



**pennsylvania**

HUMAN RELATIONS COMMISSION

# Won't You Be My Neighbor?

Neighbor-to-Neighbor Harassment under Housing Laws

Lyle Wood: Regional Director, Pittsburgh Regional Office, PHRC



Fair Housing in  
Pennsylvania —

It's Your Right.

# Training Goals

1. Provide an overview of the Act and its corresponding sections
2. Discuss Neighbor-to-Neighbor harassment under the FHA
3. Investigation of Neighbor Harassment
  - (a) Evaluating a Case
  - (b) Evaluating Defenses
4. Answer your questions

# ▶ Three approaches to Harassment Claims

## 1. Hostile Housing Environment

- § 3604(b) of FHA
- Section 5(h)(3) of PHRA

## 2. Discriminatory Statements

- § 3604(c) of FHA
- Section 5(h)(5) of PHRA

## 3. Interference

- § 3617 of FHA

# Hostile Housing Environment

Under the federal Fair Housing Act, it is illegal to:

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

42 USC § 3604(b)

# PHRA Corollary

Illegal for (a) for any person . . . .

(3) to Discriminate against any person . . . .

(h) in the terms or conditions of selling or leasing any housing accommodation or commercial property or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any housing accommodation or commercial property.

# ▶ PHRA Definition of “Person/s”

## Section 4. (a)

The term “person” includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers. It also includes but is not limited to, any owner, lessor, assignor, builder, manager, manager, broker, salesman, agent employer, independent contractor, lending institution and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and commissions thereof.

# ▶ Hostile Housing Claim Elements

- **Conduct was unwelcome;**
- **Conduct was because of a protected class;**
- **Conduct was sufficiently severe or pervasive to alter the conditions of housing; and**
- **Some basis to find particular defendant liable for the conduct (more on this later)**



# Discriminatory Statements

- (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

42 USC § 3604(c)

# PHRA Corollary

Section 5. Unlawful for (a) for any person to . . .

h (5)

Print, publish or circulate any statement or advertisement:

(ii) relating to the sale, lease or acquisition of any housing accommodation or commercial property which indicates any preference, limitation, specification or discrimination based upon use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.

# ▶ Discriminatory Statements Claim Elements

- Make, print, or publish, or cause to be made, printed, or published;
- Statement, or advertisement, with respect to the sale or rental of a dwelling;
- That indicates any preference, limitation, or discrimination based on protected class.

# Interference

- It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605 or 3606 of this title.

# Interference Claim Elements

1. Respondent's conduct constituted coercion, intimidation, a threat, or interference;
2. Respondent's conduct is because of protected class;  
and
3. Complainant's exercise or enjoyment of a Fair Housing right is affected.

## ▶ What is severe/pervasive?

- Schwemm: “Interference under § 3617 should be interpreted to include any neighbor harassment that would reduce a reasonable person's enjoyment of his home sufficiently to raise the prospect of having to move.”
- Other options: Coercive; Threat; Intimidate
- Doesn't explain what fair housing rights need to be previously be implicated (best theory: use and enjoyment)

Acts of harassment count both when done during search for housing and afterward. *Bloch v. Frischolz*, 587 F.3d 771 (7th Cir. 2009)

# HUD Rule Confirms

## Conduct involving the following is unlawful:

- Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

24 CFR § 100.400

## § 3631 – Criminal corollary

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—(a) any person because of his race, color, religion, sex, handicap (as such term is defined in section 3602 of this title), familial status (as such term is defined in section 3602 of this title), or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings



# 2017: Cincinnati, OH



## 2018: Toledo, OH

- WOMAN ARRESTED FOR SPRAY-PAINTING RACIAL SLUR AND SWASTIKA ON NEIGHBOR'S HOUSE: 'HAIL TRUMP'

July 14, 2018

Toledo police say a woman spray-painted “Hail Trump” and a racial slur on a neighbor’s home early Saturday, about 2 miles from — and just hours before — Toledo’s annual African-American Parade.



# Taking Action

- Criminal investigation
  - FBI
  - Local police
    - Usually no damages for victims
- Civil investigation
  - HUD/FHAP agencies under fair housing laws
  - Damages for victims
- Can use both tools!

# Housing-related Harassment

- Cross-burnings
- Racial, religious and ethnic verbal slurs, written graffiti
- Threats to interfere with living situation
- Hate-filled flier distribution
- Attempted arson
- Criminal assault/battery/murder

But what if it's less severe than this?

## Bottom Line

It is illegal for neighbor to harass (based on a protected class) another neighbor in a manner that would reduce a reasonable person's enjoyment of his home sufficiently to raise the prospect of having to move.

# ▶ What's the Right (Statutory) Fit?

- What is the relationship of complainant to harasser?
- What protected class is the harassment based on?
- Is there any issue with the severity of the harassment?
- Are there any 1A defenses to be concerned about?

# Federal Fair Housing Act

- Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq.
- Prohibits discrimination because of:
  - Race, color, national origin
  - Religion
  - Sex
  - Disability (1988)
  - Familial status (1988)

# PA Human Relations Act

- The Pennsylvania Human Relations Act prohibits discrimination in all housing transactions including but not limited to sales, rental, finance, providing reasonable accommodations or modifications to housing or commercial properties based on:
  - Race
  - Color
  - National Origin
  - Religion
  - Sex/Familial Status
  - Disability
  - Age (over 40 in housing)
  - Ancestry
  - Pregnancy



# HUD Regulations

## **24 CFR § 100.600 (Harassment)**

A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment or evidences a quid pro quo.

## **24 CFR § 100.400 (Interference)**

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

# Prima Facie Case

Frame your investigation around these points:

- What was the fair housing protected right that was affected?
- What was the conduct that intimidated/coerced/interfered with rights?
- Was there speech involved and was it protected by the First Amendment?
- What is the evidence that connects the fair housing right to the conduct?

# Assessing Credibility

Harassment claims often come down to the credibility of the complainant, and of the respondent.

- Investigation Toolkit
  - Complainant Interview
  - Respondent Interview
  - Third-Party Corroboration
  - Witnesses
  - Written complaints
  - Police, medical reports (though not everyone reports immediately)
  - Prior statements of respondent
  - Text messages, cell phone records, emails
  - Social media

# ▶ Defense/Pretext Evaluation

“I didn’t do it!”

Police reports, witnesses

“It wasn’t intended to be discriminatory.”

Look at content and context (In Discriminatory Statements claim, this won’t matter)

“It wasn’t intimidating/coercive.”

Use reasonable person in the place of the complainant

“This is a squabble between neighbors.”

Be aware of “stray remarks” doctrine

“He started it.”

Who brought in the protected class?

First Amendment

## ▶ First Amendment as a Defense

It would be a mistake to overlook the First Amendment in discussing neighbor on neighbor harassment.

That being said...

- Speech intended to coerce, intimidate, threaten is not protected.
- Speech directed at unwilling audiences and at people in their homes where they are entitled to peace is less likely to be protected.
- Harassing speech is less likely to have a legitimate or important constitutional concerns.

# Source of Law

Wetzel v. Glen St. Andrew Living Community, LLC,  
901 F.3d 856 (7th Cir. 2018)

## RULE:

Not only does the Fair Housing Act, 42 U.S.C.S. §§ 3601-3619, create liability when a landlord intentionally discriminates against a tenant based on a protected characteristic; it also creates liability against a landlord that has actual notice of tenant-on-tenant harassment based on a protected status, yet chooses not to take any reasonable steps within its control to stop that harassment.

## ▶ HUD Rule (issued Sept. 2016)

- Section 100.7(a)(1)(iii) of this final rule provides that a person is directly liable for “failing 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.

## ▶ **Wetzel v. Glen St. Andrew Living Cmty., LLC - 901 F.3d 856 (7th Cir. 2018)**

Within months of her arrival at Glen St. Andrew Living Community ("St. Andrew"), Marsha Wetzel faced a torrent of physical and verbal abuse from other residents because she is openly lesbian. Time and again, she implored St. Andrew's staff to help her. The staff's response was to limit her use of facilities and build a case for her eviction. Wetzel sued St. Andrew, alleging that it failed to provide her with non-discriminatory housing and that it retaliated against her because of her complaints, each in violation of the Fair Housing Act (FHA or Act), 42 U.S.C. §§ 3601-3619. St. Andrew insists that the Act affords Wetzel no recourse, because it imposes liability only on those who act with discriminatory animus, an allegation Wetzel had not expressly made of any defendant. The district court agreed and dismissed Wetzel's suit.



## 7th Circuit Court Decision

The court held that Wetzel's suit was erroneously dismissed for failure to state a claim because under the FHA, the duty not to discriminate in housing conditions encompassed the duty not to permit known harassment on protected grounds. The harassment was severe and pervasive, and the landlord was responsible for the building's common areas, where most of the harassment occurred, and the incidents within Wetzel's apartment occurred because the landlord was exercising a right to enter.

# Holding a Housing Provider Accountable

## Four Requirements:

- The housing provider had power to correct and end the harassment;
- The housing provider knew or should have known of the discriminatory conduct;
- The housing provider fails to take action that it knew or should have known would be successful in ending the harassment; and
- The conduct of the harasser rises to the level of severe or pervasive.

# Illustrative Examples

Corrective actions that housing provider should have taken to cure tenant-on-tenant harassment:

- Verbal and written warnings
- Enforcing lease provisions to move or evict or otherwise punish
- Issuing no-trespass orders or reporting conduct to police
- Establishing anti-harassment policy and complaint procedures

# Contact Us

Pittsburgh Regional Office  
Regional Director: Lyle Wood  
301 Fifth Avenue  
Suite 390, Piatt Place  
Pittsburgh, PA 15222  
412-565-5395

Fair Housing Line: 855-866-5718

## Questions?