

## THE 1968 FAIR HOUSING ACT & ASSESSING FAIR HOUSING IN YOUR COMMUNITY

City of Plano - April 7, 2018



Demetria McCain

## Inclusive Communities Project

- ▶ Dallas-based nonprofit working for the
  - ▶ Creation and maintenance of thriving racially and economically inclusive communities,
  - ▶ Expansion of fair and affordable housing opportunities for low-income families, and
  - ▶ Redress for policies and practices that perpetuate the harmful effects of discrimination and segregation

ICP's Knowledge is Power Blog:  
inclusivecommunities.net/wp/icp-knowledge/

On Twitter: @ICPMobility

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"We make two general assertions:

- (1) that American cities and suburbs suffer from galloping segregation, a malady so widespread and so deeply imbedded in the national psyche that many Americans, Negroes as well as whites, have come to regard it as a natural condition; and
- (2) that the prime carrier of galloping segregation has been the Federal Government. First it built the ghettos; then it locked the gates; now it appears to be fumbling for the key. Nearly everything the Government touches turns to segregation, and the Government touches nearly everything."

Senator Edward Brooke (1968)

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"Segregation now,  
segregation tomorrow and  
segregation forever!"

Gov. George C. Wallace 5

## Fair Housing Act of 1968

- ▶ FHA finally passed April 11, 1968
  - ▶ 1 week after Rev. Dr. Martin Luther King, Jr.'s 4/4/1968 assassination
- ▶ Prohibits discrimination in the:
  - ▶ terms, conditions, or privileges of sale or rental of a dwelling
  - ▶ provision of services or facilities
  - ▶ or otherwise make unavailable or deny, housing

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## Fair Housing Act of 1968: Protected Classes under FHA

- ▶ Race
- ▶ Color
- ▶ Religion
- ▶ National origin
- ▶ Sex
- ▶ Disability
- ▶ Familial status (presence or anticipated presence of children in the home)

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## Fair Housing Act of 1968: Affirmatively Further Fair Housing

- ▶ Requires government actors to take affirmative steps to overcome segregation and unequal access to opportunity or "affirmatively further fair housing" (AFFH)
- ▶ Duty to do MORE than simply refrain from discrimination
  - ▶ HUD to use grant programs to stop segregation and
  - ▶ open housing

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## How do jurisdictions AFFH?

- ▶ Housing & Community Dev. Act of 1974
  - ▶ HUD grantees required to certify that they'll AFFH to get funding
- ▶ A grantee certifies it will
  - ▶ conduct an analysis to identify impediments to fair housing choice within the jurisdiction;
  - ▶ take appropriate actions to overcome the effects of any impediments identified through that analysis; and
  - ▶ maintain records reflecting the analysis and actions

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## 2015 AFFH Regulation (24 C.F.R. §§5.150-5.180)

- ▶ New process, participants must conduct an Assessment of Fair Housing (AFH) using an Assessment Tool provided by HUD
- ▶ HUD provides standardized data to participants related to key metrics
- ▶ AFH synchronized with Consolidated Planning process: Con Plan (and PHA plan) must reflect AFFH-identified priorities
- ▶ HUD must review AFH submissions
- ▶ Encourages regional approaches and collaboration between jurisdictions and PHAs
- ▶ Community participation, especially by historically excluded individuals, is integral to the process
- ▶ Jurisdictions must include all comments they receive in the final AFH, and if they haven't incorporated those comments, they must explain why they didn't

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## Definition of AFFH

Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

Taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

The duty to AFFH extends to all of a program participant's activities and programs relating to housing and urban development.

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## The Assessment of Fair Housing (AFH) Report

- Identifies fair housing issues
  - Public participation plan with outreach to protected classes and marginalized communities
  - Quantitative and spatial analysis of HUD-provided data and maps AND local data and knowledge
- Identifies contributing factors that led, in whole or in part, to the existence of those issues
  - qualitative analysis of policies and practices, both governmental and private, that may be contributing factors
- Proposes goals for overcoming fair housing issues and contributing factors

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## Plano's AFFH Report

- ▶ Study underway by University of Texas at Arlington
  - ▶ For more info: <http://northtexasrha.com/>
- ▶ Jointly done with other regional cities and public housing authorities
- ▶ Originally due January 2018
- ▶ Delayed until June 2018 upon request by UTA and jurisdictions so updated data could be analyzed
- ▶ National 2-year extension announced early 2018 by HUD

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## Areas of Analysis

- Assessment of past goals, actions, and strategies
- Patterns of Segregation
- Racially or Ethnically Concentrated Areas of Poverty (RECAP)
- Disproportionate housing need
- Disparities in Access to Opportunity
- Land use and zoning laws
- Location and type of affordable housing
- Public and private investment
- Lack of community revitalization strategies
- Transportation access
- Location and type of affordable housing
- Environmental hazards
- Location of Jobs
- Location of proficient schools and school assignment policies
- Accessibility for persons with disabilities
- How to ensure that projects comply with federal, state, and other fair housing and civil rights obligations?

HUD AFFH Data and Mapping Tool  
<https://egis.hud.gov/affht/>

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## AFH's Public Participation

- ▶ **Requirements:**
- Provide the public reasonable opportunities for involvement in the development of the AFH and in the incorporation of the AFH, and other required planning documents
- Make data available (in accessible format) to the community, including residents, public agencies, and other interested parties
- Publish the proposed AFH in a manner that affords stakeholders the opportunity to examine its content and submit comments
- Provide a period of not less than 30 calendar days to receive comments from the community

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## Collateral Benefits of the AFH Process

A successful AFH community participation process will create opportunities for members of protected classes, residents, stakeholders, and intergovernmental partners, to:

- Provide local knowledge to supplement the HUD data as well as to tell the story behind the HUD data
- Raise fair housing issues based on their experience and local data and knowledge
- Explore goals and strategies to address the contributing factors
- Legitimize and increases support for fair housing planning, including development of new projects;
- Improve community-government relations

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## What are contributing factors?

- ▶ Community Opposition
- ▶ Displacement of residents due to economic pressures
- ▶ Lack of community revitalization strategies
- ▶ Lack of private investments in specific neighborhoods
- ▶ Lack of public investments in specific neighborhoods, including services or amenities
- ▶ Lack of regional cooperation
- ▶ Accessible public infrastructure
- ▶ Land use and zoning laws
- ▶ Lending Discrimination
- ▶ Location and type of affordable housing
- ▶ Occupancy codes and restrictions
- ▶ Private discrimination
- ▶ Siting selection policies, practices and decisions for publicly supported housing, including discretionary aspects of Qualified Allocation Plans and other programs

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## Key Components: Local Data & Local Knowledge

- ▶ Local data
  - ▶ subject to determination of statistical validity by HUD, can be found through reasonable search, low or no cost, necessary for completion of the AFH using the Assessment Tool
- ▶ Local knowledge
  - ▶ relevant to assessment, known or becomes known to the jurisdiction, and necessary for completion of the AFH using the Assessment Tool

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## Fair Housing Goals: Example

**Fair housing issue:** Displacement of residents due to economic pressures

**Goal:** Preservation of 200 units of affordable housing in X, Y, and Z neighborhoods, which have high performing schools

**Metrics:** Within 6 months, publish and begin implementing a detailed 5-year plan to preserve and improve 100 units of affordable rental housing in X, Y and Z neighborhoods; including a plan to collect and analyze data on at-risk properties; facilitate collaboration among federal, state, and local agencies; and reduce operating costs.

**Responsible Program Participant:** Housing and Community Development Agency

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The Fair Housing Act of 1968  
has not been Repealed

HUD &  
Local Jurisdictions  
still must  
Affirmatively Further Fair Housing

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**Fair Housing Presentation  
Plano Fair Housing Symposium  
April 7, 2018**

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[www.northtexasfairhousing.org](http://www.northtexasfairhousing.org)

## Who We Are

- ▶ Founded in 2010.
- ▶ A private, non-profit fair housing organization.
- ▶ Services:
  - ▶ Discrimination Complaint Investigation
  - ▶ Landlord/Tenant Counseling
  - ▶ Community Education and Training
- ▶ Area Served
  - ▶ Collin, Dallas, Delta, Denton, Ellis, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise Counties

## Fair Housing Complaints – National Statistics

- ▶ In 2016, 19,740 fair housing complaints were filed nationwide with non-profit fair housing organizations like the North Texas Fair Housing Center.
- ▶ In comparison, 1,371 complaints were filed with HUD, 7,030 with state and city fair housing departments and 40 with the U.S. Department of Justice.
- ▶ Of the total number of housing discrimination complaints filed nationally, 53.3% were complaints of discrimination based on disability. The second highest number of complaints, 17.0% were based on race.\*

\* The Case for Fair Housing: 2017 Fair Housing Trends Report. The National Fair Housing Alliance. Can be found at [www.nationalfairhousing.org](http://www.nationalfairhousing.org).

## What is Unlawful Under the Fair Housing Laws?

- ▶ Refusal to Rent, Sell or Lease a Dwelling
- ▶ Lying about the Availability of a Dwelling
- ▶ Differential Treatment
  - ▶ - Terms
  - ▶ - Treatment

*Property owners should have uniform policies and apply them uniformly!*  
(exception: reasonable accommodations & modifications)
- ▶ Statement of Preference
  - ▶ Verbal Statements
  - ▶ Advertisements

## Sexual Harassment

- ▶ 1. Quid-pro-quo: This type of harassment occurs when tenants are given benefits in exchange for sexual favors (i.e. discounted rent, waiving late fees)
- ▶ 2. Hostile living environment: This type of harassment occurs when there is continued harassment or unwanted attention from a housing provider (i.e. constant sexual comments, unwanted touching)

## Gender Protection and Domestic Violence

- ▶ Victims of Domestic Violence are protected under the gender protection of the FHA.
- ▶ This enables victims to secure housing while being safe from violence.
- ▶ This protection includes the right to end a lease agreement without penalty.
- ▶ Survivors may have claims under the FHA when they are evicted, denied housing, or otherwise discriminated against due to DV they have experienced.

## Examples of Discrimination

- ▶ A landlord (or a municipally controlled housing agency) denies housing to a female DV victim based upon a gender-biased belief that women always go back to their abusers.
- ▶ Female DV survivor was evicted because her abuser broke into her home, but a male tenant was not evicted when someone burglarized his unit for non-DV reasons.
- ▶ A municipality enacts a nuisance law that encourages or requires landlords to evict tenants who make frequent calls to the police, and this ordinance targets DV related crimes for penalty or is disproportionately enforced against DV victims. If DV victims are penalized under such a law both the landlord and the city may be subject to FHA claims.

## More Examples

- ▶ Housing providers must agree to terminate a lease without penalty if a DV victim feels unsafe in their unit.
- ▶ Housing providers must not give lease violations or fines to DV victims for calling the police.

## Persons with Disabilities - Definition

- 1) A **physical or mental impairment**
- 2) which **substantially limits**
- 3) one or more **major life activities**

*does not include current, illegal use of or addiction to a controlled substance, but does include someone in recovery.*

## Reasonable Modifications

- Building a ramp.
- Installing grab bars in the restroom.
- Replacing carpet with accessible flooring.
- Leveling doorway thresholds.

## Reasonable Accommodations

- Granting an exception to a No-Pet Rule for a tenant who needs a companion animal.
- Granting a transfer to a first floor unit.
- Changing the rent due date.
- Assigning a parking space closer to a disabled tenant's unit.

## Rights & Responsibilities When an Accommodation Request is Made

- Is LL responsible for seeking out who needs an accommodation?
- Can LL ask what the disability is?
- Does LL have to waive the rule for everyone?
- Can LL request a letter from your doctor?
- Can LL treat the tenant differently after the request is made?
- Can LL charge the tenant extra rent or security deposit for the accommodation?
- Can LL require the tenant to submit the request in writing?

### **Filing a Fair Housing Complaint**

- ▶ The North Texas Fair Housing Center can process your complaint by phone or in person. You can also file a complaint through our website.
- ▶ U.S. Department of Housing and Urban Development
- ▶ Texas Workforce Commission Civil Rights Division


**THANK YOU**

**[www.northtexasfairhousing.org](http://www.northtexasfairhousing.org)**

# Texas Landlord-Tenant Law

## Plano Fair Housing Symposium

James Esh  
Managing Attorney, McKinney office  
Legal Aid of NorthWest Texas




### What we're talking about:

1. Where to look for the rules
2. Apartment hunting and deposits
3. Moving in and living in unit
4. End of lease
5. Repairs
6. Evictions
7. Finding Legal Aid

### 1. Where to Look for "Renting Rules"

- The Lease
  - The agreement between the parties
  - Enforced as a **contract**
- Texas Property Code
  - Law; "background" rules
- Sometimes special rules for public and subsidized housing

### TIP: Read your lease and keep a copy in a safe place



### 2. Apartment Hunting and Deposits

- Rental selection criteria from landlord
- Filling out rental application
- Deposits and fees
  - Application Fee
  - "Hold" Deposit
  - Security Deposits

### Different Types of Deposits and Fees

- Application Fee
  - Mostly non-refundable
- "Hold" Deposit
  - Non-refundable if approved and don't move in; Refundable if not approved
- Security Deposits
  - Refundable at end of lease—if no violations



- Take pictures at move in and keep copy of lease
- During tenancy, any "side- agreements" should be in writing
- **MUST ALWAYS PAY RENT** and keep proof

- Always pay rent
  - Can be evicted for paying late or paying only part of rent
  - Cannot force repairs if you are not paid up
- "Grace Period"?? Lots of myths but probably not!

6. **Rent and Charges.** You will pay \$\_\_\_\_\_ per month for rent, in advance, with/without demand **[check one]**:  
☐ at the onsite manager's office  
☐ through our online payment site  
☐ at \_\_\_\_\_

Prorated rent of \$\_\_\_\_\_ is due for the remainder of the \_\_\_\_\_ day of \_\_\_\_\_  
**[check one]**: ☐ 1st month **or** ☐ 2nd month, on the \_\_\_\_\_ day of \_\_\_\_\_  
 (month) (year)

***You must pay your rent on or before the 1st day of each month (due date). There is no grace period for the payment of rent, and you agree that not paying rent on or before the 1st day of each month is a material breach of this Lease. Cash is not acceptable without our prior written permission. You cannot withhold or offset rent unless authorized by law.*** We may, at our option, require at any time that you pay all rent and other sums in one single payment by any method we specify. If you don't pay all rent on or before the \_\_\_\_\_ day of the month, you'll pay the reasonable initial late charge of \$\_\_\_\_\_ plus the reasonable daily late charge of \$\_\_\_\_\_ per day after that date until the amount due is paid in full. You agree that these late charges are a reasonable estimate of uncertain damages to you that are incapable of precise calculation and result from late payment. Daily late charges are not subject to a maximum amount.

(due date). There is no grace period for the payment of rent, and you agree not to pay rent on or before the 1st of each month. **Material breach of this Lease. Cash is not acceptable without our prior written permission. You cannot withhold or offset rent unless authorized by law.** We may, at our option, require at any time that you pay all rent and other sums in one single payment by any method we specify. If you don't pay all rent on or before the \_\_\_\_\_ day of the month, you'll pay the reasonable initial late charge of \$\_\_\_\_ per day, plus the interest on the amount due is paid in full. You agree that these late charges are a reasonable estimate of uncertain damages to us that are incapable of precise calculation and result from late payment of rent. Daily late charges cannot exceed 15 days for any single month's rent. We won't impose late charges until at least the third day of the month. You'll also pay a charge of \$\_\_\_\_ for each returned check or rejected electronic payment, plus interest on the amount due. **Default.** If you don't pay rent on time, you'll be in default and subject to all remedies under state law and this Lease.

- Will cost you\*\*
  - Fees in lease
  - Rent for any “notice period” required
  - Maybe additional rent due under lease?
- Possibly reported to “tenant tracker” services

### Reasonable accommodations for a physical or mental disability

- To ensure equal access to housing, landlord must:
  - let you make reasonable physical accommodations
  - make reasonable accommodations to policies/procedures

### 4. At the end of the lease

- Tenant and landlord must agree to a new lease; either one can choose to walk away at end of lease
- New lease can be for any amount—**no limit** on landlord increases
- Give proper notice if you want to leave
- Take pictures at move out

### Renewals and Month-to-Month Leases

- If no new lease and no termination, lease goes “month- to-month”
- More flexibility but less tenant protection—Tenant probably wants new lease
- At any time landlord could terminate or raise rent – **NO LIMIT ON INCREASE**

### 5. Seeking Repairs & Forcing Repairs

- Must first follow the steps, then exercise rights
  - Tenants have to jump through some hoops
  - Can only **FORCE** repairs if condition materially affects health and safety

### TIP: Request repairs in writing

- Must follow the steps to force repairs
  - Be current on rent
  - Give 2 written notices of problem (or 1 if Certified Mail RRR) – while current on rent!

### TIP: Know what you want to do next

- Tenant’s remedies – if health or safety risk
  - Terminate lease, or
  - Court order for repairs
  - Court order for rent reduction
  - Court ordered money penalties
  - “Repair and Deduct” - **IT’S A TRAP**

## 6. Evictions

- Usually for non-payment of rent; also for rule violations or “holding over” after lease ends
- Tenant must show **legal** defense to eviction
- Landlord not making repairs is not a legal defense to non-payment

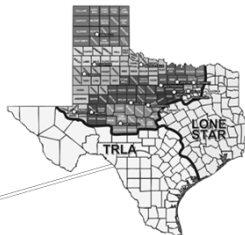
## Eviction Steps

- Landlord first gives Notice to Vacate, then files in Court
- Tenant served by constable with Petition
- Court Date – must show up!
- Get any agreements not to evict in writing, signed by landlord

## Evictions Appeals

- Tenant has 5 days to move out or appeal
- Appeal gets new trial in higher court
- May be able to appeal without paying bond
- Non-payment of rent eviction? Must pay one month's rent to Court to stay in unit during appeal

## Legal Aid of NorthWest Texas



- McKinney Office
  - 972-542-9405
  - Ext. 1 for intake information
  - 901 N. McDonald St., #702, McKinney, TX 75069
- Intake Hotline
  - 888-529-5277

## Other Resources:

- [texastenant.org](http://texastenant.org)
- [texaslawhelp.org](http://texaslawhelp.org)