

Affordable Housing Discrimination in America

Appendix: History of Housing Discrimination

TIMELINE OF HOUSING DISCRIMINATION

1607: Jamestown becomes the first permanent English settlement in the Americas

The early settlements had European indentured laborers who had signed contracts agreeing to work to pay the cost of their passage to the Americas.

1619: Enslaved Africans first arrive in North America near Jamestown

Most Africans were not given indentured servitude contracts and remained enslaved for life.

1662: Partus sequitur ventrem

The legal doctrine "*Partus sequitur ventrem*" (meaning "That which is born follows the womb") is passed in colonial Virginia in 1662 and in the other English colonies. This defined the legal status of children born in the colonies as being the same as the mother, which entrenched African chattel slavery in the fabric of the colonial Americas.

1776: Declaration of Independence

"We hold these truths to be self-evident, that all men are created equal. That they are endowed by their creator with certain unalienable rights, that are among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed....."

There is little doubt that "the pursuit of happiness" included the right to own one's own home.

1787: The U.S. Constitution

Enslaved people were to be counted as "three-fifths" of a person in determining a state's population for congressional representation. The three-fifths compromise is found in Article 1, Section 2, Paragraph 3 of the United States Constitution:

"Representatives and direct Taxes shall be apportioned

among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."

Article 4, section 9, clause 3, or the "Fugitive Slave Clause" states:

"No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labour may be due."

1780 - 1804: Slavery abolished in northern states

After the American revolution, the northern states gradually abolished slavery state-by-state and came to be known as "free states". The Northwest Ordinance of 1787 also prohibited slavery, and the states created from the Northwest Territory were all free states.

1820: Missouri Compromise

Congress passed legislation prohibiting slavery in the Louisiana Purchase lands except for Missouri.

1854: Kansas–Nebraska Act

In the creation of the territories of Nebraska and Kansas, the Missouri compromise was effectively repealed when the status of slavery was decided to be based on "popular sovereignty". This resulted in a series of armed conflicts known as "Bleeding Kansas".

1857: Dred Scott v. Sanford

Dred Scott sued his master, arguing that a person on free soil was entitled to freedom. The Supreme Court declared that Scott was not a citizen of Missouri and not entitled to sue in its courts.

"In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration

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of Independence, show that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, or intended to be included in the general words used in that memorable instrument.”

1861: The American Civil War

After the election of President Abraham Lincoln, slave states formally declared secession, creating the Confederacy and beginning the American Civil War.

1865: 13th Amendment to the U.S. Constitution

After the end of the Civil War, slavery was formally abolished in an amendment to the constitution:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

It further stated that:

“Congress shall have the power to enforce this article by appropriate legislation.”

1866: The Civil Rights Act of 1866

“All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”

1868: 14th Amendment to the U.S. Constitution

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without the due process of law; not deny to any person within its jurisdiction the equal protection of the law.”

1883: Civil Rights Cases

The Civil Rights Cases were a group of five cases by

the U.S. Supreme Court to offer a single judgement. The Court held that the equal protection clause of the U.S. Constitution (i.e., the 14th Amendment) did not prohibit private acts of discrimination; rather it merely prohibited discrimination that was the product of government action.

Even in the cases of state discrimination, an injured party would have to sue to gain protection by the law. Most African Americans did not have the resources to bring a lawsuit—if they could even find a lawyer to represent them.

For another century or so, courts prohibited racial discrimination primarily concerning governmental, or “state,” discrimination such as racial zoning or racial discrimination of restrictive covenants that were enforced by courts.

1896: Plessy v. Ferguson

The court held that the enforcement of racial segregation of private or public facilities did not violate the Constitution as long as separate facilities were equal. This created the “separate but equal” policy that legitimized segregation in all aspects of society, including rights in real property.

1917: Buchanan v. Warley

The U.S. Supreme Court struck down a Louisville, Kentucky zoning law that limited African Americans and other minorities to specific areas of town.

The Court held that governmental zoning laws that discriminate based upon race violate the equal protection clause of the Fourteenth Amendment. This court case did not, however, ban any form of private discrimination. Again, private persons were free to discriminate based upon race.

1948: Shelley v. Kraemer

In 1948, the Supreme Court ruled in *Shelley v. Kraemer* that the enforcement by a state court of a private, racially restrictive covenant constituted a “government involvement that was sufficient to violate the equal protection clause of the Fourteenth Amendment.”

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In this case, the Shelleys, an African American family, purchased a home in St. Louis, Missouri, unaware that a restrictive covenant barring “people of the Negro or Asian race” from living on the property had been in place since 1911. A white neighbor, Kraemer, sued to prevent the Shelleys from living on the property. The U.S. Supreme Court ruled that racially restrictive covenants are not invalid under the Fourteenth Amendment, and their verdict was in favor of Kraemer.

1948: *Hurd v. Hodge*

The "Shelley" rule applies equally to federal courts (in this case, the District of Columbia), as well as state courts.

1954: *Brown v. Board of Education*

The U.S. Supreme Court rendered its landmark decision in *Brown v. Board of Education*, reversing the "separate but equal" decision in *Plessy v. Ferguson*. The Brown case outlawed segregation in schools and marked the beginning of the end of the era of legalized segregation.

It stated that:

“In the field of education ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”

The court further ruled, in *Brown v. Board of Education*, that segregation was unconstitutional.

1962: *Executive Order 11063 - Equal Opportunity in Housing*

The federal government neglected to pass any laws to prevent housing discrimination throughout the first half of the 20th century. In fact, to a certain extent, the federal government was counterproductive in efforts to defeat segregation. For example, the Federal Housing Administration (FHA) instructed its staff and appraisers to consider the racial makeup of a neighborhood.

Also, it is important to note that discrimination in housing was certainly not limited to African Americans. Other minorities and religious groups were commonly discriminated against, as were women.

In 1962, President Kennedy signed Executive Order 11063, entitled "Equal Opportunity in Housing." It prohibited discrimination in the sale, rental or use of all residential housing that was owned, operated or financed by the federal government. However, while it had good intentions, there was little real impact on the housing market in general, as it lacked judicial enforcement.

1964: *Civil Rights Act of 1964*

Two years later, another step was taken. In 1964, Congress passed Title VI to the Civil Rights Act of 1964, which prohibited discrimination in public accommodations, in all federally assisted programs, and in employment on the basis of:

- Race
- Color
- Religion
- Sex
- National origin

Although this didn't directly address housing issues, it demonstrated a shift in perception when it came to discrimination. Two years later, in 1966, President Lyndon Johnson introduced fair housing legislation. However, it did not have immediate impact as it sat in Congress and was debated for about three years.

1967: *Reitman v. Mulkey*

Court held that the California State Constitutional Amendment, which effectively nullified California's fair housing laws, violated the equal protection clause, since the Amendment encouraged private racial housing discrimination.

1968: *Fair Housing Act*

The real change in fair housing came in 1968, a year that is considered the birth of modern fair housing. In March of that year, the Kerner Commission Report said that America was heading for two societies that were separate, but unequal.

Two historic events occurred that year that forever changed the housing market.

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First, at sunset on April 4, 1968, Martin Luther King, Jr. was fatally shot while standing on the balcony of the Lorraine Motel in Memphis, Tennessee. There was unrest in 130 American cities and 20,000 arrests. King's funeral on April 19th was an international event. Within one week of his death, on April 11, Title VIII of the Civil Rights Act (aka the Fair Housing Act) was enacted into law by President Lyndon B. Johnson.

The Fair Housing Act bans discrimination on the basis of race, color, religion and national origin in most types of housing transactions. The Act also contains a variety of remedies to address both public and private housing discrimination. Unlike previous attempts to create equality, this act had an enforcement provision. Hence the Housing and Urban Development Authority was born.

Second, in June, the U.S. Supreme Court rendered its decision in *Jones v. Alfred H. Mayer Co.*, and held that the Civil Rights Act of 1866 banned private, as well as government, racial discrimination in housing. The Fair Housing Act outlaws a variety of private discriminatory acts, including refusal to rent, sell, or belong to a housing-related organization, discrimination in the terms of sale or rental, blockbusting, and discrimination in advertising and in the use of real estate services.

The Fair Housing Act prohibited discrimination in most types of housing on the basis of:

- Race
- Color
- Religion
- National origin

Thus the 1866 Act was given new life, and it could now be used to fight racial discrimination.

1972: Trafficante v. Metropolitan Life Insurance Co.

In the Court's first Title VIII decision the Court held that Fair Housing Act should be broadly construed, and that Title VII (federal employment discrimination) court cases can be used to interpret Title VIII and that HUD's interpretations of the Act should be entitled to

"great weight."

1973: Rehabilitation Act

Congress enacted Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against persons with disabilities in all federally assisted programs, including housing.

1974: Fair Housing Act Expanded

In 1974, Congress passed the Housing and Community Development Act, which added "sex" (meaning gender: male or female, not sexual orientation) as another prohibited basis for discrimination. This prohibited sexual harassment, but not discrimination for sexual orientation.

The same year, the Fair Housing Act was also expanded to include prohibition of gender discrimination. Later that year the Equal Credit Opportunity Act was passed by Congress, which prohibited credit discrimination in housing based on the basis of:

- Race
- Color
- Religion
- National origin
- Gender or marital status
- Age

NOTE: In housing, age and marital status are NOT federally protected classes, although many states include these. The ECO Act was limited to credit discrimination.

1975: Age Discrimination Act

Congress enacted the Age Discrimination Act of 1975, which prohibited discrimination on the basis of age in programs receiving federal financial assistance.

1977: Village of Arlington Heights v. Metropolitan Housing Development Corporation

Court holds that a housing corporation and neighborhood residents had standing to challenge a municipality's denial of rezoning, which was alleged to have racially disproportional impact. (But Court also

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held that some "discriminatory intent or purpose was required to prove unconstitutional behavior.")

1979: Gladstone REALTORS® v. Bellwood

Court upholds municipality and residents' standing to sue local real estate brokers for racial steering.

1980: Gender-Based Discrimination

In 1980, President Carter expanded Kennedy's executive order to include gender-based discrimination, and to grant HUD additional authority to issue regulations to further fair housing in federal programs.

1982: Havens Realty Corp. v. Coleman

In 1982, the Court rendered an important decision entitled *Havens Realty Corp. v. Coleman*, which permitted housing organizations and "testers" to sue in racial steering cases. These court cases enable private and public organizations to investigate fair housing violations and to file actions for civil penalties and damages.

1988: Fair Housing Amendments Act

The 1988 Fair Housing Amendments Act was signed into law by President Ronald Reagan in September of 1988. It contained many significant provisions that strengthened the 20-year-old Fair Housing Act. The 1988 Amendment was enacted to expand the coverage of the Fair Housing Act and to enhance enforcement of the Act.

It extended federal civil rights protection to families with children and to persons with physical and mental disabilities. It instituted tougher enforcement policies by HUD and added sanctions and remedies for violations. The Amendment also modified the administrative process for HUD complaints, and it essentially provides that HUD has a higher degree of authority to enforce the Fair Housing Act.

The Act removed the cap on punitive damages and monetary awards that were now possible for actual damages as well as for non-economic injuries such as embarrassment, humiliation and mental anguish.

The Amendment also extended Title VIII to other discriminatory practices, relating to real estate loans for repairs and improvements, certain secondary market activities, and real estate appraisals.

So, we see that true fairness and equality has been a long time coming under the law. However, it has accelerated rapidly in recent years. It is still being debated as to the state of actual fairness and equality in today's world.

FAIR HOUSING RESOURCES

More information on the history of Housing Discrimination in the United States:

- For more information on the Reconstruction period (1865-1877): <http://www.history.com/topics/reconstruction>
- Summary of Plessy v. Ferguson: <https://www.history.com/topics/black-history/plessy-v-ferguson>
- Buchanan v. Warley: <https://www.oyez.org/cases/1900-1940/245us60>
- Shelley v. Kraemer: https://scholar.google.com/scholar_case?case=12732018998507979172&hl=en&as_sdt=2&as_vis=1&coi=scholar
- Video – Brown v. Board of Education: <https://www.youtube.com/watch?v=TTGHLdr-iaK>
- Title VI of the Civil Rights Act of 1964: <https://www.hhs.gov/civil-rights/for-individuals/special-topics/needy-families/civil-rights-requirements/index.html>
- Reitman v. Mulkey: <https://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-chemerinsky/the-structure-of-the-constitutions-protection-of-civil-rights-and-civil-liberties/reitman-v-mulkey/>
- Video - Kerner Commission Report: <https://billmoyers.com/content/the-kerner-commission-40-years-later/>

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- Video – Fair Housing Act: Looking Back, Looking Forward: <http://youtu.be/wdKzxSC7DTU>

More information on the protections of the Fair Housing Act

- Fair Housing - It's Your Right: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights
- Document - Fair Housing - Equal Opportunity for All: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12146.pdf
- Document - Fair Housing Act (from GPOaccess.gov): http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+42USC3604
- Here is a link to a comprehensive 6-minute video from the National Association of REALTORS® <https://www.youtube.com/watch?v=94TVHAJtang>
- A Guide To The Fair Housing Act And Its Exemptions: <https://www.forbes.com/advisor/mortgages/fair-housing-act/>

Stay current with Fair Housing issues online:

- Housing and Urban Development website: www.hud.gov

- HUD - Fair Housing Program: www.hud.gov/fairhousing

- HUD on Facebook: www.facebook.com/HUD

- HUD on Twitter: www.twitter.com/hudnews

- HUD on YouTube: www.youtube.com/HUDchannel

- HUD on Flickr (photos): www.flickr.com/photos/hudopa

- The HUDdle (a HUD blog): <http://blog.hud.gov>

- National Assoc. of REALTORS® Diversity program: www.realtor.org/diversity

- The Leadership Conference - Fair Housing: www.civilrights.org/fairhousing/laws

- Leadership Conference on Facebook: www.facebook.com/civilandhumanrights

- National Fair Housing Advocate Online: www.fairhousing.com



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