



Sexual Harassment in Housing: A Primer

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INTRODUCTION

Each year, thousands of women across the country are subject to illegal sexual harassment by landlords, building managers and employees, real estate brokers and their agents.¹ For example, landlords, who are in control of often scarce rental housing, may force women to trade sexual favors for housing benefits and subject women to sexually derogatory comments and behavior. While this harassment affects women of all classes, it falls hardest on low and middle income women who have to live in rental housing.²

Women need to know that they have the right to be free of sexual harassment in their housing and that there are laws that protect them. This primer focuses on remedies available under the federal Fair Housing Act to women who have been sexually harassed. There are also other laws that can provide legal remedies for sexual harassment. Those laws are outlined in a separate section at the end of this packet. This primer is not a substitute for a lawyer's advice. While it provides useful information to help you protect your federal rights, you should consult a lawyer if you are contemplating a lawsuit.

SEXUAL HARASSMENT IN HOUSING UNDER THE FAIR HOUSING ACT

I. Defining Sexual Harassment in Housing under the Fair Housing Act

A. Sexual Harassment in Housing is Illegal Sex Discrimination

Title VIII of the Civil Rights Act, known as the Fair Housing Act ("FHA"), prohibits discrimination on the basis of sex in the sale or rental of housing.³ The FHA applies to all housing

in the United States, including public and private housing. The only exceptions are (1) single family housing sold or rented by someone who does not own more than three such homes, and (2) an owner-occupied home that contains housing for four or fewer families.⁴

The recognition that sexual harassment is a form of sex discrimination has been developed most fully in the employment context where victims of sexual harassment have established that their rights to be free of discrimination in employment under Title VII of the Civil Rights Act of 1964 ("Title VII") are violated when they are harassed in the workplace.⁵ A number of courts have held that the FHA's prohibition on sex discrimination parallels the prohibition under Title VII, using the same analysis as courts have used in cases involving sexual harassment in employment to give relief for sexual harassment in housing.⁶ As some courts have observed, sexual harassment in the home may even have more severe effects than sexual harassment in the workplace.⁷ A woman who is subject to sexual harassment in housing may have remedies against her landlord, building manager, real estate agent or the owner of her housing for violating her rights to be free from discrimination. Since you will need to show many of the same kinds of facts for a housing sexual harassment claim as for an employment sexual harassment claim, we highly recommend that you also refer to the NOW Legal Defense and Education Fund Legal Resource Kit: "**Employment -- Sex Discrimination and Sexual Harassment.**"

Women's rights to be free of sexual harassment in housing are also guaranteed by a separate provision of the Fair Housing Act that does not have a parallel in employment discrimination law. That provision protects against interference with housing rights through coercion, threats, or intimidation.⁸ At least two courts have held that this

provision can provide a remedy for sexual harassment if there is an allegation of threats or intimidation.⁹

B. Elements of a Sexual Harassment Claim under the FHA.

Although there are many different ways that sexual harassment can occur, courts addressing the issue under the FHA have followed the well established Title VII analysis and recognized two forms of sexual harassment claims: the “quid pro quo” claim and the “hostile environment” claim.¹⁰ A woman bringing suit under the FHA can argue that she was subject to one or both of these forms of discrimination.

1. Quid Pro Quo Harassment

a. What is Quid Pro Quo Sexual Harassment?

“Quid pro quo” sexual harassment (literally, “this for that”) involves harassment in situations in which sex or sexual favors are demanded of women by those in control of their housing in return for housing or a housing benefit. For example, if a landlord evicts a tenant or takes away her housing certificate because she refuses to have sex with him, this would be quid pro quo harassment. Regulations of the Department of Housing and Urban Development (“HUD”) specifically prohibit “quid pro quo” sexual harassment.¹¹

Case law has recognized quid pro quo sexual harassment as illegal discrimination under the FHA. For example, in *Shellhammer v. Lewellan*,¹² the owner of Tammy Shellhammer's building asked her to pose for nude photographs and to have sex with him in exchange for money. When Ms. Shellhammer refused to engage in such activities, she and her husband were evicted. The court held that, even though the owner did have a legal reason to evict the Shellhammers (they had been late in paying their rent), the owner evicted them at least in part because of Ms. Shellhammer's refusals. Therefore, the court held that Ms. Shellhammer had been subjected to quid pro quo sexual harassment and her claim was actionable under the FHA.¹³

Similarly, in *Grieger v. Sheets*,¹⁴ the plaintiff claimed that her landlord refused to make necessary repairs in the apartment and threatened that he would make sure she lost her Section 8 certification (a federal housing benefit) because she refused to have sex with him. The court found that the plaintiff had stated a quid pro quo sexual harassment claim under the FHA.¹⁵

Although most courts that have addressed quid pro quo sexual harassment have done so in the context of eviction for refusal of sexual demands, and the HUD regulations are phrased in terms of a refusal and subsequent denial of a benefit, a claim for sexual harassment could also be made in a situation where the woman complied with the demands, particularly where she was in desperate need of the housing.¹⁶ In quid pro quo claims, it is also not necessary for the defendant explicitly to have threatened eviction when he made the sexual demands, as long as there is adverse action like eviction following the refusal and a causal connection between the harassing conduct and the adverse action can be shown.¹⁷

b. Elements of Quid Pro Quo Sexual Harassment.

To establish a quid pro quo sexual harassment claim, you must prove that:

- you are a member of a protected class (*e.g.*, you are a woman);
- you were subjected to an unwelcome demand or request for sexual favors, *i.e.*, one which was not solicited or desired by you;
- that unwelcome demand or request was based on sex (but for your gender the harassment would not have taken place);
- because of the way in which you responded to the demand for sexual favors, you were denied housing or substantial benefits of housing; and
- if the harassment was done by an agent or employee of the owner and the owner is being sued, that the owner knew or should have known of the harassment and failed to remedy the situation.¹⁸

One incident alone is enough to sustain a claim of quid pro quo sexual harassment if all of the above elements are met.¹⁹

2. Hostile Housing Environment

a. What is a Hostile Housing Environment Claim?

A hostile housing environment claim involves unwelcome behavior of a sexual nature that creates an intimidating, hostile or abusive housing environment or has the effect of unreasonably interfering with a tenant's housing. For example, if a landlord makes repeated unwanted sexual advances, sexual threats or touches a female tenant in a sexual way when she does not want him to, the landlord may be liable for creating a hostile housing environment.²⁰

In a number of cases, federal courts have found in favor of women claiming discrimination due to sexual harassment which created a hostile housing environment. In *Reeves v. Carrollsbury Condominium Unit Owners Ass'n*,²¹ a condominium resident suffered as a result of a neighbor who repeatedly shouted sexist and racist epithets and threatened to rape and kill her. The plaintiff alleged that since the condominium owners association was aware of the neighbor's behavior, it was liable for tolerating and creating a hostile housing environment. The court found that the plaintiff's allegations "clearly satisfied the prima facie case for hostile housing environment due to racial and sexual harassment."²²

In *Williams v. Poretzky Management, Inc.*,²³ the plaintiff alleged that the apartment repairman sexually assaulted her twice, by grabbing her in an elevator, and later the same evening, by pinning her against a laundry-room table, rubbing his body against her, and attempting to kiss her. After the plaintiff complained to the resident manager, she was subjected to verbal abuse by the repairman and others. The court found that this conduct constituted sexual harassment and was sufficiently severe that a jury could reasonably find a hostile housing environment.²⁴

In *Beliveau v. Caras*,²⁵ the plaintiff asserted that the resident manager of her building stared at her while she was laying out by the pool of the building; "began making off-color, flirtatious and unwelcome remarks;" and, most seriously, when he came to fix a leak in her bathroom, he "called her into the bathroom, put his arm around her, told her she was attractive, he would like to keep her company any time, and made a remark about her breasts, referring to them as headlights." When the plaintiff pushed him away he "grabbed her breast and, after being pushed away again, grabbed her buttock as she walked away from him."²⁶ In finding that these facts amount to the creation of a hostile housing environment, the court emphasized the severity of the conduct and the vulnerability of the plaintiff, stating that, "[a]ny such touching would support a sexual harassment claim under the federal Fair Housing Act. Particularly where . . . the alleged battery was committed (1) in plaintiff's own home, where she should feel (and be) less vulnerable, and (2) by one whose very role was to provide that safe environment . . ."²⁷

In *New York v. Merlino*,²⁸ female customers of a real-estate broker complained of unwanted physical touching and suggestive sexual comments and propositions from the broker. The court held that the customers could bring a claim of sexual harassment under the FHA, but noted that for their

claim to succeed, the customers must demonstrate severe and pervasive sexual harassment, and a relationship between the harassment and denial of a housing benefit.

In *Grieger v. Sheets*,²⁹ the plaintiff maintained that the landlord told her she had to have sex with him once a month or she would lose her housing. She alleged that he repeatedly refused to make repairs because she had turned him down, and that, when her husband confronted the owner on those issues, the owner threatened to shoot him. The court stated that, if proven, these claims amount to a sexually hostile housing environment.

Other courts, including circuit courts, have similarly recognized the existence of a hostile housing environment cause of action, even where they did not rule in favor of the plaintiff.³⁰

b. Elements of a Hostile Housing Environment Sexual Harassment Claim.

The *Shellhammer* court clarified the requirements for establishing a hostile housing environment claim. You must show that:

- you are a member of a protected group (e.g., you are a woman);
- you were subjected to "unwelcome and extensive sexual harassment in the form of sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, which has not been solicited or desired and which is viewed as undesirable or offensive;"
- the harassment was based on sex (but for your gender the harassment would not have taken place);
- the harassment "makes continued tenancy burdensome and significantly less desirable than if the harassment were not occurring;" and
- if you are asserting that the owner of housing is vicariously liable for the acts of his employees, you must prove that the owner "knew or should have known about the particular harassment and failed to remedy the situation promptly."³¹

In evaluating the facts of a claim of hostile environment, there are several factors that courts will consider in deciding whether or not a plaintiff has proven all elements of her claim. Some of these factors are:

- the frequency of the discriminatory conduct;

- its severity;
- whether it is physically threatening or humiliating, as opposed to a mere offensive utterance; and
- whether the conduct resulted in psychological harm, although a woman does not have to prove psychological harm in order to prove that she was subject to a hostile environment.³²

Several courts have held that while just one incident can establish a quid pro quo claim, to establish a hostile environment claim, it is usually necessary to demonstrate a series of harassing incidents.³³

C. Who Can Sue Under the FHA?

Anyone who has been sexually harassed in their housing is protected by the provisions of the FHA, including those living in houses, apartments, condominiums, trailer parks and homeless shelters.³⁴ The only exceptions are those living in a single family house that was rented or sold to them by someone who owns no more than three such houses and those living in an owner occupied building with four or fewer families. However, women who are harassed in housing not covered by the FHA may have remedies under state tort law or may be covered by state or local anti-discrimination laws. See “Other Laws Prohibiting Sexual Harassment in Housing,” below. In addition, the Supreme Court has held that same-sex sexual harassment is actionable as sex discrimination under Title VII.³⁵ Since FHA cases often rely on Title VII cases for legal standards, this ruling is likely also to apply in housing cases.

D. Who Can You Sue Under the FHA?

Anyone who harasses you can be sued under the FHA as long as your housing does not come under one of the exceptions described above and you can prove the claim. Thus, a landlord, rental agent, building manager, janitor, management corporation, and so on can all be sued under the FHA if they sexually harass a tenant.³⁶

A landlord or building owner may also be held liable for the harassing conduct of his agents or employees even if he himself did not do the harassing.³⁷ A property owner is responsible for insuring that the FHA is complied with on his property. Thus, sexual harassment by building managers or superintendents may also give rise to claims against the landlord or owner who employs them. In particular, if the landlord or owner does not inform his agents or employees that they cannot engage in sexual harassment, has no procedures for bringing complaints of sexual harassment to

his attention and having them remedied, and/or ignores complaints of sexual harassment, he, as well as the harasser, may be sued for violating the FHA.³⁸ In public housing, at least one court has held that a Housing Authority can be held liable for the actions of an employee who conditioned tenancy privileges on submission to sexual requests.³⁹

II. How to Raise a Claim Under the FHA

The Fair Housing Act establishes three ways in which those who have been sexually harassed in their housing may obtain relief:

- (1) You may file an administrative claim with the Department of Housing and Urban Development (HUD);⁴⁰
- (2) You may sue in federal court;⁴¹
- (3) If HUD decides that your case is of larger public importance, it may submit the claim to the U.S. Department of Justice and ask them to pursue it.⁴²

The Fair Housing Amendments of 1988 allow claimants to pursue these options separately or simultaneously so that someone who has been sexually harassed may go directly to court, may file an administrative claim or may do both.⁴³ However, if an administrative claim is filed and the agency reaches a settlement between the parties (known as a “conciliation agreement”) with the consent of the complainant, a court action cannot be filed unless the agreement is violated.⁴⁴ Similarly, if an administrative claim is at a hearing stage, the Administrative Law Judge will discontinue the administrative proceedings once a trial begins in a court action seeking relief with respect to the same issue.⁴⁵

A. Administrative Claims

A tenant who has experienced sexual harassment in housing may file a claim with the regional office of HUD within one year of the alleged incident.⁴⁶ The administrative process provides a remedy which is informal and inexpensive in comparison to court proceedings. The goal is to reach an agreement between the parties, known as a conciliation agreement. That agreement may provide for monetary or other relief, and is subject to approval by HUD. After a conciliation agreement has been reached, the decision is final, and you *may not* file a further action in court unless the conciliation agreement is violated.

If an agreement cannot be reached, HUD has the discretion to either file a charge or dismiss the claim. A charge may either be heard by an Administrative Law Judge or litigated in federal court by the Justice Department. If the claim is dismissed, you may still be able to pursue your claim in federal court. Although this kit outlines the procedure for filing an administrative claim, it would be a good idea to request a description of the procedure in writing from the agency before you proceed.

1. Filing a Complaint with HUD

(a) You must file a complaint with the Secretary of Housing and Urban Development no later than one year after the alleged incident occurred.⁴⁷ In this process, you are called the complainant; the person you are complaining about is called the respondent; and both of you together are the parties.

(b) The complaint must be in writing and should contain all of the information you have about the discriminatory practices. Clear descriptions of both subtle and blatant acts should include:

- Name of the harasser;
- Dates;
- Times;
- What happened;
- What was said; and
- Names of witnesses (if any).⁴⁸

The complaint should name all of the parties you intend to sue, including your landlord or building owner if you have a claim against them. A form complaint is available on-line at <http://www.hud.gov/complaints/housediscrim.cfm>.

(c) HUD has 100 days from the filing of the complaint to complete its investigation and issue a final investigative report stating whether there is reasonable cause to believe that a discriminatory housing practice occurred. If HUD is unable to complete the investigation and make this determination within this time period, HUD must notify the complainant and respondent of the reasons it was unable to meet the time deadline.⁴⁹

(d) If there is a state or local agency within the jurisdiction where the harassment occurred which HUD has certified as providing equivalent rights and remedies as HUD does under the FHA, HUD must refer the case to that agency *before* taking any action on the complaint. Please note: the state agency has 30 days from the date of the referral to respond. In such a case, HUD will only take further action (after 30

days) if the state agency fails to commence proceedings or fails to do so properly.⁵⁰ When the state acts within 30 days, a complainant cannot pursue or obtain federal agency relief.

(e) After the filing of a complaint, HUD will try to engage the parties in a conciliation while it investigates the complaint.⁵¹ A conciliation agreement is an agreement between the complainant and the respondent that is subject to approval by HUD. These agreements may provide for binding arbitration of the dispute and may also include monetary relief. If the parties do not comply with a conciliation agreement they agreed to, HUD can ask the Department of Justice to bring a lawsuit to enforce the agreement.⁵²

(f) At the end of the investigation of the complaint, HUD prepares a final investigative report that includes the following:

- the names and dates of contacts with witnesses;
- a summary and the dates of correspondence and other contacts with the complainant and the respondent;
- a summary description of other pertinent records;
- a summary of witness statements; and
- answers to interrogatories.⁵³

(g) HUD will issue a report even if an agreement is reached between the parties. However, the report will not make a finding of whether there is reasonable cause to believe a violation of the FHA occurred if the parties reach a conciliation agreement. If no conciliation agreement can be reached and if HUD finds reasonable cause to believe that a discriminatory practice occurred, HUD will issue a charge. If no reasonable cause is found, HUD will dismiss the complaint.⁵⁴

(h) If HUD issues a charge, the complainant may decide if she would like a hearing with an Administrative Law Judge (“ALJ”) or, within 20 days of the issuance of the charge, she may elect to have a civil action filed in a United States District Court.⁵⁵ If the complainant elects to have a civil action filed, HUD refers the claim to the Attorney General and the Attorney General must file the action on behalf of the complainant within 30 days after the complainant chooses to have a court action. The complainant has a right to be a party in the action.⁵⁶ If the agency dismisses the complaint, the complainant can still file her own action in federal court.

2. Choosing an Administrative Hearing

As explained above, you can choose to have an administrative hearing if the agency finds reasonable cause to believe your complaint.⁵⁷

(a) The ALJ will conduct the hearing within the vicinity of the place where the discriminatory act occurred.⁵⁸

(b) At the hearing you have the right to:

- Appear in person;
- Be represented by counsel (if necessary, counsel will be appointed for you);
- Cross-examine witnesses; and
- Have subpoenas issued to require persons to give testimony or other evidence about your complaint.⁵⁹

(c) Even if the statutory time frames are met (and the agency does not always comply with its own time frames), it may take up to nine months from the time a complaint is filed to the issuance of a decision by an ALJ. After the 100 days HUD has to investigate the discriminatory practice and determine reasonable cause, an ALJ has up to 120 days to commence the hearing and another 60 days after the end of the hearing to make a ruling.⁶⁰

(d) If the ALJ finds that a discriminatory practice has taken place he or she may order that you receive compensatory damages, injunctive equitable relief and/or attorney fees. The ALJ may also order a civil penalty of up to \$10,000 for the first violation of the FHA, up to \$25,000 for the second violation within 5 years and up to \$50,000 for the third within 7 years if he finds it would be in the public interest to do so.⁶¹

3. Benefits/Risks of Pursuing an Administrative Claim

Benefits:

- Conciliation agreements generally involve promises to do or not to do certain things. Therefore, these agreements work best for tenants who would like to maintain their tenancy.
- For claimants without lawyers, an administrative procedure may be easier and less intimidating than a court suit.

Risks:

- Some observers believe that HUD violates time frames set forth in the statute and that it is somewhat weak on enforcement.⁶²
- If a state agency has been certified in your state, your complaint will be referred to them and, unless the state agency fails to act in a timely manner, you will have to pursue your rights with the state agency rather than the federal government.
- Although an administrative proceeding can award you compensation for any damages you actually sustained because of the harassment, it cannot require the respondent to pay larger punitive damages.

B. Filing a Civil Action in Federal Court

If you decide to pursue a claim in federal court, you must file a complaint within *two years* of the alleged harassment. A housing discrimination claim may be joined with state law claims under civil rights statutes or tort claims such as intentional infliction of emotional distress, battery or trespass.

1. Procedure

You can file an action in federal court under the FHA without going through the administrative process outlined above. Such a civil action must be filed within two years of the discriminatory act(s) or breach of a conciliation agreement. This two-year period does not include any time you may have lost while you were pursuing an administrative remedy.⁶³

You can also choose to go to court instead of to an administrative hearing after HUD finds reasonable cause that there was a violation of the FHA. You have 20 days to decide whether to go to court instead of to an administrative hearing beginning with the date HUD finds reasonable cause.⁶⁴ Under 42 U.S.C. § 3612(o), HUD and the Attorney General are obligated to file a civil action on your behalf within 30 days of your decision to pursue your claim in court. Once an Administrative Law Judge begins a hearing on your claim, however, you cannot file an action in federal court on that claim.⁶⁵

You can also choose to file an action in federal court if the agency fails to find there is reasonable cause to believe a discriminatory practice took place. You should keep in mind that the two years you have to file a case does not include any time it took to pursue your administrative claim.⁶⁶

The court may appoint an attorney for you if you are financially unable to bear the costs.⁶⁷ It may also award attorneys' fees at the end of the process if you win.⁶⁸

2. Remedies

If the court finds that a discriminatory practice occurred, or is about to occur, the court can:

- (a) give you actual damages to compensate you for any actual monetary loss you incurred because of the discrimination;
- (b) award you punitive damages, which is a monetary award in addition to actual damages that the court can award when the defendant intentionally and flagrantly violated the law; and/or
- (c) grant a permanent or temporary injunction or a temporary restraining order which would order the defendant to stop harassing you, or to allow you to return to your housing if you were evicted, or require him to perform actions such as repairs that may have been the subject of the lawsuit.

In its discretion, the court may also allow the prevailing party reasonable attorneys' fees and costs.⁶⁹

3. Benefits/Risks of Pursuing Court Action

Benefits:

- There is broader available relief in a court action since a claimant may receive unlimited punitive damages as well as injunctive relief and compensatory damages.
- Tenants who have been evicted, or have voluntarily left their apartments, may want to seek money rather than a court order that the defendant do or not do something. Since the administrative remedy focuses on conciliation and monetary relief is limited, a court action may be a better forum to obtain monetary damages.
- Since the FHA provides for appointment of a lawyer if the person bringing the case cannot afford one and for attorney fees to the prevailing claimant, you may be able to find a lawyer to represent you.
- You can be sure you will be heard in federal court since there will be no referral to a state agency as there might be in an administrative action.

Risks:

- A court action can be time consuming and costly. Even though there are provisions for attorneys' fees and costs, if you do not qualify for appointment of counsel, you may have to pay for costs and fees up front and obtain reimbursement later.
- Since the question of whether sexual harassment occurred is primarily a factual one and the federal courts have specific rules about gathering evidence before a trial, you may be subject to long drawn out factual development. You may also have to testify during a trial and be prepared for probing and possibly embarrassing questions from the other side. However, if you have been harassed, you may nevertheless want to tell your story to someone who can give you relief.

C. Attorney General Suit

At any time during the investigation of a complaint, HUD may decide the matter should be litigated in federal court and refer it to the U.S. Department of Justice to file such a lawsuit.⁷⁰ In addition, HUD must refer any violation of a conciliation agreement to the Attorney General with a recommendation of court action.⁷¹ The Attorney General may also initiate a suit if the complainant shows a pattern of discrimination or raises a socially important issue.⁷² A complainant may intervene as of right in any lawsuit filed on her behalf by the Attorney General.⁷³ Remedies in this type of action may include actual or punitive damages, temporary restraining orders, injunctive relief, declaratory judgments and affirmative relief.

OTHER LAWS PROHIBITING SEXUAL HARASSMENT IN HOUSING

Although this primer focuses on sex discrimination remedies under the FHA for women who have been sexually harassed by landlords, real estate agents, building managers, building employees, and others with control over housing, women who are subject to sexual harassment in housing should be aware that there are other laws which could also provide legal remedies. These are briefly discussed below:

I. Other provisions of the FHA

42 U.S.C. § 3617 and § 3631, discussed briefly above, provide a federal remedy against an individual who interferes with your housing rights through coercion, threats, or

intimidation.⁷⁴ These provisions are different from claims alleging sex discrimination in housing. Under § 3617, you must show that you feel threatened or intimidated by the alleged abuser. If a landlord threatens you or makes you feel that he might use force to make you comply with his sexual (or other) demands, this provision could be used. For example, in *Grieger v. Sheets*, the court held that where the landlord threatened the victim's husband with a rifle and threatened the victim with bodily harm if she did not submit to his sexual demands, 42 U.S.C. § 3617 was violated.⁷⁵ Under § 3631, violations of this provision may result in fines and/or up to one year in prison.

II. State and Local Tort Claims

State tort law claims are general civil remedies available when a person harms another person. Depending on the facts of a particular case and the laws of your state, a woman may be able to sue her harasser in state court for injuries such as intentional infliction of emotional distress, retaliatory eviction, assault, or battery.⁷⁶ In addition, a woman may bring these claims in federal court along with her claims under the FHA.

III. State and Local Anti-discrimination Laws

A woman considering initiating a claim should also find out if there are state or local anti-discrimination laws that prohibit sex discrimination in housing.⁷⁷ For example, the Massachusetts Human Rights Law has been interpreted as prohibiting sexual harassment in housing. In one case, a landlord repeatedly made lewd suggestions and insinuations to his tenant, upsetting her and her child, and the

Massachusetts state court held him liable for sex discrimination in housing under the Massachusetts civil rights law because he had made the tenancy less desirable by his sexual harassment of the plaintiff.⁷⁸

IV. Laws Prohibiting Other Forms of Sex Discrimination

A. Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act ("Title VII"), 42 U.S.C. § 2000e *et seq.* (2002) protects you from various forms of discrimination in employment, including sexual harassment. This provision covers hiring, firing, work assignments, work environments, promotions, benefits, training, retirement policy and wages. Title VII only applies to employers with fifteen or more employees, labor unions, employment agencies and joint labor-management committees. NOW Legal Defense and Education Fund has produced a separate legal resource kit on "**Employment -- Sex Discrimination and Sexual Harassment.**"

B. Title IX of the Equal Education Amendments of 1972

Title IX of the Equal Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (2002), prohibits sex discrimination, including sexual harassment, by teachers, students, or school employees, in schools receiving federal funding. The Supreme Court ruled in 1992 that damages are available under Title IX. NOW Legal Defense and Education Fund has produced a separate legal resource kit on "**Sexual Harassment in the Schools.**"

Notes

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1. A 1987 study of the prevalence of sexual harassment in housing estimates that, in a four year period, between 7,000 and 15,000 incidents of sexual harassment in housing may have occurred nationwide. Regina Cahan, *Home is No Haven: An Analysis of Sexual Harassment in Housing*, 1987 Wis. L. Rev. 1061, 1067.
 2. William Litt, et al., *Recent Development*, 2 UCLA Women's L.J. 227, 232-34 (1992).
 3. 42 U.S.C. § 3604(b) provides in relevant part: "it shall be unlawful 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." While the Federal Fair Housing Act ("FHA"), Title VIII of the Civil Rights Act of 1968 does not explicitly prohibit sexual harassment in housing, the Act prohibits discrimination on the basis of sex in the sale or rental of housing. The Department of Housing and Urban Development, the federal agency which administers the FHA, has recognized that sexual harassment in housing is sex discrimination within the meaning of the Act. 24 C.F.R. § 100.65(b)(5).
 4. 42 U.S.C. § 3603(a), (b).

5. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). Title VII of the Civil Rights Act is codified at 42 U.S.C. § 2000e *et seq.* (2002).
6. See generally Annotation, *Sex Discrimination in Housing*, 81 A.L.R. 4th 205 (1990 & Supp. 1995). See also *Hall v. Meadowood Ltd. P'ship*, 7 Fed. Appx. 687 (9th Cir. 2001); *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996); *Honce v. Vigil*, 1 F.3d 1085 (10th Cir. 1993); *Reeves v. Carrollsburg Condo. Unit Owners Ass'n*, 1997 U.S. Dist. LEXIS 21762 (D.D.C. Dec. 18, 1997); *Williams v. Poretsky Mgmt., Inc.*, 955 F. Supp. 490, 494-95 (D. Md. 1996); *Woods v. Foster*, 884 F. Supp. 1169 (D. Ill. 1995); *Beliveau v. Caras*, 873 F. Supp. 1393 (C.D. Cal. 1995); *Grieger v. Sheets*, 689 F. Supp. 835, 840 (N.D. Ill. 1988); *New York ex rel. Abrams v. Merlino*, 694 F. Supp. 1101 (S.D.N.Y. 1988); *Shellhammer v. Lewallen*, 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985); Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 Clearinghouse Review 708 (Mar.-Apr. 2002).
7. See *Williams v. Poretsky Mgmt., Inc.*, 955 F. Supp. 490, 498 (D. Md. 1996); *Reeves v. Carrollsburg Condo. Unit Owners Ass'n*, 1997 U.S. Dist. LEXIS 21762 (D.D.C. Dec. 18, 1997).
8. 42 U.S.C. § 3617 provides: "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 803, 804, 805, or 806 [§§ 3603, 3604, 3605, or 3606]. This section may be enforced by appropriate civil action." See also 24 C.F.R. § 100.400(c)(2) (implementing this provision and stating that it is unlawful to interfere with a person's enjoyment of their property because of their sex).
9. See *Krueger v. Cuomo*, 115 F.3d 487, 491 (7th Cir. 1997) (upholding ALJ finding that landlord's "campaign of harassment" and retaliation against tenant for filing a harassment complaint "each independently violated" 42 U.S.C. § 3617); *Grieger v. Sheets*, 689 F. Supp. 835, 840 (N.D. Ill. 1988). The *Grieger* court found that the plaintiff's argument that she felt threatened and intimidated by the landlord after her refusal of his sexual demands was an adequate claim under § 3617 as was her husband's claim that he was threatened and intimidated after he confronted the defendant about his sexual demands to his wife.
10. While the majority of circuits have addressed sexual harassment issues in the context of employment, fewer courts have addressed the issue in the context of discrimination in housing. The Seventh, Ninth, and Tenth Circuit Courts of Appeals and District Courts in the Second, Fourth, Sixth, Seventh, and D.C. Circuits have squarely held that sexual harassment is actionable sex discrimination under the FHA. See citations at n.6 *supra*. In other circuits, actions for sexual harassment under the FHA would be cases of first impression. No court, however, has rejected the argument that sexual harassment is actionable sex discrimination under the FHA.
11. 24 C.F.R. § 100.65(b)(5) specifically states that prohibited actions under the FHA include "denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors."
12. 1 Fair Hous.-Fair Lending Rep. 15,128 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985).
13. *Id.*
14. 689 F. Supp. 835 (N.D. Ill. 1988).
15. *Id.*
16. See *Woods v. Foster*, 884 F. Supp. 1169 (N.D. Ill. 1995), where women in a shelter for homeless families complied with the sexual demands made of them and a claim under the FHA was sustained.
17. A causal connection can normally be shown by alleging the sexual demand and the eviction and that any other reason given for the eviction is a pretext. See *Shellhammer v. Lewallen*, 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985); *United States Dep't of Housing & Urban Dev. v. Kogut*, 1995 WL 225277, at *4 (H.U.D. A.L.J. 1995) (A landlord evicted a woman four days after she rejected his sexual advances. Despite the fact that the landlord had never explicitly threatened to evict her if she refused him, the court found him liable for quid pro quo

sexual harassment.). However, in *Honce v. Vigil*, 1 F.3d 1085 (10th Cir. 1993), the court rejected plaintiff's claim of quid pro quo sexual harassment because of the lack of a causal connection between her refusal to date the owner of a mobile home park and the subsequent problems she had as a tenant in that park. For other cases discussing quid pro quo claims in housing, see *Woods*, 884 F. Supp. 1169; *Doe v. Maywood Housing Auth.*, No. 93 C 2865, 1994 U.S. Dist. LEXIS 13451 (N.D. Ill. Sept. 24, 1994).

18. *Shellhammer*, 1 Fair Hous.-Fair Lending Rep. 15,472; *New York ex. rel. Abrams v. Merlino*, 694 F. Supp. 1101, 1104 (S.D.N.Y. 1988).

19. *Shellhammer*, 1 Fair Hous.-Fair Lending Rep. 15,472.

20. In addition to the regulations implementing the prohibition on sex discrimination, which clearly apply in this type of sexual harassment, see 24 C.F.R. § 100.400(c)(2), which states that the provision of the FHA prohibiting coercion, threats or interference with the enjoyment of one's housing applies to "threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the ... sex ... of such person."

21. No. 96-2495, 1997 U.S. Dist. LEXIS 21762 (D.D.C. Dec. 18, 1997).

22. *Id.* at *24.

23. 955 F. Supp. 490 (D. Md. 1996).

24. *Id.* at 492-93, 498.

25. 873 F. Supp. 1393 (C.D. Cal. 1995).

26. *Id.* at 1395.

27. *Id.* at 1398.

28. 694 F. Supp. 1101 (S.D.N.Y. 1988).

29. 689 F. Supp. 835 (N.D. Ill. 1988).

30. See, e.g., *DiCenso v. Cisneros*, 96 F.3d 1004 (7th Cir. 1996); *Honce v. Vigil*, 1 F.3d 1085 (10th Cir. 1993).

31. *Shellhammer*, 1 Fair Hous.- Fair Lending Rep. at 16,128.

32. See *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 63-69 (1986).

33. *Shellhammer*, 1 Fair Hous.-Fair Lending Rep. at 16,128; *New York v. Merlino*, 694 F. Supp. at 1103. But see *DiCenso*, 96 F.3d at 1009 (reversing decision allowing claim to proceed based on only one incident of harassment, but allowing possibility that a single incident of harassment could support an actionable claim); *Szkoda v. Illinois Human Rights Comm'n*, 706 N.E.2d 962, 969 n.1 (Ill. App. 1998) ("A single instance of sexual harassment may create a hostile housing environment in violation of section 3604(b) of the Fair Housing Amendments Act.").

34. In *Reeves v. Carrollsburg Condo. Unit Owners Ass'n*, 1997 U.S. Dist. LEXIS 21762 (D.D.C. Dec. 18, 1997), a condominium resident sued; in *Woods v. Foster*, 884 F. Supp. 1169 (N.D. Ill. 1995), homeless residents of a shelter were held to be protected by the FHA; in *Honce v. Vigil*, 1 F.3d 1085 (10th Cir. 1993), residents of a trailer park sued.

35. *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998).

36. See *Davis v. Mansards*, 597 F. Supp. 334 (N.D. Ind. 1984), on coverage of the FHA generally. In *Merlino*, 694 F. Supp. 1101, real estate brokers were sued for harassment; in *Woods*, 884 F. Supp. 1169, homeless women sued the executive director and chairman of the board of the ministry running the homeless shelter where they were harassed; in *Honce*, 1 F.3d 1085, the owner of a trailer park was sued; in *Hall v. Meadowood Ltd. P'ship*, 7 Fed. Appx. 687 (9th Cir. 2001), the apartment manager was sued; in *Reeves*, 1997 U.S. Dist. LEXIS 21762, a condominium owners association was sued; in *Williams v. Poretzky Mgmt., Inc.*, 955 F. Supp. 490 (D. Md. 1996), the real estate management company was sued.

37. Courts have held that the doctrine of respondeat superior applies to the FHA. See *City of Chicago v. Matchmaker Real Estate Sales Ctr.*, 982 F.2d 1086 (7th Cir. 1992), cert. denied, 113 S. Ct. 2961 (1994). This means that the landlord can be

liable under the FHA for actions of his agents and employees acting within the scope of their employment or duties. In particular, landlords may be liable if they did not make their employees and agents aware of the requirements of the FHA not to engage in sexual harassment and did not take steps to make sure harassing conduct does not occur on his premises. See *Bethishou v. Ridgeland Apts.*, 88 Civ. 5256, 1989 U.S. Dist. LEXIS 11986 (N.D. Ill. Sept. 28, 1989); see also *Reeves*, 1997 U.S. Dist. LEXIS 21762, at *25-27 (allowing FHA claims against condominium association, for “tolerating” one resident’s racial harassment of another); *Williams*, 955 F. Supp. at 496-97 (finding that landlord “knew or should have known of the harassment [by the repairman of a tenant], and took no effectual action to correct the situation”).

The Supreme Court held in a pair of employment discrimination cases that an employer is liable to an employee subject to sexual harassment by a supervisor whenever the employee experiences “a tangible employment action” such as a change in employment status. When no “tangible employment action” is taken, the employer may have an affirmative defense (*i.e.*, the employer may escape liability) if (a) the employer “exercised reasonable care to prevent and correct promptly any sexually harassing behavior,” and (b) the employee “unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer.” *Faragher v. Boca Raton*, 524 U.S. 775, 877 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998). It is unclear whether these concepts will be applied in the housing context to determine when a landlord will be held liable for the sexually harassing behavior of an employee or agent. For further discussion of the possible application of *Ellerth* to the housing context, see Nicole A. Forkenbrock Lindemeyer, *Sexual Harassment on the Second Shift: The Misfit Application of Title VII Employment Standards to Title VIII Housing Cases*, 18 Law & Ineq. J. 351, 386-91 (2000).

38. See discussion at n.32. In addition, the responsibility of employers for the sexually harassing conduct of their supervisors has developed under Title VII law and much of that case law is relevant to landlords and their employees under the FHA. See *Yates v. Avco Corp.*, 819 F.2d 630 (6th Cir. 1987); *Karibian v. Columbia Univ.*, 14 F.3d 773 (2d Cir.), *cert. denied*, 114 S. Ct. 2693 (1994).

39. *Doe v. Maywood Housing Auth.*, No. 93 C 2865, 1994 U.S. Dist. LEXIS 13451 (N.D. Ill. Sept. 24, 1994).

40. 42 U.S.C. § 3609.

41. *Id.* § 3613.

42. *Id.* § 3614.

43. *Id.* § 3613(a)(2).

44. *Id.* § 3613(a)(2). Unlike the Title VII context, there is no requirement that individuals filing a FHA claim in court first file an administrative claim with HUD.

45. *Id.* § 3612(f).

46. *Id.* § 3610.

47. 42 U.S.C. § 3610(a); 24 C.F.R. § 103.35.

48. 42 U.S.C. § 3610; 24 C.F.R. § 103.25.

49. 42 U.S.C. § 3610(a)(1)(B)(iv).

50. *Id.* § 3610(f).

51. *Id.* § 3610(b).

52. 42 U.S.C. § 3614(b)(2)(A).

53. *Id.* § 3610(b)(5)(A).

54. *Id.* § 3610(g).

55. *Id.* § 3612(a).

56. *Id.* § 3612(o)(1), (2).

57. Hearing procedures before an Administrative Law Judge are outlined in the statute at 42 U.S.C. § 3612.

58. *Id.* § 3612(b).

59. *Id.* §§ 3611, 3612(c).

60. *Id.* § 3612(g)(1)(2).

61. *Id.* § 3612(g)(3).

62. National Council of Negro Women, *Women and Housing: A Report on Sex Discrimination in Five American Cities* (1975); U.S. Commission on Civil Rights, *The Federal Fair Housing Enforcement Effort* 5-7 (Mar. 1979); J. Kushner, *Fair Housing Discrimination in Real Estate, Community Development and Revitalization* § 1.06, at 1-9 (1983 Supp. & 1988 Supp.).

63. In other words, the statute of limitations for a court action is tolled during the time you are pursuing an administrative remedy. 42 U.S.C. § 3613(a).

64. *Id.* § 3612(a).

65. *Id.* § 3613(a)(3).

66. *Id.* § 3613(a)(1)(B).

67. *Id.* § 3613(b).

68. *Id.* § 3613(c).

69. *Id.*

70. *Id.* § 3610(e).

71. *Id.* § 3610(c).

72. *Id.* §§ 3610, 3613.

73. *Id.* §§ 3612(o), 3614(e). Furthermore, the Attorney General may intervene in an individual action if she finds that the action is of general public importance. *Id.* § 3613(e).

74. 42 U.S.C. § 3617 provides: “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 803, 804, 805, or 806 [§§ 3603, 3604, 3605, or 3606]. This section may be enforced by appropriate civil action.”

75. *See Grieger v. Sheets*, 689 F. Supp. 835, 840 (N.D. Ill. 1988) (finding that the plaintiff’s argument that she felt threatened and intimidated by the defendant after her refusal of his sexual demands was an adequate claim under § 3617 as was her husband’s claim that he was threatened and intimidated after he confronted the defendant about his sexual demands to his wife); *see also Krueger v. Cuomo*, 115 F.3d 487, 491 (7th Cir. 1997) (upholding an ALJ finding that a landlord’s “campaign of harassment” and retaliation against a tenant for filing a harassment complaint “each independently violated 42 U.S.C. § 3617”).

76. *See generally* Kathleen Butler, *Sexual Harassment in Rental Housing*, 1989 U. Ill. L. Rev. 175, 190-95; Cahan, *supra* note 1, at 1085-86. For cases involving statutory and common law tort violations and sexual harassment in housing, see *Barela v. Superior Court of Orange Cty.*, 30 Cal. 3d 244, 636 P.2d 582, 178 Cal. Rptr. 618 (Cal. 1981).

77. For cases discussing state anti-discrimination law remedies for sexual harassment in housing, *see Szkoda v. Illinois Human Rights Comm’n*, 706 N.E.2d 962 (Ill. App. 1998); *Brown v. Smith*, 55 Cal. App. 4th 767 (Cal. App. 1997); *Gnerre v. Mass. Comm’n Against Discrimination*, 402 Mass. 502, 524 N.E.2d 84 (Mass. 1988); *Chomicki v. Wittekind*, 128 Wis. 2d 188, 381 N.W.2d 561 (Wis. Ct. App. 1985).

78. *Gnerre*, 524 N.E.2d at 88.