

GENDER BASED DISCRIMINATION IN THE #METOO ERA: SEXUAL HARASSMENT IN HOUSING

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#METOO IN HOUSING?

- Approx 5-10% of fair housing complaints based on sex in 2016
 - Underreported
- Dept of Justice initiative
- Media attention in the wake of #metoo
- Especially prevalent in tight housing markets among vulnerable women

RELEVANT SECTIONS OF FHA

- Discriminatory refusal to rent or to “otherwise make unavailable” – 42 USC § 3604(a)
- Discriminatory terms and conditions – 42 USC § 3604(b)
- Discriminatory statements – 42 USC § 3604(c)
- Interference, threats, coercion – 42 USC § 3617

A FEW IMPORTANT CASES

- *Shellhamer v. Lewallen*, 1 Fair Housing – Fair Lending ¶ 15,472 (ND.Ohio 1983), *affd* without opinion, 770 F.2d 167 (6th Cir. 1985)
- *West v. DJ Mortgage, LLC*, 271 F.Supp.3d 1336 (N.D. GA 2017) – quotes HUD regs; strong analysis of vicarious liability
- *Beliveau v. Caras*, 873 F.Supp. 1393, 1398 (C.D. CA 1995)
- *Krueger v. Cuomo*, 115 F.3d 487 (7th Cir. 1997)
- *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir.1996)
- *Honce v. Vigil*, 1 F.3d 1085, 1088-90 (10th Cir.1993)

HUD'S 2016 HARASSMENT REGS

[HTTPS://WWW.FEDERALREGISTER.GOV/DOCUMENTS/2016/09/14/2016-21868/QUID-PRO-QUO-AND-HOSTILE-ENVIRONMENT-HARASSMENT-AND-LIABILITY-FOR-DISCRIMINATORY-HOUSING-PRACTICES](https://www.federalregister.gov/documents/2016/09/14/2016-21868/quid-pro-quo-and-hostile-environment-harassment-and-liability-for-discriminatory-housing-practices)

- “One's home is a place of privacy, security, and refuge (or should be), and harassment that occurs in or around one's home can be far more intrusive, violative and threatening than harassment in the more public environment of one's work place.” (HUD's summary of new rule, 81 FedReg 63055, 2016)

24 CFR § 100.600 ET SEQ

- Adds harassment to list of prohibited practices in all phases of housing, based on any protected status
 - 100.60 – in making housing available, including acquisition and evictions
 - 100.65 – terms and conditions, e.g. during tenancy
 - 100.80 – lying about availability because of response to sexual advances

QPO -- 24 CFR § 100.600 (A)(1)

- *Quid pro quo harassment.* Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to [all aspects of housing]

HOSTILE ENVIRONMENT

24 CFR §100.600(A)(2)

- “Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with [any aspect of housing]”
 - Based on “totality of circumstances”
 - May consider the nature of the conduct, the context, the severity, scope, frequency, duration, location, and the relationships of the persons involved.
- “evaluated from the perspective of a reasonable person in the aggrieved person's position.”

MORE FROM HUD REGS

- Harassment can be written, verbal, or other conduct, and **does not** require physical contact.
- A **single incident** of harassment may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment, or evidences a quid pro quo.

PROTECTED CLASSES UNDER FHA INCLUDE GENDER IDENTITY ?

- “HUD reaffirms its view that under the Fair Housing Act, discrimination based on gender identity is sex discrimination. Accordingly, quid pro quo or hostile environment harassment in housing because of a person's gender identity is indistinguishable from harassment because of sex.” 81 Fed.Reg. 63058

STATE LAWS

- FEHA, Gov't Code § 12927, 12955
 - Substantially same coverage as FHA
- Unruh Act, Civil Code § 52
 - Some case law has held that Unruh prohibits sex harassment
- Civil Code § 51.9
 - In a professional relationship, including LL or prop manager
 - Sexual advances that were unwelcome and severe or pervasive
 - Plaintiff suffered injury
 - Unruh damages

DOES TRAINING WORK?

- The evidence is mixed
 - If Man = power: little/no benefit from training
 - Is it a behavior problem or a knowledge problem?
- Emphasis on limiting employer liability is ineffective way to prevent harassment
- Organizational culture matters more
 - Valuing and rewarding ethical behavior
 - Treating women with respect and equality
 - Bystander training