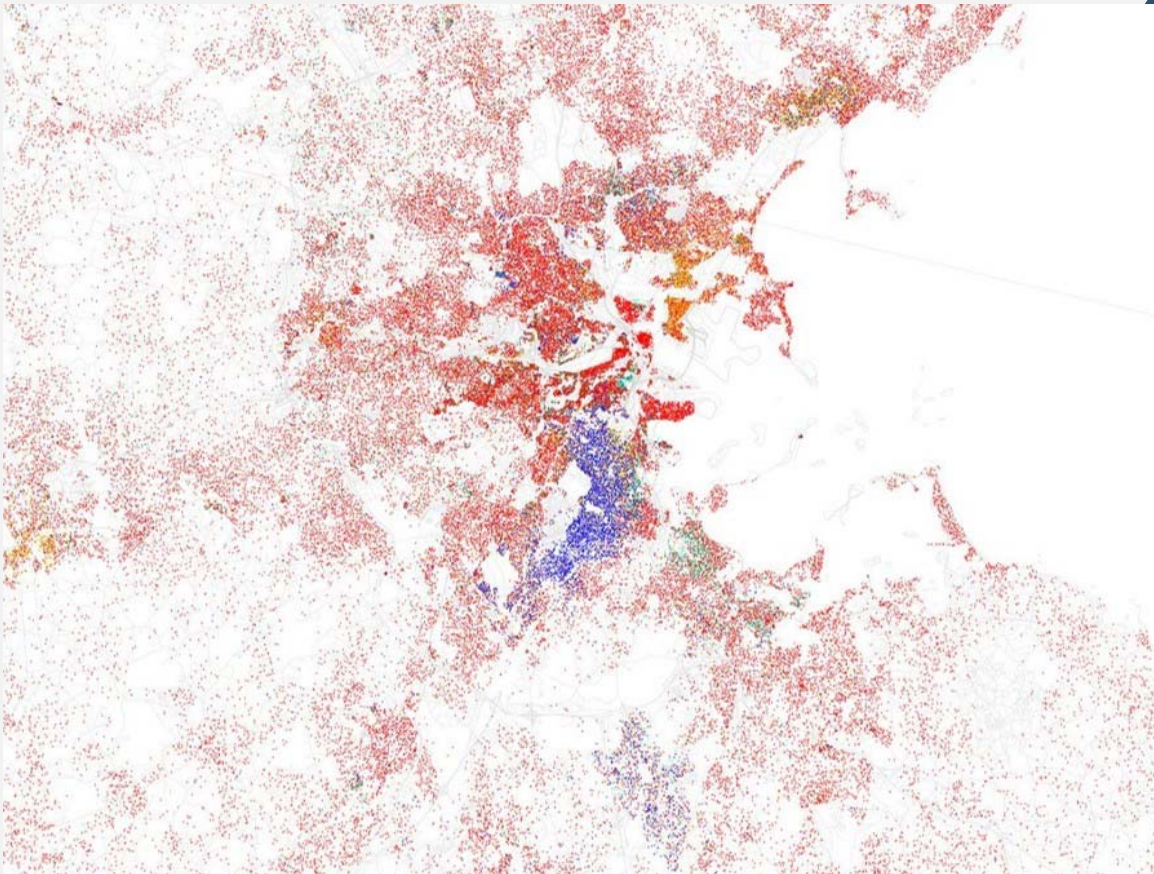
Blue dots = Black residents

Orange dots = Hispanic residents

Green dots = Asian residents

Red dots = White residents

Yellow dots = Other residents



Racial Wealth Gap Persists

The Color of Wealth in Boston

A Joint Publication of Duke University, The New School, and the Federal Reserve Bank of Boston



Ken Dubrawski

The Boston Globe

SERIES STORIES

BOSTON. RACISM. IMAGE. REALITY.

BY THE SPOTLIGHT TEAM [Join the discussion on Facebook](#)

A 2018 Pulitzer Finalist in Local Reporting

► Play

IMAGE & REALITY
BOSTON. RACISM. IMAGE. REALITY: THE SPOTLIGHT TEAM TAKES ON OUR HARDEST QUESTION

SEAPORT
A BRAND NEW BOSTON, EVEN WHITER THAN THE OLD

HOSPITALS
COLOR LINE PERSISTS, IN SICKNESS AS IN HEALTH

COLLEGES
LOST ON CAMPUS, AS COLLEGES LOOK ABROAD

SPORTS
THE BIGOT IN THE STANDS, AND OTHER STORIES

POWER
FOR BLACKS IN BOSTON, A POWER OUTAGE

SOLUTIONS
A BETTER BOSTON? THE CHOICE IS OURS

A video player interface for a series of stories. The main video shows a man in a suit speaking. To the right is a graphic for the Super Bowl. Below the main video are several smaller video thumbnails with titles related to Boston's social and economic issues.

Boston Fed study finds wealth disparities ‘worrisome’

The Federal Reserve Bank of Boston, *The Color of Wealth in Boston*, 2015.



•The typical **white household in Boston is more likely than nonwhite households to own every type of liquid asset.** For example, close to half of Puerto Ricans and a quarter of U.S. blacks don't have either a savings or checking account, compared to only 7% of whites.

•Whites and nonwhites also exhibit important differences in assets that associated with homeownership, basic transportation, and retirement. **Close to 80% of whites own a home, whereas only one-third of U.S. blacks, less than one-fifth of Dominicans and Puerto Ricans, and only half of Caribbean blacks are homeowners.** And while most white households (56 percent) own retirement accounts, only one-fifth of U.S and Caribbean blacks, and 8 percent of Dominicans have them.

•**Nonwhite households have only a fraction of the net worth attributed to white households. While white households have a median wealth of \$247,500, Dominicans and U.S. blacks have a median wealth of close to zero.** Of all nonwhite groups for which estimates could be made, Caribbean black households have the highest median wealth with \$12,000, which is only 5 percent of the wealth attributed to white households in the Boston MSA.

The Solution is Not Solely More Affordable Choices

- Cities and towns should be more welcoming and open
- Rather than seeing newcomers as detracting from “character,” suburban communities should embrace diversity
- Local leaders should speak out in favor of initiatives designed to increase diversity

Harris and McArdle,

More than Money: The Spatial Mismatch Between Where Homeowners of Color in Metro Boston Can Afford to Live and Where They Actually Reside, 2004.
(Harvard Civil Rights Project)



Havens Realty v. Coleman,
455 U. S. 367 (1982)

Racial steering practices deprived the victims of “the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices.” *Havens*, at 376.

Trafficante v. Metropolitan Life,
409 U. S. 205 (1972)

Court found that where the landlord discriminated against Black prospective tenants, White tenants in the building suffered injury and had standing to sue the landlord because they were denied the “important social benefits from interracial associations.” *Trafficante*, at 210.

Inclusivity is Key to Create Healthy, Sustainable Communities

Fair Housing isn't just important to help undo results of past policies, but it is also good for our communities and local/regional economy.



WHAT ARE FAIR HOUSING LAWS?

FEDERAL

FAIR HOUSING ACT

STATE

MASS. GENERAL LAW 151B

CITY

CITY ORDINANCES



Housing & Civil Rights Principles

- Equal access to housing is a civil right, protected by local, state and/or federal law
- There must be the provision of equal access to housing opportunity for all persons regardless of their protected class membership
- Groups of individuals are designated as protected classes based on a history of discriminatory practices that denied or limited equal access to housing



Purpose of Civil Rights Housing Laws

- To identify who is protected
- To define the responsibilities of all involved parties
- To define the scope of the regulatory protection
- To authorize jurisdiction for the specifically identified government entities to do investigation & enforcement



Protected Class in Massachusetts

Characteristic of a person that cannot be targeted for discrimination

FED

42 U.S.C. § 3601

- Race
- Color
- Religion
- Sex
- Handicap
- Familial Status
- National Origin



MA

Mass. Gen. Law c. 151B, § 4

- Race
- Religion
- National origin
- Gender
- Disability
- Familial status
- Age



MA

Mass. Gen. Law c. 151B, § 4

- Marital status
- Sexual orientation
- Receipt of Government Assistance (including rental vouchers)
- Military status
- Genetic Information
- Gender Identity/Expression



Individuals with Disability

Who qualifies as a person with a disability under the Fair Housing Act?

Individuals who have, who are regarded as having, or with a record of physical or mental impairments such as:

- Orthopedic
- Visual
- Speech
- Hearing
- Cerebral palsy
- Autism
- Epilepsy
- Muscular dystrophy *illegal*
- Multiple sclerosis *use of controlled substance)*
- Cancer
- Heart disease
- Diabetes
- HIV infection
- Developmental disabilities
- Mental illness
- Drug addiction (*other than addiction caused by current, use of controlled substance)*
- Alcoholism



Types of Discrimination:

- **Legal vs. Illegal:** Discrimination can only be punished legally if it has been defined as a violation of the laws or regulations.
- **Attitudinal:** A perception or belief that creates barriers to equal access to housing opportunities.
- **Intentional:** A denial that was imposed purposely to prevent participation in housing.
- **Action Centered:** Acting intentionally or unintentionally in a manner that denies equal access to housing opportunity to protected class members.
- **Lack of Awareness:** Actions that discriminate because of lack of knowledge of one's fair housing responsibilities.



DISCRIMINATORY EFFECT

A policy or practice adversely affects people of a protected class and/or perpetuates segregated housing patterns

- Can appear neutral on its face e.g.,
- Prohibiting multifamily development in a community
- Occupancy limits for unrelated individuals
- Limit # bedrooms per unit
- Local preference

Rule applies to all public and private entities. Consult with your Town Counsel if you have any concerns that a project might have a discriminatory effect.

1) Is policy/practice likely to negatively impact PC?

2) Is policy/practice necessary to achieve substantial, legitimate, nondiscriminatory interests

3) Is there a less discriminatory alternative

Who Must Follow FH Law:

- Property owners/sellers
- Developers
- Condo associations and homeowner associations
- Housing employees such as property managers, clerical staff, maintenance and other housing personnel
- Attorneys
- Real estate agents
- Advertisement venues
- Other residents in the building, development and neighborhood
- Architects and contractors can be held liable under the accessible design and construction fair housing mandates

BASICALLY EVERYONE



Housing Transactions Covered Under FH Law:

- Advertising
- Rentals including tenant screening/tenant selection
- Terms, conditions or privileges
- Provisions of services
- Design & construction requirements for persons with disabilities
- Reasonable accommodations & reasonable modifications
- Sales
- Mortgages



Prohibited Conduct...

In the sale and rental of housing, because of protected class:

Refuse to rent or sell

Refuse to negotiate for housing

Make housing unavailable

Deny a dwelling

**Set different terms, conditions or privileges
for sale or rental**

Provide different housing services or facilities

Falsely deny that housing is available for inspection, sale or rental



Prohibited Conduct cont...

In the sale and rental of housing, because of protected class:

Blockbusting: For profit, persuade, or try to persuade homeowners to sell by suggesting people of a particular race are moving into neighborhood

Steering: Restricting access to specific geographic areas, neighborhoods, or buildings because of one's protected class

Deny access to or membership or participation in any organization, facility or service (multiple listing service) related to sale or rental of dwellings, or set different terms and condition of such access, membership or participation

Coerce, intimidate, threaten, or interfere with anyone exercising a fair housing right or assisting others who exercise those rights



Prohibited Conduct cont...

In the sale and rental of housing, because of protected class:

Systemic denials and/or lack of flexible interactive process of reasonable accommodation/reasonable modification requests.

Harassment: Retaliation or other acts of aggression to prevent or punish a protected class member from exercising their rights to equal access and opportunity in housing

Disparate Impact: A policy or practice that appears neutral but in the practice negatively impacts members of protected classes.

Predatory lending: Targeting members of a protected class with terms that lead to financial hardship for the lende



reply  

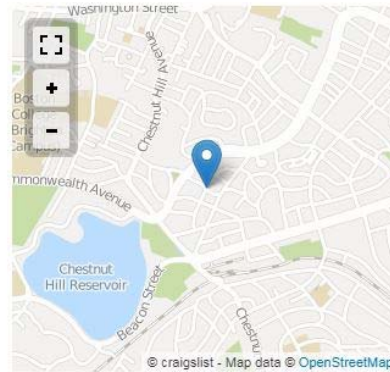
prohibited ¹²

Posted 23 days ago

[print](#)

☆ \$1795 / 1br - No fee + No Sec Dep! Brighton Chiswick Rd 1bed freshly painted! LDRY (Brighton, Cleveland, BC) 

image 1 of 3




Chiswick at selkirk
[\(google map\)](#)

1BR / 1Ba available now

cats are OK - purrr

apartment



BRIGHTON NO FEE -- BRIGHTON, 2000 block of Commonwealth Avenue Green B Line T! Near to Boston College! Nicely landscaped, four-floor brick apartment building on Comm. Ave. The building is located next to Boston College campus! Graduate students and professionals only. Studios from \$1745, 1 beds available from \$1975; One year lease. International students welcome! NO SECURITY DEPOSIT REQUIRED 

Advertising

FHA says it is illegal to:

“To make, print, or publish any notice, statement, or advertisement that indicates a preference or limitation based on a protected class”

Best Practice:

Describe the property *not* the type of people who might be interested



Tenant selection process should not eliminate an applicant due to their membership in a protected class.

Focus should be whether the applicant can **afford** the rent with or without a rental voucher, has acceptable **credit history, references** and **CORI** (there are restrictions on the use of CORI).

Criteria should not be used that would intentionally create barriers for protected class members such as:

- demanding that voucher must cover 100% of the rent,
- forbidding families with children under 6 years of age,
- strict residency requirements, proficiency in English,
- in person application process etc.

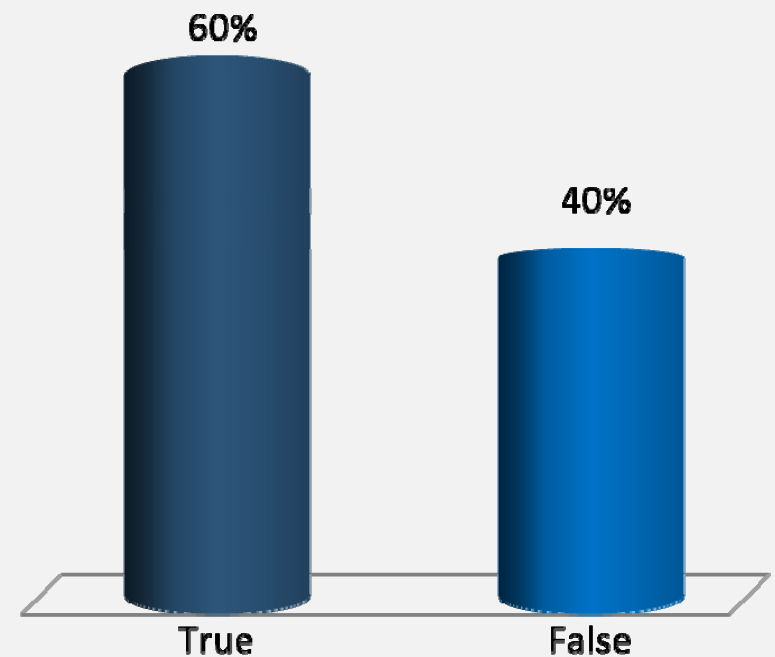
Tenant Screening

<https://www.masslegalhelp.org/cori/housing/what-cori>

An owner can refuse to rent to Section 8 (housing voucher) recipients because the apartment will not pass inspection.

A. True

B. False



Answer: *False*

- **Public Assistance Reciprocity** is a protected class.
- A dwelling cannot be denied to someone because he or she has a housing voucher.



A Lender Cannot:

- Refuse to make a mortgage loan on the basis of a protected class
- Refuse to provide info regarding mortgage loans
- Impose different terms or conditions (dif. Interest rates, points, or fees)
- Discriminate in appraising property
- Steer an applicant toward a bad mortgage loan product
- Provide inferior servicing of a mortgage loan



What Does Predatory Lending Look Like:

- Include unnecessary closing costs;
- Have inflated appraisal costs;
- Have inflated broker or lender fees;
- Have unnecessary recording fees;
- Have excessive prepayment penalties; or
- The mortgage loan terms change
- upon closing without the consent of the borrower.

Mortgage Lenders are Required to Provide:

- Good Faith Estimate
- Truth In Lending Disclosure Statement
- Copy of the loan application
- Mortgage Servicing Disclosure Statement



Prevalent Issues re: Massachusetts Law

**MA Lead
Law**

**Reasonable
Accommodations**

**Reasonable
Modifications**



Massachusetts Lead Law

- Properties that are older than 1978 likely have lead paint present if it has not been dealt with
- Seller is under no obligation to pay for lead inspection prior to selling
- BUT - Landlord IS obligated to inspect if tenant with child under age 6 is going to live there
- Landlord cannot evict or refuse to rent because of presence of lead paint and child under 6
- Refusing to rent to family with child under 6 is familial status discrimination & violates the lead law!



M.G.L. c. 111, §197 (aka “the lead law”)

“Whenever a child under [6]... resides in any premises in which any paint... contains dangerous levels of lead, the owner shall abate or contain...”

No claim for strict liability may be brought under §199 against an owner for which letter of interim control or full compliance has been issued;

No person shall occupy premises while containment or abatement is taking place.



Owner may **reasonably delay** the start of tenancy until **letter of compliance** or interim control **certificate** is issued (provided that no duly executed lease exists & no delay shall exceed 30 days)

During said 30 days, prospective tenant must bear any living expenses

If owner must bring unit into compliance while a tenant is occupying the unit, “the owner shall have the **right to move the tenant to a substitute dwelling** ... upon reasonable notice; provided, ... that the **owner pays** reasonable moving expenses and any use and occupancy charges for a substitute dwelling ...”



M.G.L. c. 111, §199

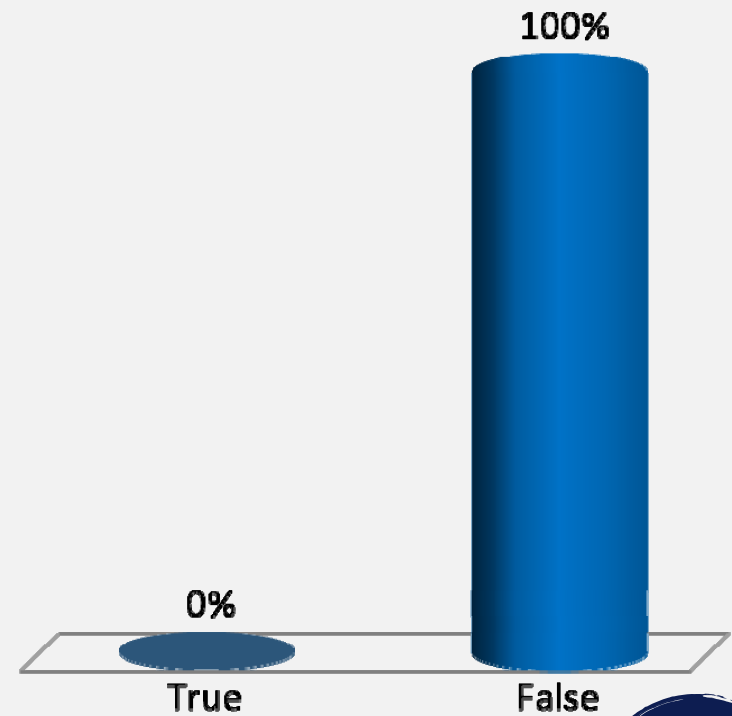
“...owner of any premises shall be liable for all damages to a child under six years of age at the time of poisoning...that are caused by [their] failure to comply with [the lead law].”

Owner covered by a letter of full compliance shall not be strictly liable



Tenants with children can be required to live in ground floor apartments so that other tenants are not bothered by noise.

- A. True
- B. False



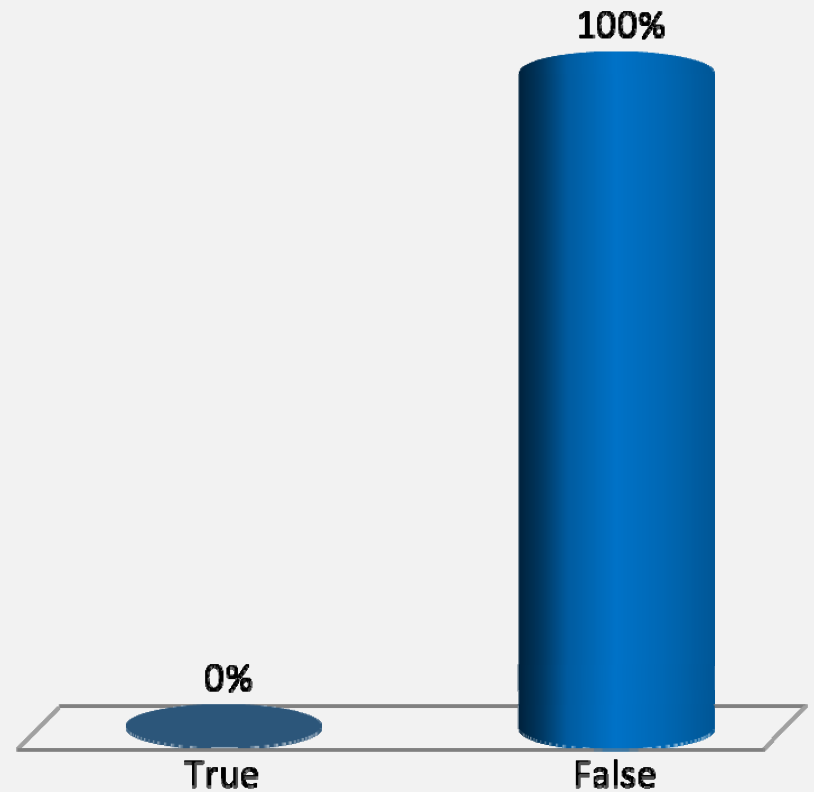
Answer: *False*

- **Familial Status** is a protected class
 - Child who is not yet 18
 - Pregnant women
 - Those in the process of securing legal custody of someone who is not yet 18 years of age
- Different *terms and conditions* cannot be set for people based on membership in a protected class



A landlord can reject a prospective tenant with a young child's application due to lead poisoning concerns.

- A. True
- B. False



Answer: *False*

- The “Lead Law” in Massachusetts requires dwellings to be made lead safe if a child under the age of 6 lives or will live there.
- It can be a costly endeavor, but the responsibility to make a dwelling lead safe cannot be avoided by not renting to families with young children.
- That would be discrimination based on familial status.



Reasonable Accommodations

Definition:

A change or waiver to policies, practices, procedures or services that is needed due to a disability.

Request process:

- An internal formal process can be used but not mandated;
- A verbal request is allowable;
- A written note or letter from applicant or tenant is allowable.

Approval/Denial:

A reasonable accommodation can only be denied if it causes an undue administrative and financial burden or changes the basic nature of the program.

If the request is denied an alternative reasonable accommodation should be discussed.

Implementation:

Must be done in a fair and good faith manner that meaningfully implements the reasonable accommodation request.

In addition to federal Fair Housing Act, the Mass. Antidiscrimination Law c.151B (s. 7A) requires reasonable accommodation, as does MGL c.40A.



- Transfers
- Assistive animals
- Change of rent payment date
- Live-in aide
- Early termination of lease
- Hoarding clean-up
- Surrogacy
- Relocation of residents meetings
- Large print
- Sign language
- Treatment plans
- Accessible and/or designated parking spaces



Reasonable Accommodations

EXAMPLES



- **Definition:**

A physical alteration to provide greater accessibility and use of the premises for a person with a disability.

Request process:

- An internal formal process can be used but not mandated;
- A written note or letter from applicant or tenant is allowable;
- A verbal request is allowable.

Conditions of Approval:

Reasonable modification will be done in a professional and code compliant manner. > Person(s) doing the reasonable modification is licensed and insured.

Who pays for Reasonable Modification:

If under 10 units, the person making the request assumes all costs. If there are 10 or more contiguous units or the building/development is directly or indirectly government subsidized, housing provider assumes all costs.

Conditions of Restoration:

Alteration must be restored when resident vacates the premises if it is internal to the unit and would affect the marketability of such unit. If the alteration was to a common use area or external to the unit, resident is not responsible for restoration.

Reasonable Modifications

Implementation:

Must be done in a fair and good faith manner that meaningfully implements the reasonable modification request.



- Air filtration systems
- Air conditioners
- Ramp
- Installation of a grab bar
- Lowering of cabinets
- Lowering of shelves
- Flashing doorbells
- Strobe smoke detectors
- Curb cuts
- Door hardware
- Sink hardware
- Hand rails



Reasonable Modifications

EXAMPLES



Helpful Resource to Understand RA/RM Issues HUD/DOJ Joint Statement

The following examples are taken from the Joint Statement, which is Set up as Q&A with 27 questions including:

- How does the Fair Housing Act apply to state and local land use and zoning?
- What types of land use and zoning laws or practices violate the Fair Housing Act?
- When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?
- Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?



Health Care Documentation

Any health care provider, with the authorization of the person with the disability, can supply this information.

Only the information that is absolutely necessary should be provided. **The nature and severity of the disability should not be disclosed.**

All health care or disability related information must be kept confidential by the housing provider. Such information should not become common knowledge of staff not directly involved in the reasonable accommodation/reasonable modification request or other residents.

Use of a housing providers forms for health care provider information can not be made mandatory.

Documentation from the health care provider should not invite the housing provider to contact them directly by any means.



Sample Health Care Documentation

Jamal Smith
Housing Provider Person
Somewhere, MA 00000

Dear Mr. Smith;

Ms. Jones is a person with a disability and she is under my care for respiratory related issues. Controlling the air quality in her sleeping environment is medically necessary. The current shared bedroom configuration does not allow her this control and worsens her symptoms: as a result, it deprives her of equal use and enjoyment of her home. Therefore, Ms. Jones requires a separate bedroom.

Sincerely,
Jonas Doe, LPN

Jacinta Smith
Housing Provider Person
Somewhere, MA 00000

Dear Ms. Smith:

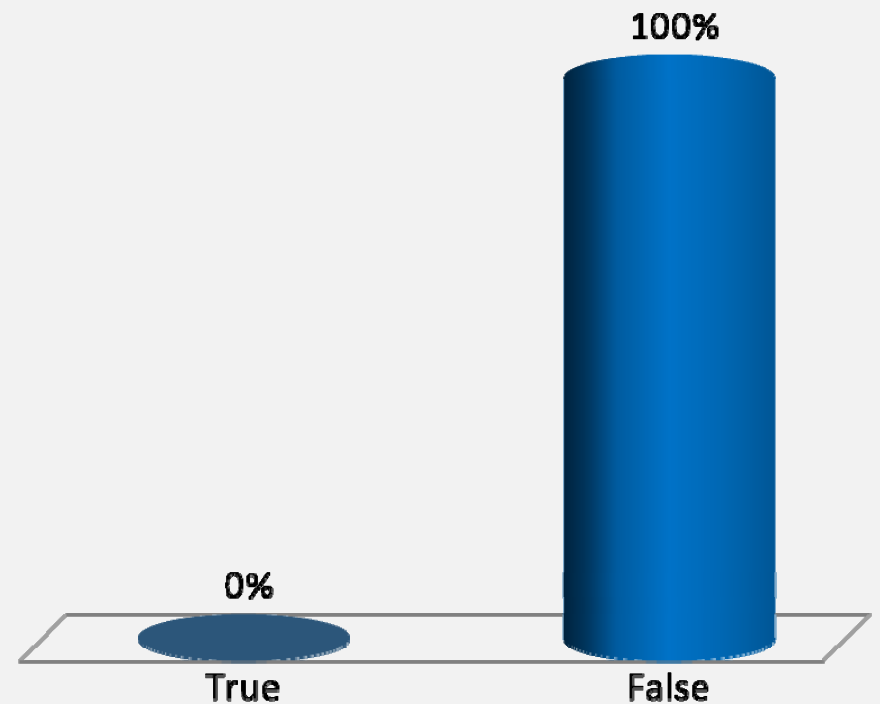
I am writing on behalf of Sam Jones. He is a person with a disability and is under my care. He has difficulty handling stairs and occasionally must use a wheelchair. Therefore Mr. Jones requires an accessible unit.

Sincerely,
Tanesha Adams, P.T.



A tenant with a permanent brain injury requests that the landlord give the tenant a verbal reminder to pay rent each month. The landlord can immediately say no because he does not need to take on that responsibility.

- A. True
- B. False



Answer: *False*

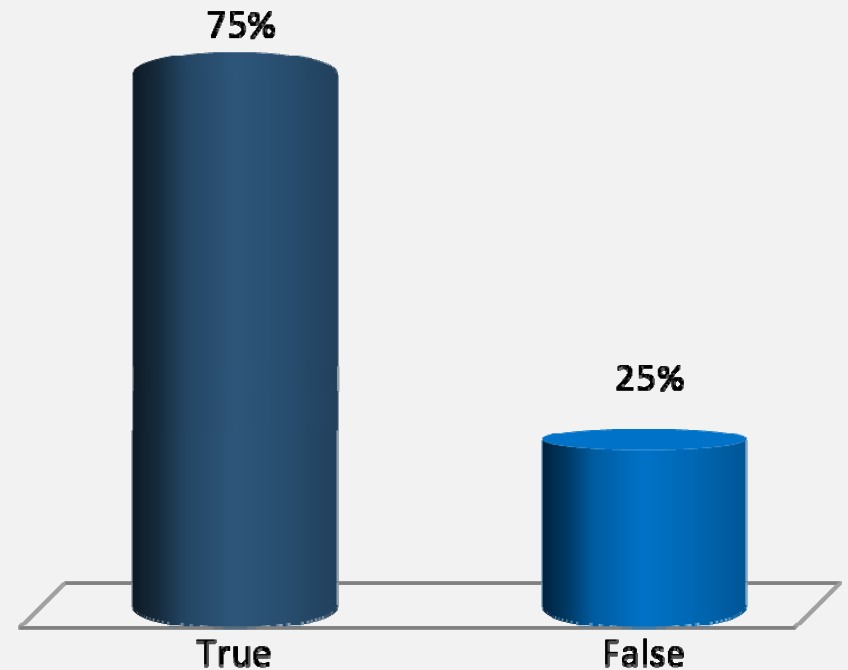
- A landlord must engage in an interactive process with a tenant when he or she requests a reasonable accommodation.
- A R.A. is a change, exception, or adjustment to a rule, policy, practice or service that may be necessary for a person with a disability to use and enjoy a dwelling, including public and common use spaces.
- There must be an identifiable connection between the request and disability.



A person is denied housing because the housing provider believes that person has a disability, even though she does not, she is protected by fair housing laws.

A. True

B. False



Answer: *True*

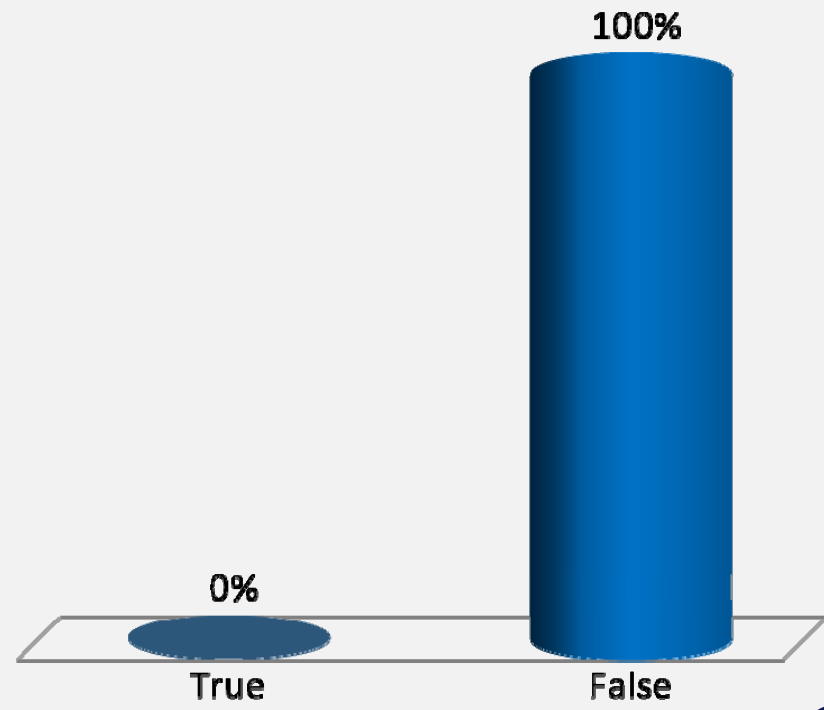
- If you or someone associated with you:
 - Has a physical or mental disability that substantially limits one or more major life activities
 - Have a record of such a disability or
 - Are regarded as having such a disability:

You are protected by fair housing laws



A landlord may inquire about the nature and severity of a rental applicant's disability.

- A. True
- B. False



Answer: *False*

Disability is a protected class and a housing provider cannot ask rental applicants about the nature or severity of their disability.

Note that housing providers *may* ask for verification of related need if a reasonable accommodation or modification request if that need is not visibly apparent.



Top 10 Best Practices to Avoid Fair Housing Violations

10. Advertisements: describe the property, not the renter.	5. Consistently apply written policies & procedures.
9. Regularly train staff.	4. Reasonable accommodation requests: engage in a dialogue, and respond in a timely manner.
8. Seek expert/specialized help.	3. Review policies for disparate impact on protected classes.
7. Screen based on ability to comply with lease.	2. Document legitimate, business reasons for decisions.
6. Avoid retaliatory conduct.	1. Be consistent, treat everyone in the same, non-discriminatory manner.



**LEGAL
UPDATES FROM
HUD 2018
NATIONAL
CONFERENCE**



**CASE STUDIES
HANDOUTS**

Wetzel v. Glen St. Andrew – Argued 2-6-18, Decided 8-27-18

Facts:

- Wetzel moved to nursing facility
- Signed Tenant Agreement indicating compliance with Tenant Handbook
- Facility may institute eviction proceedings if non-compliance w Handbook
- Wetzel spoke openly about her sexual orientation
- Wetzel has Mobility disability and used motorized scooter

Treatment at Issue:

- Residents repeatedly berated her for being a “f%#\$ing dyke” “f%#\$ing fa\$%ott”
- Tenants physically abused her by hitting her scooter with their canes in Common areas
- When Doing laundry alone, someone struck her in head
- Wetzel fell out of scooter, suffered black eye as result

Treatment at Issue Continued: Wetzel complained to management

- Behavior from Tenants continued
- Management and Staff also started to restrict services to Wetzel (food, cleaning, etc.)
- Wetzel now stays out of main areas and away from floor where two harassers live
- Uses laundry facilities only when she knows she won't be alone, avoids other tenants

Protected Classes at Issue? Claims Brought by Wetzel?

Procedural Summary:

- Wetzel filed complaint in Federal District Court, Illinois
- Complaint: Alleged St. Andrew failed to ensure non-discriminatory living environment
- Alleged St. Andrew retaliated against her for complaining about **sex-based** harassment
- Corporate Defendants filed *Motion to Dismiss* for Failure to State a Claim

What do you think happened after D's Filed a Motion to Dismiss?

Wetzel v. Glen St. Andrew

District Court Agreed with Defendants...

D's claimed > FHA Does Not hold Landlord Accountable for failing to stop tenant-on-tenant harassment UNLESS in-action was by discriminatory animus

District Court Dismissed Wetzel law suit...

Wetzel Appealed. Case heard by Seventh Circuit. Opinion issues by Chief Judge Wood

Issues on Appeal:

Does the FHA cover post-acquisition discrimination?

Does the Act impute liability to St. Andrew for the hostile housing environment?

Wetzel v. Glen St. Andrew

The Law: Under 42 U.S.C. s 3604(b) unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of dwelling, or in provision of services or facilities in connection therewith because of protected categories.

s 3617 of FHA - Unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted by this title. **Retaliation**

Do you think FHA prohibits hostile housing environment?

Yes: Title prohibits discriminatory harassment that unreasonably interferes with the use and enjoyment of a home.

Court analyzes if: 1) sex is protected, 2) harassment was severe and pervasive enough to interfere with housing, 3) there is a basis for imputing liability to defendant.

Wetzel v. Glen St. Andrew

Defendants Argument – Closer Look

FHA defines *What* is prohibited, not *Who* is subject to those prohibitions re: LL/TT

Relies on precedent > No agency or custodial relationship between landlord and tenant

Court Analysis

On Face, Act does not address who may be liable when sex-based discrimination occurs
– FHA does not spell out landlord liability for this situation.

> Used other statutes for guidance – Title VII Employee/ER and Title IX Education (aims to eradicate sex-based discrimination in academic settings)

Title VII – Yes, Employers Liable for in-action

Title IX – Yes, School Board liable for in-action of Known acts of student-on-student harassment

Applied Reasoning – Did Defendants Have ACTUAL Knowledge of Severe Harassment and Deliberately Indifferent? If Yes, Violated FHA

Wetzel v. Glen St. Andrew

What do you think court concluded based on Defendant argument
re: No custodial relationship?

- 1) Landlord has a responsibility over common areas, which is where majority of harassment took place.
- 2) Liability attached to St. Andrew > they “had an arsenal of incentives and sanctions to apply” to conduct and failed to use them.
 - Ex. Reminding harassers that non-compliance with handbook may lead to eviction
 - Update handbook to include anti-harassment provision
 - Suspend privileges of common areas for tenants who failed to abide by anti-harassment provisions

CASE REVERSED and REMANDED to District Court - Ongoing

If Someone Thinks They Experienced Discrimination, They Can Contact:

Boston Fair Housing Commission

1 City Hall Plaza, Room 966
Boston, MA 0220
Phone: (617) 635-4408
www.cityofboston.gov/civilrights

MA Commission Against Discrimination

One Ashburton Place
Boston, MA 02108
Phone: (617) 994-6000
TTY: (617) 994-6196

Cambridge Human Rights Commission

51 Inman Street, 2nd Floor
Cambridge, MA 02139
Phone: (617) 349-4396
TTY: (617) 492-0235
www.cambridgema.gov/HRC

Suffolk University Law School Housing Discrimination Testing Program

120 Tremont Street
Boston, MA 02108
Phone: (617) 884-7568
TTY: 1 (800) 439-2370
<https://www.suffolk.edu/law/academics/59759.php>

HUD FHEO Region I

Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street,
Boston, Massachusetts 02222-1092
Phone: (617) 994-8300
Phone: 1(800) 827-5005
TTY (617) 565-5453



RESOURCES

Metro Housing Boston: Housing Related Resources and Questions
<https://www.metrohousingboston.org/housing-portal/resources-for-tenants/>

MA Attorney General:

<http://www.mass.gov/ago/consumer-resources/your-rights/civil-rights/housing/>

DOJ and HUD Joint Statement on Reasonable Accommodations:

https://www.hud.gov/sites/documents/DOC_7771.PDF

<https://www.suffolk.edu/law/academics/59759.php>

THANK YOU

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