

# Table of Contents

## Volume 1

### CHAPTER 1. INTRODUCTION

§ 1:1 Generally

### CHAPTER 2. SUMMARY OF SUBSTANTIVE PROVISIONS OF THE FAIR HOUSING ACT AND THE CIVIL RIGHTS ACT OF 1866

- § 2:1 Introduction
- § 2:2 Discriminatory housing practices under Title VIII—Refusal to rent or sell a dwelling
  - Steering
  - Land use and exclusionary zoning
  - Nuisance and crime free ordinances
  - Discriminatory terms, conditions, or services
  - Harassment
  - Statements and advertising
  - Misrepresentation
  - Blockbusting
  - General protections for people with disabilities
  - Assistance animals
  - Failure to design and construct dwellings accessible to persons with disabilities
  - Financing
  - Brokerage services
  - Coercion, intimidation, threats, or interference
  - Affirmatively furthering fair housing
  - Exemptions
- § 2:19 Types of activity protected under § 1981 and § 1982
- § 2:20 Who can sue
  - Families with children
  - People with disabilities
  - Non-citizens
  - Sexual orientation, gender identity, and expression discrimination
  - Domestic violence victims
- § 2:26 Who can be sued
- § 2:27 Theories of liability and burdens of proof
- § 2:28 —Disparate treatment
  - Types of evidence used to prove intent
  - Order and burdens of proof

- § 2:31 ——Mixed motive and other causation and intent issues
- § 2:32 ——Further considerations for facially discriminatory policies
- § 2:33 —Disparate impact—General principles
- § 2:34 ——Elements of a claim
- § 2:35 ——Specific applications
- § 2:36 ——Recent issues
- § 2:37 Discriminatory housing practices under Title VIII—Actions against HUD

## **CHAPTER 3. TITLE VIII: ENFORCEMENT—WEIGHING THE OPTIONS**

### **I. OVERVIEW**

- § 3:1 Generally

### **II. ENFORCEMENT THROUGH HUD**

#### **A. SUMMARY OF HUD ADMINISTRATIVE PROCESS**

- § 3:2 Initiating the complaint
- § 3:3 Investigation and issuance of charge
- § 3:4 Conciliation
- § 3:5 Election of administrative hearing
- § 3:6 Adjudication before the ALJ
- § 3:7 Judicial review and enforcement

#### **B. WEIGHING THE ADVANTAGES AND DISADVANTAGES OF ENFORCEMENT THROUGH HUD**

- § 3:8 Advantages
- § 3:9 Disadvantages

### **III. ENFORCEMENT THROUGH THE DEPARTMENT OF JUSTICE**

- § 3:10 Summary of DOJ enforcement process
- § 3:11 Weighing the advantages and disadvantages of enforcement through DOJ—Advantages
- § 3:12 —Disadvantages

### **IV. ENFORCEMENT THROUGH PRIVATE CIVIL ACTIONS**

- § 3:13 Filing suit under § 3613
- § 3:14 Filing suit under §§ 1981 and 1982
- § 3:15 Weighing the advantages and disadvantages of private enforcement—Advantages
- § 3:16 —Disadvantages

TABLE OF CONTENTS

**V. RETROACTIVE APPLICATION OF THE AMENDED ACT**

§ 3:17 Generally

**CHAPTER 4. LITIGATING A PRIVATE SUIT,  
PART I: PRETRIAL**

**I. PRECOMPLAINT INVESTIGATION**

§ 4:1 Initial client interview  
§ 4:2 Deciding whether or not to use testers  
§ 4:3 Selecting the named plaintiffs  
§ 4:4 The retainer agreement

**II. DRAFTING THE COMPLAINT**

§ 4:5 Who to name as defendants  
§ 4:6 Jurisdiction and venue—Venue  
§ 4:7 —Federal jurisdiction  
§ 4:8 Pleading the facts  
§ 4:9 Jury demand  
§ 4:10 Prayer for relief  
§ 4:11 Amending the complaint

**III. COMMUNICATIONS WITH OPPOSING COUNSEL  
BEFORE FILING**

§ 4:12 Generally

**IV. EMERGENCY RELIEF**

§ 4:13 Generally  
§ 4:14 —The legal standard  
§ 4:15 —The form of the pleadings  
§ 4:16 —Ex parte emergency relief to prevent destruction of documents

**V. DISCOVERY**

**A. ORGANIZING AND COORDINATING THE  
POSTCOMPLAINT INVESTIGATION: DEVELOPING  
THE FACTS**

§ 4:17 Overview  
§ 4:18 Documents and records maintained by the defendant  
§ 4:19 Government investigative reports  
§ 4:20 Independent investigations

**B. DEPOSITIONS**

§ 4:21 Taking depositions

- § 4:22 —Timing of the deposition
- § 4:23 —Selecting the deponent and the questions
- § 4:24 Defending depositions
- § 4:25 —Testers
- § 4:26 —The bona fide plaintiff
- § 4:27 —The fair housing organization

### C. PROTECTIVE ORDERS

- § 4:28 Generally
- § 4:29 —Test reports
- § 4:30 —Testing manual
- § 4:31 —Revealing identities of testers

## VI. HANDLING DISPOSITIVE MOTIONS

- § 4:32 Motions to dismiss—Standing
- § 4:33 —General principles
- § 4:34 —Tester standing
- § 4:35 —Standing of fair housing organizations
- § 4:36 —Organizational standing
- § 4:37 —Representational standing
- § 4:38 —Proximate cause
- § 4:39 —Failure to exhaust administrative remedies
- § 4:40 —Failure to join a necessary party
- § 4:41 Summary judgment
- § 4:42 —Lack of racial identification
- § 4:43 —Failure to apply
- § 4:44 Motions for class certification
- § 4:45 —Rule 23(a) requirements
- § 4:46 —Rule 23(b) requirements
- § 4:47 —Practical considerations

## VII. PRETRIAL PREPARATIONS

- § 4:48 Motions in limine
- § 4:49 Pretrial brief
- § 4:50 Jury instructions
- § 4:51 Sample verdict sheet

## VIII. OFFERS OF JUDGMENT

- § 4:52 Generally

## CHAPTER 5. LITIGATING A PRIVATE SUIT, PART II: TRIAL

- § 5:1 Voir dire
- § 5:2 Opening statement
- § 5:3 Preparing the plaintiffs for direct and cross-examination

## TABLE OF CONTENTS

- § 5:4 Presenting statistical evidence through an expert witness—
  - General principles
- § 5:5 —Preparing the analysis
- § 5:6 ——Calculating the expected outcome
- § 5:7 ——Choosing the point in time at which to measure the defendant's performance
- § 5:8 ——The expert's burden
- § 5:9 —Presenting the expert witness at trial
- § 5:10 Cross-examining the rental or sales agent
- § 5:11 Cross-examining the owner/philanthropist
- § 5:12 Cross-examining hostile tenants and employees
- § 5:13 Closing argument

# **CHAPTER 6. LITIGATING A PRIVATE SUIT, PART III: RELIEF**

## **I. DAMAGES**

### **A. COMPENSATORY**

- § 6:1 General principles
- § 6:2 Problems in establishing proof of compensatory damages—
  - Tester damages
- § 6:3 —Organizational damages

### **B. PUNITIVE DAMAGES**

- § 6:4 General principles
- § 6:5 Establishing the measure of proof for punitive damages

## **II. INJUNCTIVE RELIEF**

- § 6:6 Generally

## **III. ATTORNEYS' FEES**

- § 6:7 Generally

# **CHAPTER 7. SETTLEMENT**

- § 7:1 General considerations
- § 7:2 Negotiating the monetary component
- § 7:3 Components of a model consent decree
- § 7:4 —The form of the injunctive relief
- § 7:5 —Scope of the decree
- § 7:6 —Nonadmission clause
- § 7:7 —General nondiscrimination provision
- § 7:8 —Fair housing training
- § 7:9 —Advertising
- § 7:10 —Recordkeeping and reporting
- § 7:11 —Duration of the decree

- § 7:12 —Inclusion of the monetary settlement
- § 7:13 —The release
- § 7:14 Monitoring the decree

## CHAPTER APPENDICES

- APPENDIX 2A. HUD Policy Memoranda on Reasonable Occupancy Restrictions
- APPENDIX 2B. HUD Guidance Regarding Advertisements Under § 3604(c)
- APPENDIX 2C. Joint Statement of HUD and the Department of Justice on Reasonable Accommodations
- APPENDIX 2D. Response to concerns about housing security following September 11, 2001
- APPENDIX 2E. Interagency Statement on Discrimination in Lending
- APPENDIX 2F. Joint Statement of HUD and The Department of Justice on Reasonable Modifications
- APPENDIX 2G. Immigration Status and Housing Discrimination Frequently Asked Questions
- APPENDIX 2H. Domestic Violence Guidance
- APPENDIX 2I. Presidential Memoranda on Discriminatory Housing Practices and Policies
- APPENDIX 3A. List of States and Localities Certified as Substantial Equivalents on Date Fair Housing Amendments Act Became Effective
- APPENDIX 3B. List of States and Localities Certified as Substantial Equivalents
- APPENDIX 3C. Summary of Time Limitations and Flowchart Depicting Enforcement Options
- APPENDIX 3D. HUD ALJ Rulings on Intervention
- APPENDIX 3E. HUD and DOJ Letters on Intervention
- APPENDIX 3F. Sample Motion for Leave to Intervene in Pending DOJ Federal Court Case and Pending HUD ALJ Proceeding
- APPENDIX 3G. HUD Declaration on Tolling of Statute Pending Agency Action
- APPENDIX 3H. HUD Memorandum on Procedural Limitations for Cases that Implicate the First Amendment
- APPENDIX 3I. Sample Motion Concerning Application of Continuing Violations Theory
- APPENDIX 3J. Sample Statements in Support of HUD Complaint
- APPENDIX 4A. List of Private Fair Housing Organizations
- APPENDIX 4B. Sample Retainer Agreements

TABLE OF CONTENTS

APPENDIX 4C.      Sample Complaints

**Volume 2**

APPENDIX 4D.	Sample Briefs in Support of Motion for Leave to Amend Complaint
APPENDIX 4E.	Sample Motions and Orders for Temporary Restraining Order and Preliminary Injunctive Relief
APPENDIX 4F.	Sample Interrogatories
APPENDIX 4G.	Sample Answers to Interrogatories
APPENDIX 4H.	Sample Letter to Opposing Party Providing Reasons Why Discovery Responses Are Inadequate (Foundation for Motion to Compel)
APPENDIX 4I.	Sample Document Requests
APPENDIX 4J.	Sample Answers to Document Requests
APPENDIX 4K.	Sample Tenant Site Survey Forms
APPENDIX 4L.	Sample 30(B)(6) Deposition Notices
APPENDIX 4M.	Motion for Protective Order (Timing of Deposition)
APPENDIX 4N.	Motion for Protective Order (Access to Test Reports and Tester's Manual) and Sample Stipulated Protective Orders
APPENDIX 4O.	Sample Motion for Protective Order (Placing Psychiatric Reports Under Seal)
APPENDIX 4P.	Sample Pleadings Regarding Medical Records
APPENDIX 4Q.	Sample Motions and Orders to Compel Financial Information
APPENDIX 4R.	Sample Motion for Protective Order (Producing Former Testers for Deposition)
APPENDIX 4S.	Sample Motions to Compel Access to Documents and Files
APPENDIX 4T.	Sample Oppositions to Motions to Dismiss
APPENDIX 4U.	Sample Brief in Support of Plaintiffs' Motion for Summary Judgment
APPENDIX 4V.	Sample Briefs in Opposition to Motion for Summary Judgment

**Volume 3**

APPENDIX 4W.	Sample Motion for Class Certification
APPENDIX 4X.	Sample Amicus Brief in Support of Plaintiff's Opposition to Motion for Judgment on the Pleadings

HOUSING DISCRIMINATION PRACTICE MANUAL

APPENDIX 4Y.	Sample Stipulations of Fact
APPENDIX 4Z.	Sample Pretrial Statements
APPENDIX 4AA.	Sample Pretrial Statement and Trial Brief
APPENDIX 4BB.	Sample Jury Instructions and Verdict Forms
APPENDIX 4CC.	Checklist of Questions for Determining Emotional Distress
APPENDIX 4DD.	Topics to Cover in Intake Interview
APPENDIX 4EE.	Sample Motion for Sanctions for Alteration of Documents
APPENDIX 4FF.	Sample Motions in Limine
APPENDIX 4GG.	<i>[Reserved]</i>
APPENDIX 4HH.	Motion to Obtain Prior Complaints of Discrimination from Human Rights Agency
APPENDIX 4II.	Sample Complaint Allegations and Discovery Requests Relating to Piercing the Corporate Veil
APPENDIX 4JJ.	Sample Freedom of Information Act Request
APPENDIX 4KK.	Sample Motions for Reconsideration
APPENDIX 4LL.	Sample Objections and Responses to Objections to Magistrate Judge's Recommendation
APPENDIX 5A.	Sample Voir Dire Questions for a Typical Fair Housing Case
APPENDIX 5B.	Sample Proposed Voir Dire Questions for Families with Children Case
APPENDIX 5C.	Sample Expert Exhibits
APPENDIX 6A.	Sample Post-Trial Brief on Damages
APPENDIX 6B.	Sample Post-Trial Motion for Injunctive Relief
APPENDIX 6C.	Sample Memorandum In Opposition to Defendant's Post-Trial Motion for Judgment as Matter of Law on Punitive Damages
APPENDIX 6D.	Sample Frustration of Mission and Diversion of Resources Damages Worksheets
APPENDIX 6E.	Sample Lost Housing Opportunity Damages Worksheet
APPENDIX 6F.	Unpublished Decision in <i>Fair Housing Council of Suburban Philadelphia v. Mercury Peerless Publications, Inc.</i>
APPENDIX 7A.	Sample Consent Decrees
APPENDIX 7B.	Sample Application for Fees and Expenses
APPENDIX 7C.	Sample Motion to Enforce Consent Decree
APPENDIX I.	The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, As Amended, (42 U.S.C. §§ 3601 et seq.), and Related Provisions

## TABLE OF CONTENTS

## APPENDIX II. Legislative History Materials: Selected Excerpts from 1988 House Report on the Fair Housing Amendments Act

## Table of Cases

## Index