

Discriminatory Lending Cases

Protecting Homeowners Empowering Victims



BJA
Bureau of Justice Assistance
U.S. Department of Justice



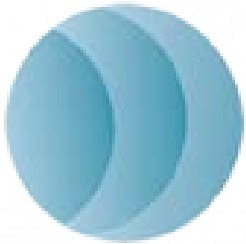
NATIONAL
CRIME
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JUSTICE FOR VICTIMS
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Office for Victims of Crime
OVC



Identifying Discriminatory Lending Practices and Filing a Fair Lending Complaint



NATIONAL CRIME
VICTIM LAW INSTITUTE

Victims' Rights in Criminal Prosecutions Related to Discriminatory Lending



Session Speaker



Diane Cipollone, Esq.
Director of Training
National Fair Housing Alliance
Office: 202-898-1661
Mobile: 410-693-0943
dcipollone@nationalfairhousing.org



***Identifying Discriminatory Lending Practices
and Filing a Fair Lending Complaint***



Fair Housing Act and Equal Credit Opportunity Act

- Fair Housing Act was enacted to insure equal access to housing, mortgage loans and homeowner's insurance
- The Fair Housing Act covers lending and other aspects of real estate-related transactions
- ECOA is broader and covers credit transactions for real estate and other types of credit, such as credit cards, vehicle loans and consumer loans



Protected Classes Fair Housing Act

- Race
- Color
- Religion
- National Origin
- Familial Status – presence of children under age of 18 in household
- Disability
- Sex



Types of Discrimination

- **Overt** – Blatant unfair treatment of someone because of their membership in a protected class
- **Differential Treatment** – Subtle unfair treatment of one person compared to another based on membership in a protected class
- **Disparate Impact** – A practice or policy which is applied uniformly but which results in a discriminatory effect on a group of protected persons and the policy is not justified by a business necessity



Fair Housing Act Covered Transactions

- Mortgage Application and Underwriting Process
- Advertising, Selling, Brokering, Appraising
- Mortgage Loan Servicing
- Loans made or purchased including:
 - Purchase, refinance and home equity loans
 - Loans to construct or improve a home
 - Loans for multi-family properties



Fair Housing Act Enforcement Authority

- U.S. Department of Housing and Urban Development (HUD)
 - Administrative Complaint Process
 - Must file complaint within 1 year of discriminatory act
 - HUD will refer complaint to state Fair Housing Assistance Program where applicable
- Private Right of Action
 - Individual lawsuit in federal or state court/must file within 2 years of discriminatory act
- U.S. Department of Justice (DOJ)
 - Systemic cases “pattern or practice of discrimination”



Equal Credit Opportunity Act

Protected Classes

- Race or Color
- Religion
- National Origin
- Sex
- Marital Status
- Age
- Income Derived from Public Assistance
- Exercised Rights under Consumer Credit Protection Act



Notice of Creditor's Decision

- Denial or change in credit terms
 - Creditor must provide an “Adverse Action Notice” that lists the reason(s) for the denial or offer of credit on substantially different terms than requested
- If credit was denied based on information obtained from a credit report, additional information must be provided under the Fair Credit Reporting Act (FCRA) 15 U.S.C. 1681 *et seq.*
- Additional disclosures also required under Dodd-Frank Wall Street Reform and Consumer Protection Act



Adverse Action Notice

Adverse Action

- Denial or revocation of credit
- Change in the terms of an existing credit arrangement
- Refusal to grant credit in substantially the amount or on substantially the terms requested
- Does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or in default, or where the additional credit would exceed a previously established credit limit



ECOA Enforcement Authority

- Consumer Financial Protection Bureau (CFPB)
 - Administrative enforcement
- Private Right of Action
 - Individual lawsuit in federal or state court/must file within 5 years of discriminatory act
- U.S. Department of Justice (DOJ)
 - Systemic cases “pattern or practice of discrimination”



Resources

- Fair Housing and Fair Lending Issues
 - www.nationalfairhousing.org
 - » Click on “Know Your Rights”
 - » Click on “Find Local Help”
- Electronic Code of Federal Regulations
 - www.ecfr.gov
 - » Click on drop-down menu to access all federal regulations



Resources

- U.S. Code and Code of Federal Regulations
- Fair Housing Act 42 U.S.C. 3601 *et seq.*
 - Regulations *24 CFR Part 100*
- Equal Credit Opportunity Act 15 U.S.C. 1691 *et seq.*
 - Regulations enforced by various agencies, including:
 - 12 CFR Part 202 (Federal Reserve Regulation B)
 - 12 CFR Part 1002 (CFPB Regulation B)



Resources

- Search “fair lending” and/or “file a complaint”
- www.hud.gov
- www.justice.gov
- www.consumerfinance.gov
- www.ftc.gov



Session Speaker



Terry Campos, J.D.

Responding to Online Fraud Project Director
National Crime Victim Law Institute
Office: 503-768-6819
Tcampos@lclark.edu



***Victims' Rights in Criminal
Prosecutions Related to
Discriminatory Lending***



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Crime Victims' Rights Act

- 18 U.S.C. § 3771
- A “bill of rights” for crime victims
 - Protection
 - Notice
 - Heard
 - Confer
 - Restitution
 - Unreasonable delay
 - Fairness, dignity and respect



CVRA – Right to Notice

- Crime victims have the right to:
 - “reasonable, accurate and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused” 18 U.S.C. § 3771(a)(2).
- Interpretation Issues:
 - “reasonable,” “accurate,” “timely”



CVRA - Right to be Present

- Crime victims have the right:
 - “not to be excluded” from any public court proceeding, “unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding” 18 U.S.C. § 3771(a)(3).
- Interpretation Issues:
 - tremendously high hurdle for defendants to overcome
 - *mere presence* has not been held to violate defendant’s rights



CVRA - Right to be Heard

- Crime victims have the right to be:
 - “Reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding” 18 U.S.C. § 3771(a)(4).
- Interpretation Issues:
 - how (written and/or oral)
 - multiple victims



CVRA - Right to Confer with Government

- Crime victims have the right to:
 - “Confer with the attorney for the Government in the case” 18 U.S.C. § 3771(a)(5).
- Interpretation Issues:
 - more than informing victim of plea
 - victims do not control the case



CVRA - Right to Restitution

- Crime victims have the right to:
 - “Full and timely restitution as provided in law” 18 U.S.C. § 3771(a)(6).
- MVRA: “[T]he court shall order, in addition to. . . any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate” 18 U.S.C. § 3663A(c)(1)(A).



Technical Assistance

NCVLI provides legal research and educational writing to attorneys, advocates, judges, and legislatures. NCVLI also provides resources and referrals to victims. NCVLI's technical assistance request form is located on our website.



For More Information



The National Crime Victim Law Institute

Lewis & Clark Law School
10015 S.W. Terwilliger Boulevard
Portland, OR 97219
Victims (if case is pending): 1-888-768-6556
ncvli@lclark.edu
www.ncvli.org

National Fair Housing Alliance

1101 Vermont Ave. NW, Suite 710
Washington, DC 20005
202-898-1661
nfha@nationalfairhousing.org
<http://Nationalfairhousing.org>

National Crime Prevention Council

2001 Jefferson Davis Highway, Suite 901
Arlington, VA 22202
202-466-6272
www.ncpc.org





Don't Forget...

Take the time to visit the Exhibition Hall and Resource Center!

