

# Harassment & Fair Housing



RENEE WILLIAMS  
NATIONAL HOUSING LAW PROJECT

CRLA ALL-STAR BREAK ANNUAL TRAINING  
JULY 24, 2017

**HOUSING JUSTICE**

National Housing Law Project

# Topics

2

- HUD's 2016 Rule
  - Harassment
  - FHA liability
- Harassment and FEHA

# Harassment and Fair Housing

3



# HUD's Final Rule Regarding Harassment & Fair Housing

4

- Final rule issued in 2016
  - 81 Fed. Reg. 63,054 (Sept. 14, 2016)
- Two parts of the rule:
  - Harassment under the Fair Housing Act
  - Fair Housing Act liability *generally* (not just related to harassment)

## Harassment in Housing is Particularly Invasive

5

- “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.” 81 Fed. Reg. at 63,055.

# HUD Rule: Harassment

6

- Applies to **all** protected classes under the Fair Housing Act
  - Race, color, religion, sex, familial status, national origin, or disability
- A single incident of harassment can violate the Fair Housing Act.
  - 24 C.F.R. § 100.600(c)
- Harassment:
  - Does not require physical contact. 24 C.F.R. § 100.600(b)
  - Includes written, verbal, and other conduct. 24 C.F.R. § 100.600(b)

# HUD Rule: Harassment (cont.)

7

- HUD Rule doesn't define the term "harassment," but instead defines two types of harassment:
  - Quid pro quo harassment
  - Hostile environment harassment

# Quid Pro Quo Harassment

8

- An unwelcome request or demand that makes submission to the request or demand a condition of accessing or maintaining housing, because of a protected characteristic.
- Quid pro quo harassment can still occur even if a person agrees to comply with an unwelcome request or demand.
- *See* 24 C.F.R. § 100.600(a)(1).



# Example of Quid Pro Quo Harassment

9

- “A Central Valley landlord threatened to evict a married couple unless the wife would have sex with him, claiming that they were powerless to do anything to him since he could report them to [Immigration and Customs Enforcement].”

- AB 291, Senate Rules Committee Floor Analysis (2017)

# Hostile Environment Harassment

10

- Unwelcome conduct that is “sufficiently severe or pervasive” such that it interferes with accessing or maintaining housing, because of a protected characteristic
- HUD rule establishes a totality of circumstances test for hostile environment harassment.
  - 24 C.F.R. § 100.600(b)(2)(i)

## Totally of Circumstances – 24 C.F.R. § 100.600(a)(2)(i)

- Factors to be considered to determine if hostile environment harassment exists (non-exhaustive):
  - Nature of conduct
  - Context of incident(s)
  - Severity, frequency, scope, location, and duration of conduct
- Physical or psychological harm not required to prove hostile environment harassment, but evidence of such harm may be relevant in determining if a hostile environment existed and for damages.
- Standard is that of “a reasonable person in the aggrieved person’s position.”

## Example of Hostile Environment Harassment Because of Sex

12

- *Salisbury v. Hickman*, 974 F. Supp. 2d 1282 (E.D. Cal. 2013)
  - ✦ Mobile home park resident
  - ✦ In one incident, property manager made unwelcome remarks and engaged in unwanted touching; cornered resident against the side of her home.
  - ✦ In another incident, property manager entered her kitchen and pinned her against a counter.
  - ✦ Court denied defendant's motion for summary judgment.

# Fair Housing Act Liability

13



# Direct Liability

14

- **Direct liability** for:
  - One's own conduct resulting in a discriminatory housing practice;
  - One's failure "to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct"; and
  - One's failure to "to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it."
- Taking "prompt action" cannot include penalizing or otherwise harming the person who alleges the discriminatory housing practice.
  - Example: A landlord cannot evict a tenant who is the subject of ongoing racial harassment as a means of addressing the harassment.
- 24 C.F.R. § 100.7(a).

# Direct Liability for Third-Party Conduct

15

- Power “to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person’s control or any other legal responsibility the person may have with respect to the conduct of such third-party.”
- 24 C.F.R. § 100.7(a)(1)(iii).

# Vicarious Liability

16

- **Vicarious liability** for:
  - A discriminatory housing practice “by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law.”
- 24 C.F.R. § 100.7(b).



# Harassment and FEHA

17



# Fair Employment & Housing Act

18

- It is unlawful for “the owner of any housing accommodation to discriminate against or harass any person because of” membership in a FEHA-protected class. Cal. Gov. Code § 12955(a).
  - Regulations regarding harassment in housing under FEHA are forthcoming.
- It is also unlawful for an owner to “harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation” Cal. Gov. Code § 12955(f).
  - Not intended to delay UD.

# Thank You!

19

Renee Williams

[rwilliams@nhlp.org](mailto:rwilliams@nhlp.org)

(415) 546-7000, ext. 3121

