

# 2023 Broker Summit

## What's Old Is New Again



Juana Watkins  
General Counsel



Advertising  
&  
Fair Housing

# Fair Housing – Many layers, Many Players

- Federal Fair Housing Act - HUD
- Florida Fair Housing Act - FCHR
- Local Ordinances – Geographic Competency
- Code of Ethics
- Civil, administrative, professional standards

# FHA Greatest Hits

- ***Source of Income***
- ***Screening Tenants for Criminal History***
- Website Accessibility
- Assistance Animal

# Fair Housing Act: An Overview

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- Discrimination against a protected class can take many forms
  - it's not just a matter of avoiding certain words
    - ***Denying or limiting services***
    - Setting different terms or conditions (requiring preapproval, identification)
    - ***Advertising a preference, limitation, or discrimination*** (no children)
    - Steering based on racial composition of a neighborhood
    - Using coded language to do any of the above (schools, crime)

# Fair Housing Act: Testers

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- Used by multiple organizations, including:
  - U.S. Department of Justice
  - Fair housing enforcement organizations
  - Attorneys and others
- Testers pose as clients or customers to test your compliance with the Fair Housing Act
- Here are a few examples
  - Paired testers different races or national origins with similar financial backgrounds and service requests
  - A person with a criminal conviction asks whether automatically disqualified
  - Person with a handicap requests an accommodation

**Be prepared to respond to people who ask inappropriate questions**

**\*NAR RISK MANAGEMENT MEETING comment –**

**“FHA testing will not cease anytime soon”**

# DOJ Use of Testers



THE UNITED STATES  
DEPARTMENT of JUSTICE

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## FAIR HOUSING TESTING PROGRAM

At the Department of Justice, the Housing and Civil Enforcement Section of the Civil Rights Division brings suit on behalf of the United States to enforce the Fair Housing Act, which prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, and familial status. The Act authorizes the Department to bring suits where investigations yield evidence of a pattern or practice of illegal housing discrimination.

In 1991, the Civil Rights Division established the Fair Housing Testing Program within the Housing and Civil Enforcement Section, which commenced testing in 1992. Testing refers to the use of individuals who – without any bona fide intent to rent or purchase housing, purchase a mortgage or vehicle loan, or patronize a place of public accommodation – pose as prospective renters, borrowers, or patrons for the purpose of gathering information. This information may indicate whether a provider is complying with federal civil rights laws. The primary focus of the Section's Fair Housing Testing Program has been to identify unlawful housing discrimination based on race, national origin, disability, or familial status in violation of the Fair Housing Act. The Section also has responsibilities to enforce Title II of the Civil Rights Act of 1964, the nation's public accommodations law; the Equal Credit Opportunity Act, which prohibits discrimination in credit; and the Servicemembers Civil Relief Act, which provides protections for military members as they enter active duty. The Fair Housing Testing Program also

The Fair Housing Testing Program employs various means to accomplish testing in local communities, including contracts with private fair housing organizations and by using non-attorney Department employees throughout the country. The Department employees are volunteers who have been trained to participate as testers. Using these various means, the Fair Housing Testing Program conducts numerous investigations simultaneously at any given time.

Since 1992, the Department of Justice has resolved 109 pattern and practice testing cases with evidence directly generated from the Fair Housing Testing Program, leading to the recovery of more than \$14.3 million, including over \$2.3 million in civil penalties and over \$12 million in other damages. The vast majority of testing cases filed to date are based on testing evidence that involved allegations of agents misrepresenting the availability of rental units or offering different terms and conditions based on race, and/or national origin, and/or familial status.

The Department has demonstrated that testing can be a valuable tool to investigate housing, lending, and public accommodations market practices and to document illegal discrimination. The Fair Housing Testing Program has greatly enhanced the ability of the Department to identify and to challenge the discriminatory practices that persist in these industries.

Cases generated by the Fair Housing Testing Program are listed here.

<https://www.justice.gov/crt/housing-and-civil-enforcement-section-cases-1#testing>

Office of Fair Housing  
and Equal Opportunity

**Table 1.3: HUD and FHAP Case Outcomes**

Case Completion Type	# HUD Cases	% HUD Cases	# FHAP Cases	% FHAP Cases	# Total Cases	% Total Cases
Administrative Closure	254	13.9%	514	8.7%	768	10.0%
Charged or FHAP Caused	36	2.0%	453	7.7%	489	6.3%
Conciliated	645	35.3%	1,125	19.1%	1,770	23.0%
DOJ Closure	6	0.3%	-	-	6	0.1%
No Cause	744	40.7%	3,391	57.7%	4,135	53.7%
Withdrawn with Resolution	143	7.8%	394	6.7%	537	7.0%
<b>Total</b>	<b>1,828</b>	<b>100.0%</b>	<b>5,877</b>	<b>100.0%</b>	<b>7,705</b>	<b>100.0%</b>

Source: HUD Enforcement Management System (HEMS)  
Current as of September 30, 2020)

**Table 1.2: Complaints Filed by HUD and FHAP Based on Issues**

	FY 2020 Complaints (of 7,575 total filed complaints)	
Issue	Number	Percentage
Discriminatory refusal to sell	118	1.6%
Discriminatory refusal to rent	1,848	24.4%
Discriminatory advertising, statements, and notices	775	10.2%
False denial or representation of availability	153	2.0%
Blockbusting	2	0.0%
Discriminatory financing (includes real estate transactions)	153	2.0%
Discriminatory brokerage service	41	0.5%
Discriminatory terms, conditions, privileges, or services and facilities	5,689	75.1%
Failure to comply with poster regulations	1	0.0%
Refusing to provide insurance	1	0.0%
Steering	57	0.8%
Redlining	4	0.1%
Otherwise deny or make housing unavailable	1,452	19.2%
Other discriminatory acts	452	6.0%
Discriminatory acts under Section 818 (coercion, etc.)	1,908	25.2%
Using ordinances to discriminate in zoning and land use	20	0.3%
Non-compliance with design and construction requirements (disability)	60	0.8%
Discriminatory acts under Section 901 (criminal)	5	0.1%
Failure to meet senior housing exemption criteria	0	0.0%
Failure to permit reasonable modification	227	3.0%
Failure to permit reasonable accommodation	3,268	43.1%
<b>Total Filed Cases</b>	<b>7,575</b>	<b>100.0%</b>

Office of Fair Housing  
and Equal Opportunity

**Table 3.2: HUD and FHAP Complaints by State, FY 2020**

Table 3.2 shows the HUD and FHAP complaints by state, FY 2020.

	Number of HUD Complaints	Number of FHAP Complaints	Total Number of Complaints
Alabama	71	N/A	71
Alaska	7	N/A	7
Arizona	20	232	252
Arkansas	6	42	48
California	151	726	877
Colorado	25	117	142
Connecticut	21	110	131
Delaware	1	28	29
District of Columbia	1	40	41
Florida	80	612	692
Georgia	230	N/A	230
Hawaii	15	45	60
Idaho	27	N/A	27
Illinois	4	286	290
Indiana	20	186	206
Iowa	2	164	166
Kansas	68	22	90
Kentucky	4	124	128
Louisiana	5	28	33
Maine	3	43	46
Maryland	20	130	150
Massachusetts	32	236	268
Michigan	12	261	273
Minnesota	57	18	75
Mississippi	45	N/A	45
Missouri	162	N/A	162
Montana	10	N/A	10
Nebraska	5	83	88

	Number of HUD Complaints	Number of FHAP Complaints	Total Number of Complaints
Nevada	42	N/A	42
New Hampshire	30	N/A	30
New Jersey	18	143	161
New Mexico	18	N/A	18
New York	41	371	412
North Carolina	13	130	143
North Dakota	10	28	38
Ohio	22	366	388
Oklahoma	32	N/A	32
Oregon	60	1	61
Pennsylvania	48	179	227
Puerto Rico	25	N/A	25
Rhode Island	4	48	52
South Carolina	6	151	157
South Dakota	16	N/A	16
Tennessee	38	140	178
Texas	45	384	429
Utah	12	76	88
Vermont	N/A	24	24
Virgin Islands	3	N/A	3
Virginia	6	163	169
Washington	3	123	126
West Virginia	3	19	22
Wisconsin	86	N/A	86
Wyoming	11	N/A	11
<b>Total</b>	<b>1,696</b>	<b>5,879</b>	<b>7,575</b>

Source: HUD Enforcement Management Systems (HEMS)  
Current as of September 30, 2020

# The Florida Fair Housing Act

## Florida Commission on Human Relations



### History of the Florida Commission on Human Relations

The Florida Legislature created the Florida Commission on Human Relations in 1969 to enforce the Florida Civil Rights Act and address discrimination issues through education, outreach and partnerships. The Commission has investigated and closed more than 74,000 cases and has negotiated close to \$13 million in settlement amounts for more than 1,500 people through its mediation services.

## Cases by Protected Class

### Housing Cases Resolved by Basis Type - FY 2017-18

<b>Disability</b>	<b>102</b>
<b>Race</b>	<b>36</b>
<b>Familial Status</b>	<b>22</b>
<b>National Origin</b>	<b>17</b>
<b>Sex</b>	<b>8</b>
<b>Retaliation</b>	<b>1</b>
<b>Color</b>	<b>0</b>
<b>Religion</b>	<b>5</b>
<b>Total Bases:</b>	<b>278</b>

# Case example

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**Ron DeSantis**  
*Governor*

*State of Florida*  
**Florida Commission on Human Relations**

*An Equal Opportunity Employer • Affirmative Action Employer*

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020  
(850) 488-7082 / FAX: (850) 487-1007

<http://fchr.state.fl.us>

*United in One Goal: Equal Opportunity and Mutual Respect*



**Darrick McGhee**  
*Chair*

**Cheyenne Costilla**  
*Executive Director*

February 25, 2022

Dear RESPONDENT:

The Florida Commission on Human Relations (FCHR) is committed to processing your housing discrimination complaint as fairly and quickly as possible. We have found that settling cases through Conciliation is an effective way to achieve that goal. Conciliation is a settlement that may be reached between the Complainant and Respondents at any time during the investigative process. Because we are a neutral party in this process, our focus is to assist Complainants and Respondents in finding win-win solutions that resolve the issues raised in your complaint and ensure appropriate relief in the public interest.

# Case example

## TERMS:

payment in the amount of twenty thousand dollars (\$20,000.00), which is inclusive of all reasonable attorney fees, damages, and costs, including, but not limited to: ongoing compliance monitoring, reinspection, enforcement, education, reporting, and record keeping.

[REDACTED] must attend an educational program on the Fair Housing Act, including discriminatory behavior, within sixty (60) days.

- The training should be independent of [REDACTED]
- The name of the program and instructor's contact information shall be shared in writing with Florida Fair Housing Organization, Inc.
- [REDACTED] or [REDACTED], on behalf of [REDACTED] shall confirm in writing to Florida Fair Housing Organization, Inc that [REDACTED] has completed an educational program.
- Any expenses associated with the training shall be borne by [REDACTED] or [REDACTED].

[REDACTED] and [REDACTED], on behalf of all of its employees, agents, and servants, agree that to not discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any prospective buyer or renter due to familial status, race, color, national origin, sex, religion, handicap, or disability.

[REDACTED] and [REDACTED], on behalf of all of its employees, agents, and servants, agree not to make, print, or publish any notice, statement, or advertisement, with respect to the sale



Source of Income

# Source of Income Lawsuits

	<b><u>Date Filed</u></b>	<b><u>Court</u></b>	<b><u>Attorney</u></b>	<b><u>Plaintiff Party</u></b>
3				
4	11/13/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
5	11/13/22	Florida Circuit Court	Social Justice Law Collective, PLC / Shawn A. Heller, Esq.	Christopher Benjamin
6	11/12/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
7	11/12/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
8	11/12/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
9	11/12/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
10	11/10/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
11	11/9/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
12	11/9/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
13	11/9/22	Florida Circuit Court	Shawn A. Heller, Esq / Social Justice Law Collective, PL	Christopher Benjamin
14	10/9/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
15	10/9/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
16	10/9/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
17	10/9/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
18	10/9/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
19	10/2/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
20	10/1/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
21	9/30/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
22	9/30/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
23	9/30/22	Florida Circuit Court	Shawn Heller, Esq. / Social Justice Law Collective, PL	Christopher Benjamin
24	9/30/22	Florida Circuit Court	Social Justice Law Collective, PL / Shaw A. Heller, Esq.	Christopher Benjamin
25	9/30/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
26	9/30/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
27	9/30/22	Florida Circuit Court	Social Justice Law Collective, PL / Shawn A. Heller, Esq.	Christopher Benjamin
	in	+		

# Source of Income

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Source of income is not a protected class under the Federal Fair Housing Act (FHA). However, some states and local municipalities offer legal protections for housing voucher holders.

- Refusing to rent to an otherwise qualified individual based on their source of income;

- Offering different terms of conditions to rent using a voucher or other lawful source of income;

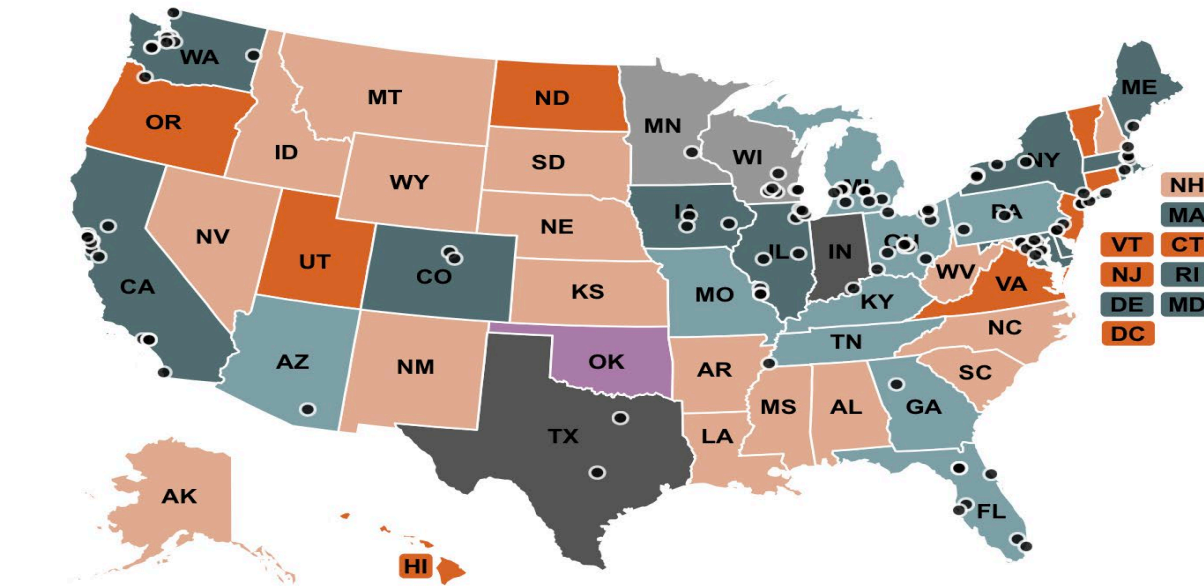
- Limiting access to facilities, services, repairs or improvements based on someone's source of income; or

- Advertising preferences or limitations based on one's source of income.

Deals with HOW the tenant pays the rent.

With vouchers it is not so much ability to pay, so income guidelines will be a problem. i.e. 3x rent

# Source of Income Lawsuits



Credit – National Multifamily Housing Council

# Source of Income Lawsuits

## Hillsborough County

Hillsborough County Code of Ordinances, Part A, Chapter 16.014, Section IV Tenant's Bill of Rights, Source of Income Anti- Discrimination And Notice Of Late Fees Ordinance (Ord. No. 21-7 , § 1, 3-5-2021).

It shall be unlawful and is hereby prohibited for any Person:

(1) To refuse to rent, show or lease, to refuse to negotiate for the rental of, or otherwise to make unavailable or deny, a Rental Unit to any Tenant because of that Tenant's Lawful **Source of Income**, or because of the Tenant's status with regard to a public assistance program, or because of any requirements of a public assistance program.



Screening Tenants

Can I deny a  
tenant with  
a criminal  
history?  
Maybe...It  
depends

- April 4, 2016 HUD's Office of General Counsel issued **guidance** on the application of Fair Housing Act Standards to the use of criminal records by providers of housing.
- 10 page memo
- 1/3 of Americans have a criminal record
- Criminal is not a protected class. Disparate impact on protected classes is the issue.
- The Fair Housing Act prohibits **both**:
  - intentional housing discrimination **and**
  - housing practices that have an unjustified discriminatory effect because of race, national origin or other protected characteristics.

# NAR list of best practices - DO

- Create ***tailored*** criminal history-based ***policies/practices***
- Exclude individuals based on criminal convictions that present a ***risk to resident safety or property***
- Consider the ***nature and severity*** of an individual's crimes
- Consider the ***amount of time*** that has passed
- Treat all applicants ***equally- the process***
- Conduct individualized assessments that take into account
  - age at the time of the conduct
  - evidence of good tenancy
  - before/after the conduct, and
  - rehabilitative efforts

# NAR list of worst practices — DO NOT

- Use criminal history as a ***pretext*** for unequal treatment
- Provide ***inconsistent explanations for denial*** of a tenant
- Create an exclusion based on ***arrest records alone***
- Create an overly ***broad or blanket exclusion*** of any person with any conviction
- Use ***comparable criminal history differently*** for individuals of a protected class (vs. non-protected class)
- Make ***exceptions for some individuals, but not others*** based on the individual's inclusion in a protected class

# A new face in Florida fair housing Florida Fair Housing Alliance, Inc.

## *WHERE DISCRIMINATION HAS NO HOME*

Here at Florida Fair Housing Alliance our goal is to lend accountability to the Fair Housing Act  
through investigatory testing to uncover discrimination in housing.



# Florida Fair Housing Alliance, Inc.

## Florida Fair Housing Alliance at a Glance

Florida Fair Housing Alliance knows that our strength lies not only in the words we stand by, but most importantly through the actions of our movement. Our Non-Profit Organization realized that by working together we could overcome our challenges much more efficiently, and that is why we ultimately decided to launch Florida Fair Housing Alliance..



Being incarcerated for a decade I had to expect many obstacles upon my return to society, however, one obstacle in particular was the reality that I could not get approved for housing and I was getting automatically denied over and over again like so many others. Frustrated at my situation, knowing the significant barrier in place with regard to housing and the countless lives being effected by discriminatory policies and practices it is imperative our Organization be born to breathe new life into the unfulfilled promises of the FAIR HOUSING ACT.

[Get in Touch](#)

# Florida Fair Housing Alliance, Inc.

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10. Despite making up a fractional percentage of the United States population in comparison to Whites, Hispanic individuals, for example, are **three times more likely** to be convicted *and* incarcerated than that of White individuals.<sup>3</sup>

11. Refusing to *even consider* an individual for tenancy if the individual has *any kind* criminal history and/or background – **as exemplified by the below discussed interaction between Mr. Williams and Defendants** – is discriminatory in effect, as it subjects Black and Hispanic individuals to differential treatment due to disproportionate rate at which Black and Hispanic individuals are arrested, convicted and otherwise incarcerated when compared to White individuals.

12. On November 16, 2020, in response to an online advertisement for the Dwelling published by Defendant-Agent, Mr. Williams contacted Defendant-Agent and inquired about renting the Dwelling.

13. Prompted by an expectation of equal treatment or, *at minimum*, fair consideration as a prospective tenant of the Dwelling, Mr. Williams asked Defendant-Agent what effect his (Mr. Williams') prior criminal history would have on the decision process. Much to the surprise of Mr. Williams, however, Defendant-Agent promptly informed Mr. Williams that Defendant-Owner,

# Florida Fair Housing Alliance, Inc.

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16. The Listing, of which Defendants have since *modified* and/or *scrubbed* from the internet, originally stated:

Come see this well maintained second floor studio condo unit that has a breathtaking view and is in a desirable gated community located close to shopping, schools and restaurants. The studio has been remodeled and the roof was replaced in the last few years. There is direct access to the Hillsborough River, designated outdoor boat storage area, fishing pier and some of the other amenities include community pool, security, gated entrance, playground, trash and racquetball. We are looking for potential tenants who have over a 620 credit score with little to no credit history issues, **no criminal background** and no previous rental evictions. To move in - there is a credit, criminal background check and rental history check. The application fee costs \$75 per adult over 18 years of age that will be moving in. It will be first, last and security deposit to move in totaling \$2100 and there are no pets allowed. To apply for this property please visit [baytobay.appfolio.com/listings](http://baytobay.appfolio.com/listings) then search the property address and click apply. The property is currently tenant occupied and requires at least a 24 hour notice. The tenant will be moving out on 12/7 and the unit will be available 12/15.



FHA Resources

# TAKEAWAY

## Advertisement is the new focus

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- As with all Fair Housing-related issues, Florida Realtors recommends all members use an abundance of caution in advertisements.
- As a starting point, any mention of a named protected class will very often be a problem.
- NO section 8
- NO criminal history
- Adult only
- Within walking distance to...
- Near a church

# Fair Housing Resource Page



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## ADVERTISING AND MARKETING

Discriminatory housing advertisements are illegal under the Fair Housing Act and other federal civil rights laws. Note that in HUD's housing programs, certain types of affirmative fair housing marketing are required by federal law.

- [What Is Prohibited?](#)
- [What Type of Affirmative Fair Housing Marketing May Be Required?](#)
- [Filing a Complaint](#)
- [Additional Resources](#)

### What Is Prohibited?

In nearly all housing, including private housing, public housing, and housing that receives federal funding, the Fair Housing Act prohibits the making, printing and publishing of advertisements that indicate a preference, limitation or discrimination because of race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin. The prohibition applies to publishers, such as newspapers and directories, as well as to persons and entities who place real estate advertisements in newspapers and on websites. It also applies where the advertisement itself violates the Act, even if the property being advertised may be exempt from the provisions of the Act. Other federal civil rights laws may also prohibit discriminatory advertising practices.

[Provide Feedback](#)

# Fair Housing Resource Page

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## GENERAL FAQ - HOUSING PROVIDERS AND FAIR HOUSING - FREQUENTLY ASKED QUESTIONS (FAQS) ON FAIR HOUSING ISSUES REGARDING EXCEPTIONS TO CREDIT CHECK POLICIES AND OCCUPANCY LIMITS, AFFIRMATIVE MARKETING, AND LANGUAGE ACCESS

[Download PDF Version](#)

The Fair Housing Act (“Act”) (42 U.S.C. §§ 3601-19) prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, and disability. Discrimination includes a failure to make a change, exception, or adjustment to a policy, practice, procedure, or service when such accommodation may be necessary for an individual with a disability to enjoy and use housing.<sup>1</sup> In addition to the requirements under the Act, there may be additional requirements for recipients of federal assistance from HUD.

### CREDIT CHECK POLICY EXCEPTIONS

**Q: If a landlord or property manager requires credit checks at admission, may the landlord or property manager forgo credit checks for specific groups?**

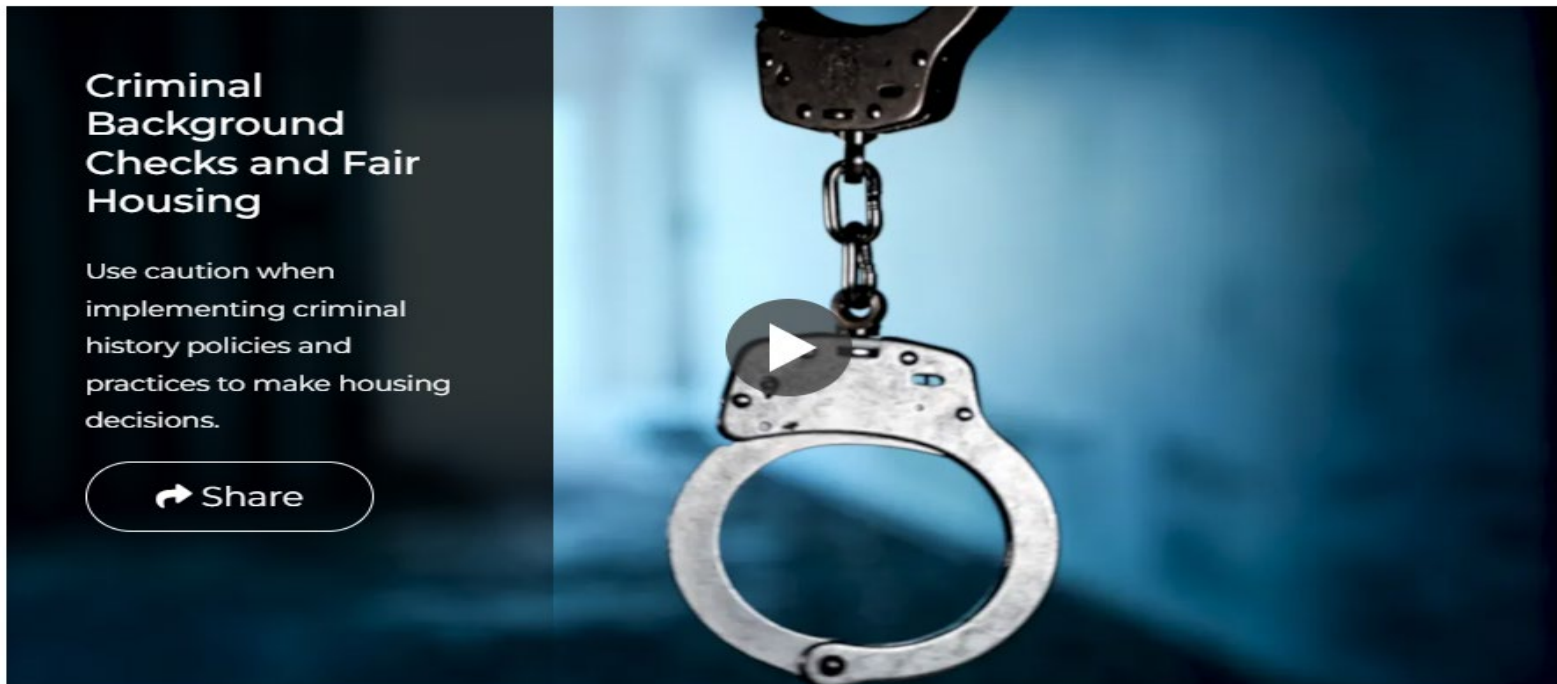
**A:** Yes. Landlords and property managers may generally forgo credit checks for any potential residents as long as they do not discriminate because of a protected characteristic under the Fair Housing Act, which prohibits discrimination in housing-related transactions on the basis of race, color, national origin, religion, sex (including gender identity or sexual orientation), familial status, and disability.<sup>2</sup> For example, if a credit check exception is made because of immigration status, the exception must apply equally to all those in the immigration status and not only to those of a certain national origin.

It is a best practice for landlords and property managers to review their credit check policies (and other background checks)

[Provide Feedback](#)

# A useful member tool

[Videos](#) > [Window to the Law](#)



## Window to the Law: Criminal Background Checks and Fair Housing

Nov 1, 2021 • 3:23 [Details](#) [Transcript](#)

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## Additional Resources

# A useful member tool



MAY 28, 2020

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## Fair Housing Act: Words Matter in Advertisements

By Joel Maxson

It's vital to review all advertisements, MLS entries and public-facing messages to make sure they comply with the Fair Housing Act and related laws that exist at all levels – local, state and federal. Realtors have been sued over accidental mistakes in the past.

# A useful member tool



JULY 1, 2020

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## New Emotional Support Animal Law: What's It All Mean?

By Meredith Caruso, Florida Realtors Law & Policy

This year, the Florida Legislature passed a bill affecting emotional-support animal guidance in Florida. The law creates new clarifications for emotional support animals. It's important to understand exactly what it does – and does not – do.

ORLANDO, Fla. – Last month, Florida Realtors [notified members of a new law](#), effective July 1, 2020, in relation to service animals. As mentioned in the article, the law was largely written to address the abuse of “online certificates,” which allege to be the gold standard in determining whether or not an animal is a “true” emotional support animal (ESA) or not.

This article breaks down the new law. More importantly, this hopefully helps Realtors understand what they can and cannot ask for if they're handling rentals for landlords – and what a tenant stating the need for an ESA should be ready to provide.

A big takeaway? It can be found in this part of the law:

“An emotional support animal registration of any kind, including, but not limited to, an identification card, patch, certificate or similar registration obtained from the internet is not, by itself, sufficient information to reliably establish that a person has a disability or a disability-related need for an



Text Messages

# This is still happening NOW

**“Lawsuit Filed Over  
‘Thousands’ of Text  
Messages Promoting  
Listings”**

- **REALTOR Magazine  
April 2019**

**“Fla. sees uptick in  
TCPA-violation lawsuits”**

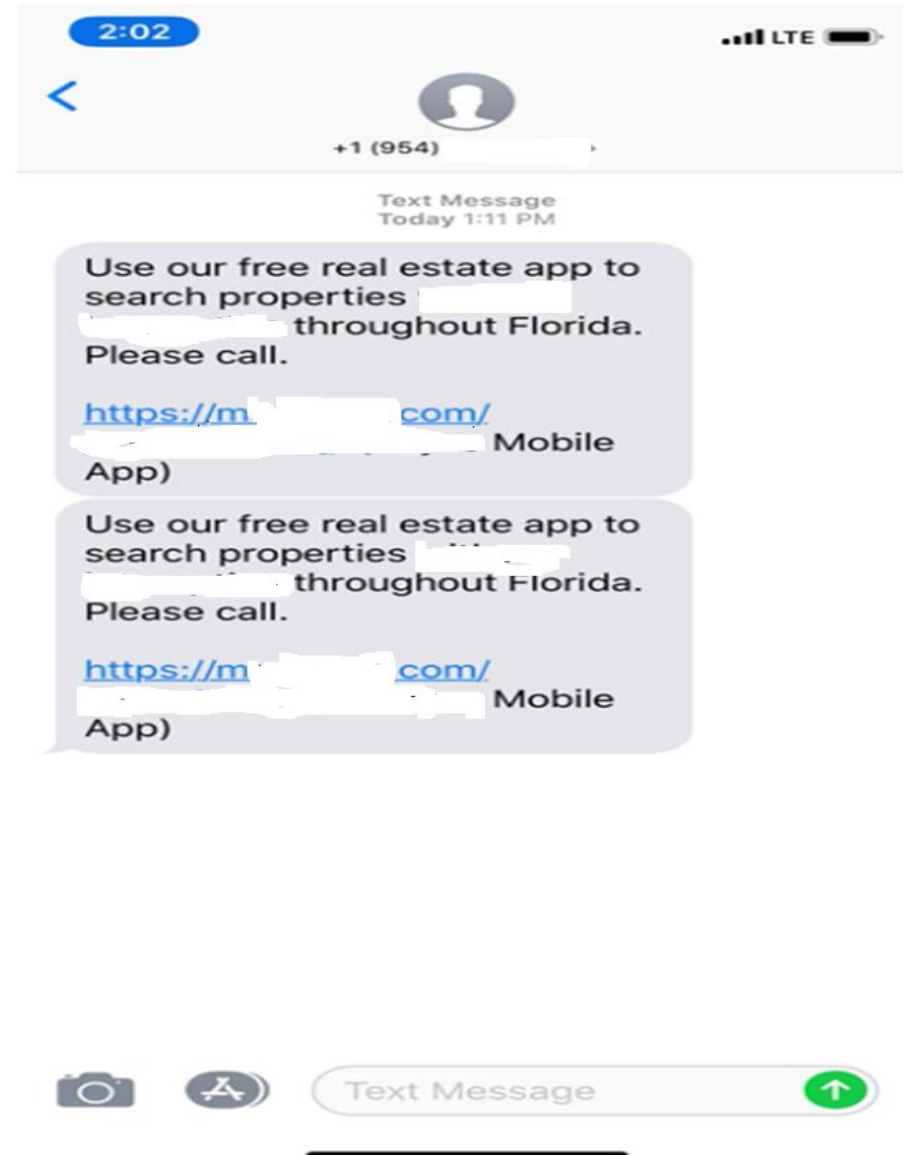
- **Florida Realtors  
April 2019**

# From a lawyer's website

## ***The Time to File Your Spam Text Messages Claim is Now***

- Did you know that there is an *ongoing mass action lawsuit against spam text messages* and ***the miscreants*** that send them? This suit is happening all across the country. You can hire a spam text messages lawyer to help you get in on this lawsuit. ***Each and every bit of spam that is sent to your phone is a violation of the TCPA*** ([Telephone Consumer Protection Act](#))...

# The Smoking Gun June 18, 2019



# Telephone Consumer Protection Act (TCPA)

Led to creation of the National Do Not Call Registry

Prohibits sending text messages using auto dialers without consumer consent and ability to opt out

Regulations also cover robocalls and faxes

Can be enforced by private lawsuit, FTC, FCC, or the state of Florida

Penalties of up to \$1,500 per violation

# Telephone Consumer Protection Act (TCPA)

Consent to receive texts sent using an auto dialer is required

- Telemarketing texts require signed consent; non-telemarketing texts require prior express consent

Best practices when obtaining consent

- Use clearly stated consent forms and keep a record
- If verbal consent is used for non-telemarketing texts, follow up with written confirmation
- Include consent language on forms

# Additional Protections under the Florida Mini TCPA

- The law defines **telephonic sales calls** as "a telephone call, text message, or voicemail transmission to a consumer **for the purpose of soliciting a sale of any consumer goods or services**, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes."
- No calls before 8:00 a.m. or after 8:00 p.m. local time **in the time zone of the person you call**. Remember Florida has two time zones, Eastern and Central.
- No more than three phone calls can be made during a 24-hour period, **regardless of the phone number used to make the call**. There is no maximum in federal law.
- No solicitation phone calls, including calls made through automated dialing or recorded messages, can be made **without the prior express written consent of the person you call**.
- Florida law defines auto-dialer more broadly than the TCPA to include "an automated system for the selection or dialing of telephone numbers or the playing of a recorded message."
- Evaluate your current dialing system, **including CRMs**, to determine whether their current dialing system qualifies as an auto-dialer under this new law.
- Random or sequential number generation capability is not part of the Florida's Mini-TCPA auto-dialer definition. Systems with this feature may still fall within Florida's broad definition.
- You cannot intentionally conceal your name and telephone number or use technology that displays a different caller identification number than the number.

Questions?  
Thank you!

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