

## **Fair Housing Law, Municipal Policies and Complaint Analysis**

### **Introduction**

Impediments to fair housing choice may be acts that violate a law or acts or conditions that do not violate a law but preclude people with varying incomes from having equal access to decent, safe, and affordable housing. Fair housing choice is defined, generally, as the ability of people with similar incomes to have similar access to housing.

The first part of this section will address the existing statutory and case law that are designed to remove impediments and promote fair housing choice. The federal fair housing law can be effective in mitigating barriers to fair housing choice depending upon enforcement efforts. Related laws and case law that provide further interpretation, understanding, and support to the Fair Housing Act will also be discussed.

The Florida Fair Housing Act, as amended, was reviewed and compared to the federal fair housing law to determine whether it offered similar rights, remedies, and enforcement to the federal law and might be construed as substantially equivalent.

Pertinent related laws, such as the Community Reinvestment Act and Home Mortgage Disclosure Act, were reviewed and will be mentioned in terms of how they can facilitate fair lending. Then, various case decisions pertaining to fair housing issues in Manatee County and the City of Bradenton were reviewed and are incorporated in the discussion below. Manatee County and the City of Bradenton's fair housing ordinances were also reviewed.

The second section discusses the level of enforcement activities in Manatee County and Bradenton. Manatee County investigates fair housing complaints through the Atlanta HUD office. Conversely, the City of Bradenton is a Fair Housing Assistance Program (FHAP) agency that accepts and investigates complaints and provides fair housing literature and education through its fair housing coordinator and at various community meetings at which staff is invited to speak.

The more difficult but intertwined aspect of fair housing choice is the availability of affordable housing. Adequate, decent, safe, and affordable housing for people of varying incomes should be available. Minimizing housing costs for the very low- and low-income usually requires some form of subsidy that is oftentimes generated utilizing federal, state, and/or local government dollars. Manatee County and the City of Bradenton have housing programs designed to rehabilitate and produce affordable housing. These efforts are detailed in the third and fourth sections.

Numerous documents were collected and analyzed to complete these sections. The key documents were Manatee County's and Bradenton's Consolidated Plans, the community profile section of this impediment analysis, County and City zoning ordinances, and documentation on various housing programs and projects, including new initiatives offered by the City and County. County and City staff also provided information on their various efforts to develop affordable housing in the past and present, and concerning their plans for the future.

An analysis of fair housing complaints is covered in the fifth section. The last section contains conclusions about fair housing barriers based on the existing law, enforcement efforts, complaint analysis, and availability of affordable housing.

## 1. Fair Housing Law

The Federal Fair Housing Act (the Act) was enacted in 1968, and amended in 1974 and 1988 to add protected classes, provide additional remedies, and strengthen enforcement. The Act, as amended, makes it unlawful for a person to discriminate on the basis of race, color, sex, religion, national origin, handicap, or familial status. Generally, the Act prohibits discrimination based on one of the previously mentioned protected classes in all residential housing, residential sales, advertising, and residential lending and insurance. Prohibited activities under the Act, as well as examples, are listed below.

It is illegal to do the following based on a person's membership in a protected class:

- Misrepresent that a house or apartment is unavailable by:
  - ✓ Providing false or misleading information about a housing opportunity,
  - ✓ Discouraging a protected class member from applying for a rental unit or making an offer of sale, or
  - ✓ Discouraging or refusing to allow a protected class member to inspect available units;
- Refuse to rent or sell or to negotiate for the rental or sale of a house or apartment or otherwise make unavailable by:
  - ✓ Failing to effectively communicate or process an offer for the sale or rental of a home,
  - ✓ Utilizing all non-minority persons to represent a tenant association in reviewing applications from protected class members, or

- ✓ Advising prospective renters or buyers that they would not meld with the existing residents;
- Discriminate in the terms, conditions or facilities for the rental or sale of housing by:
  - ✓ Using different provisions in leases or contracts for sale,
  - ✓ Imposing slower or inferior quality maintenance and repair services,
  - ✓ Requiring a security deposit (or higher security deposit) of protected class members but not for non-class members,
  - ✓ Assigning persons to a specific floor or section of a building, development or neighborhood, or
  - ✓ Evicting minorities but not whites for late payments or poor credit;
- Make, print, publish, or post (direct or implied) statements or advertisements that housing is not available to members of a protected class;
- Persuade or attempt to persuade people, for profit, to rent or sell their housing due to minority groups moving into the neighborhood by:
  - ✓ Real estate agents mailing notices to homeowners in changing area with a listing of the homes recently sold along with a picture of a Black real estate agent as the successful seller, or
  - ✓ Mailed or telephonic notices that the "neighborhood is changing" and now is a good time to sell or noting the effect of the changing demographics on property values;
- Deny or make different loan terms for residential loans due to membership in a protected class by:
  - ✓ Using different procedures or criteria to evaluate credit worthiness,

- ✓ Purchasing or pooling loans so that loans in minority areas are excluded,
  - ✓ Implementing a policy that has the effect of excluding a minority area, or
  - ✓ Applying different procedures (negative impact) for foreclosures on protected class members;
- Deny persons the use of real estate services; or
  - Intimidate, coerce or interfere.
  - Retaliation against a person for filing a fair housing complaint.

The Fair Housing Act requires housing providers to make reasonable accommodations in rules, policies, practices, and paperwork for persons with disabilities. They must allow reasonable modifications in the property so people with disabilities can live successfully.

In addition to prohibiting certain discriminatory acts, the Act places no limit on the amount of recovery and imposes substantial fines. The fine for the first offense can be up to \$10,000; the second offense, up to \$25,000; and the third offense, up to \$50,000.

The U. S. Department of Housing and Urban Development (HUD) provides funding to state and local governmental agencies to enforce local fair housing laws that are substantially equivalent to the Fair Housing Act. Once a State, County, or City have a substantially equivalent fair housing law, they can attempt to become certified as a Fair Housing Assistance Program (FHAP) Agency and receive funds for investigating and conciliating fair housing complaints. It should be noted that a County or City must be located in a state with a fair housing law that has been determined by HUD to be substantially equivalent. Then, the County or City must also adopt a law that HUD concludes is substantially equivalent in order to participate in the FHAP Program. The local law must contain the seven protected classes - race, color, national origin, sex, religion, handicap and familial status - and must have substantially equivalent violations, remedies, investigative processes, and enforcement powers.

In addition, the process for investigating and conciliating complaints must mirror HUD's. HUD's process begins when an aggrieved person files a complaint with HUD within one year of the date of the alleged discriminatory housing or lending practice. The complaint must be submitted in writing to HUD. However, this process can be initiated by a phone call. HUD will complete a complaint form, also known as a 903, and mail it

to the complainant to sign. The complaint must contain the name and address of the complainant and respondent, address and description of the housing involved, and a concise statement of the facts including the date of the occurrence and the complainant's affirmed signature. Upon filing, HUD is obligated to investigate, attempt conciliation, and resolve the case within 100 days. Resolution can be a dismissal, withdrawal, settlement or conciliation, or a determination as to cause.

The certification process includes a two-year interim period when HUD closely monitors the intake and investigative process of the governmental entity applying for substantial equivalency certification. In essence, complaints must be investigated, conciliation attempted, and closed within 100 days. Also, the local law must provide enforcement for aggrieved citizens where cause is found. It can be through an administrative hearing process or filing suit on behalf of the aggrieved complainant in court.

The State of Florida enacted the Florida Fair Housing Act in 1983 and amended it in 1989. It appears to contain all of the requisite provisions to pass HUD's scrutiny as a substantially equivalent law. In the Act and the local ordinance, all of the Federal protected classes are covered. Administrative hearings or court options are outlined in the Florida Fair Housing Act, and punitive fines are the same as the Federal Act. Manatee County adopted Ordinance No. 90-62, the Manatee County Fair Housing Ordinance on November 6, 1990, repealing Ordinance 86-50. It does not appear to be substantially equivalent to the Federal Act, although it refers to the state code for punitive measures. Manatee County's Fair Housing ordinance does not appear to be

substantially equivalent because it does not conform to the second component of substantial equivalence: operation. To obtain a level of substantial equivalence the ordinance must in “operation” provide the same rights, enforcement procedures, remedies, and judicial review as the Federal Act. Currently, there is no enforcement, investigation, or conciliation of the ordinance and it is unclear who the *Authority* is that is responsible for enforcing the ordinance. Presently, all complainants are referred to the Atlanta HUD office. It also does not have a sub-section that includes reasonable accommodations for handicapped persons and the definition of discrimination is not broad enough to cover the refusal to permit, at the expense of the handicapped person, reasonable modifications as well as the design and the construction of multifamily structures in an accessible manner. The City of Bradenton’s fair housing ordinance as amended is substantially equivalent to the Federal Act.

There are other laws that augment or promote fair housing choice. The recent developments discussed herein pertain to court cases and decisions that have developed in fair housing as well as other laws that have been utilized to enhance fair housing efforts.

Since the inception of the Act, insurance companies have taken the position that they are not covered by the Act. However, in 1992 a Wisconsin Appeals Court determined that the Act “applies to discriminatory denials of insurance and discriminatory pricing that effectively preclude ownership of housing because of the race of an applicant.” The case was a class action lawsuit brought by eight African-American property owners, the

NAACP, and the American Civil Liberties Union against the American Family Insurance Company. The plaintiffs claimed they were either denied insurance, underinsured, or their claims were more closely scrutinized than Whites'. American Family's contention was that the Act was never intended to prohibit insurance redlining. The appeals Court stated, "Lenders require their borrowers to secure property insurance. No insurance, no loan; no loan, no house; lack of insurance thus makes housing unavailable." A 1998 court verdict against Nationwide Insurance further reinforced previous court action with a \$100 million judgment against illegally discriminating against black homeowners and predominantly black neighborhoods.

Another case was settled for \$250,000 in Maryland when Baltimore Neighbors, Inc., a non-profit organization, alleged that real estate agents were steering. Fine Homes' real estate agents were accused of steering prospective African-American buyers away from predominantly White neighborhoods and Whites were almost never shown homes in predominantly African-American zip codes.

A 1999 joint statement from the Department of Justice and HUD details changing attitudes concerning group homes for the disabled and mentally ill situated in residential neighborhoods. The statement indicates that group homes should be treated no different than non-related individuals sharing a home. If a jurisdiction has zoning rules limiting the number of non-related individuals living in a home in a residential area, similar limits may be imposed on group homes for the disabled or mentally ill. If no such zoning rules exists limiting non-related individuals, none may be set for group homes.

This statement does not include half-way homes for ex-convicts, drug users, or recovering drug users.

Unfair lending is more difficult to detect and to prove. However, there are laws other than the fair housing law to assist communities in aggressively scrutinizing fair lending activity. One such law is the Home Mortgage Disclosure Act (HMDA), which requires banks to publish a record of their lending activity annually. Frequently, fair housing enforcement agencies and nonprofits will use this data to help substantiate a discrimination claim or to determine a bank's racial diversification in lending. Another law frequently utilized by community organizations is the Community Reinvestment Act (CRA). When a bank wants to merge with or buy another bank or establish a new branch, the community has an opportunity to comment. Usually, the CRA commitments made by the bank are analyzed, utilizing other data such as HMDA, to determine adherence. The community can challenge the action if the bank has a poor record. Sometimes agreements can be reached wherein the bank promises a certain level of commitment to the community. Additionally, the Equal Credit Opportunity Act (ECOA) prohibits discrimination in lending generally and can be quite significant when it comes to securing information about unfair lending practices and remedies, which may include up to one percent of the gross assets of the lending institution.

It has long been settled that fair housing testing is legal and that non-profits have standing to sue so long as certain criteria are met. These decisions make it feasible for non-profits to engage in fair housing enforcement activities.

## **2. Enforcement**

### **Manatee County**

Manatee County has delegated the task of investigating fair housing complaints to the Atlanta HUD office and the Florida Commission on Human Relations. The Commission takes complaints, investigates the issues, and attempts to conciliate the dispute. The process that the Commission on Human Relations follows was patterned on the process that HUD established for fair housing complaints prior to handing-off enforcement activities to substantially equivalent entitlement communities that have completed the training requirements to become a Fair Housing Assistance Program (FHAP) agency such as the State of Florida and the City of Bradenton.

### **City of Bradenton**

The City of Bradenton is a FHAP agency and is equipped to investigate and enforce local, state, and federal fair housing laws within its jurisdiction. The City of Bradenton does intake of fair housing complaints, investigates the complaints, and implements appropriate fair housing enforcement measures.

### **Public Outreach and Education**

An essential ingredient of fair housing opportunity and enforcement is the education of the public regarding the rights and responsibilities afforded by the fair housing law. This includes the education of housing and financial providers as well as the citizens, the potential victims of discrimination. It is important for potential victims of housing and/or lending discrimination to be cognizant of fair housing issues generally, know what may

constitute a violation, and what they can do in the event they believe they may have been discriminated against. Likewise, it is important for lenders, housing providers, and their agents to know their responsibilities and when they may be violating the fair housing law.

Oftentimes, the public is not aware of the full scope and extent of the fair housing law. Also, discrimination is generally much more subtle today than it was twenty or thirty years ago. Instead of saying that no children are allowed, they may impose unreasonable occupancy standards that have the effect of excluding families with children. Rather than saying, "We do not rent to African-Americans," they may say, "Sorry we do not have any vacancies right now, try again in a few months," when, in fact, they do have one or more vacancies. Printed advertisements do not have to state, "no families with children or minorities allowed" in order to be discriminatory. A series of ads run over an extended period of time that always or consistently exclude children or minorities may very well be discriminatory. In addition, a person who believes he may have been discriminated against will probably do nothing if he does not realize that a simple telephone call can initiate intervention and a resolution on his behalf without the expenditure of funds or excessive time. Thus, knowledge of available resources and assistance is also a critical component.

Manatee County's Community Services and Planning Departments in partnership with the City of Bradenton and other organizations and institutions are responsible for producing the annual Fair Housing workshop and luncheon in April, National Fair

Housing Month. The City of Bradenton, through its FHAP, is responsible for providing fair housing education at homebuyer's education classes, workshops, and homebuyer expos. The Bradenton FHAP was designated as a FHAP agency in 2001 and despite some challenges, the FHAP continues to provide fair housing education and outreach at first time homebuyers seminars and workshops.

The Planning and Community Services Departments of Manatee County have been exploring creative methods to provide fair housing education and outreach programs to the residents of Manatee County. They have formed a collaborative group including the City of Bradenton, Manatee County Housing Authority, Manatee Coalition for Affordable Housing, and Manatee Opportunity Council to cooperatively get the message out about residents' rights under the Fair Housing Act to housing-related practitioners and ultimately the general public.

The collaborative group targeted the housing industry practitioners they felt would have the greatest need for fair housing information by offering three individual education seminars. The first presentation was geared towards Realtors and Builders, the second was focused on Lenders and Bankers, and the third was marketed to Landlords and Property Managers. Each session was approximately three hours long and was facilitated by fair housing experts with the primary goal of educating housing professionals on fair housing issues and laws.

The sessions were held in the Manatee County Civic Center on:

October 28, 2004

Realtors/Builders

December 16, 2004

Lenders/Bankers

February 10, 2005

Landlords/Property Managers

### **3. Production and Availability of Affordable Units**

An overview of the key characteristics affecting the housing environment in Manatee County and the City of Bradenton will assist in assessing the adequacy and effectiveness of the housing programs, designed and implemented by the County and City, in reaching the target market and identifying and serving those who have the greatest need. Much of the information is taken from the Consolidated Plan, the Consolidated Annual Performance and Evaluation Report (CAPER), and other documentation provided by the City of Bradenton and Manatee County.

Grant funding for the past three years includes entitlement allocations for Community Development Block Grant and HOME Investment Partnership. State Housing Initiative Program (SHIP) funds were also a vital tool used for the development and retention of affordable housing in Bradenton and Manatee County. Funding levels are:

#### **Manatee County**

FY 2005	Community Development Block Grant	\$1,725,497
	HOME Investment Partnerships Grant	\$638,771
	State Housing Initiative Program Grant	\$1,758,126
FY 2004	Community Development Block Grant	\$1,814,000
	HOME Investment Partnerships Grant	\$651,808
	State Housing Initiative Program Grant	\$1,816,349
FY 2003	Community Development Block Grant	\$1,831,000
	HOME Investment Partnerships Grant	\$657,079

### **City of Bradenton**

FY 2005	Community Development Block Grant	\$552,863
	State Housing Initiative Program Grant	\$387,615
FY 2004	Community Development Block Grant	\$582,000
	State Housing Initiative Program Grant	\$518,743
FY 2003	Community Development Block Grant	\$595,000
	State Housing Initiative Program Grant	\$740,825

### **Manatee County**

Three priorities are detailed by the Manatee County Consolidated Plan regarding affordable housing. The first provides for the maintenance of existing affordable housing stock. The 2002-03 CAPER indicates that eight low-income units and two moderate income units were rehabilitated utilizing State Housing Initiative Program (SHIP) funds. SHIP is a State of Florida program to increase affordable housing to its income eligible citizens. Four low-income and five moderate income units were targeted for replacement housing. There are 707 Section 8 units and 80 public housing units managed by the Manatee County Housing Authority. Manatee County's 2004-2005 recommendations for CDBG funding proposed to use \$43,000 to renovate one group homes operated by Manasota Arc, which serves persons with disabilities, particularly those with developmental disabilities.

The second priority was to produce new affordable housing for low-income renters and owners. Manatee County supports the acquisition and/or development of new

affordable housing units through either private efforts or publicly assisted means, particularly as a feasible option to achieve infill redevelopment, which contributes to neighborhood preservation and stability. Manatee County has provided \$350,000 in SHIP funding toward the construction of a 144 unit affordable rental project. The project will produce 43 low income and 44 moderate income SHIP designated units.

The third priority was to provide assistance to low-income households with housing problems. The 2002-2003 CAPER indicates that 23 extremely low and low to moderate income households were assisted through the Homebuyer's Club. Good Homes of Manasota, Inc. will construct single family housing on existing units and/or rehabilitate existing structures by utilizing CHDO set-aside money from CDBG according to the 2003-2004 CAPER. Manatee County also has plans to establish HOME sub-recipient agreements with three agencies to provide security and utility deposit assistance to low and moderate income households.

### **City of Bradenton**

The City of Bradenton has three affordable housing CDBG priorities. The first priority is housing construction and the purchase of existing housing utilizing CDBG funds to assist with down payment and closing cost to first-time homebuyers. The 2001-2002 CAPER specified that one first time homebuyer was assisted through CDBG funds in 2000-2001 and 23 first time homebuyers were assisted in 2001-2002 by utilizing SHIP funds.

The second priority was the rehabilitation of owner occupied single-family residential dwelling units. The 2001-2002 CAPER specified 12 single-family occupied dwelling units were rehabilitated with CDBG funds. The City of Bradenton's CDBG funded Paint Refund program provided four grants to residents to paint the exterior of their units.

The third priority was the homeless persons/individual rental assistance reimbursement. The 2001-2002 CAPER stated that during the one year period, the City of Bradenton assisted 24 persons/families with rental assistance. Rental reimbursement is provided to the Coalition on Homelessness for assistance provided to the homeless or those close to being homeless within the City of Bradenton. The 2004 PHA Annual Plan indicates that the City of Bradenton has 519 Section 8 units reserved for only very-low and low-income residents.

#### **4. Regulatory and Public Policy Review**

##### **Manatee County**

A review of Manatee's zoning code reveals a variety of zoning categories that support affordable housing developments, particularly for mobile homes parks and individual mobile homes. Mobile home parks have a specific designation within the Manatee County Zoning Ordinance. This zoning classification is located throughout the County. Mobile homes are typically more affordable than framed houses. Due to recent hurricane activity within the State of Florida, additional regulations have been implemented for mobile homes to ensure that they can withstand treacherous hurricane weather. These requirements have increased the cost of mobile homes, but they still remain less expensive than framed housing.

While individual mobile homes are not allowed in the Residential Single Family District, they are permitted in zoning classifications A (Agricultural) and A1 (Suburban Agricultural) areas within the County.

##### **City of Bradenton**

A review of the City of Bradenton's zoning ordinance does not reveal any major concerns. There a variety of minimum lot areas allowed in the multitude of residential districts that allow for diversity in house sizes and prices to create an atmosphere that is inclusive to affordable housing. In particular, the Residential Overlay District, R-1D, is designed to facilitate continued use of already developed high density single-family development and to allow infill and redevelopment in high density areas. Mobile homes, factory built homes produced prior the enactment of the federal Manufactured Home

Construction and Safety Standards (HUD Code), are permitted only in the Mobile Home Park District although single family dwelling units are also allowed within this district. Manufactured homes, factory built homes built after the HUD code went into effect, particularly modular homes which are built to the state, local, or regional code are allowed in residential districts according to the City of Bradenton's Department of Development Services. The City of Bradenton also offers an administrative approval, Planned Redevelopment Project (PRP), for redevelopment projects that would otherwise require a variance or a special use permit. The benefits of this PRP is that it may increase affordable housing development by reducing or waiving impact and reviews fees for projects in blighted areas.

## **5. Analysis of Fair Housing Complaints**

### **Manatee County**

Fair housing complaint information was received from HUD that provides a breakdown of complaints filed for Manatee from 2000 through 2004. Nine complaints were filed at HUD and 33 were filed at the State of Florida FHAP according to one or more of seven bases, including; National Origin, Color, Familial Status, Handicap, Sex, Religion, and Race. The chart below shows the breakdown. The total is more than 42 because some cases cited multiple bases in their claim.

<b>Total Cases of Housing Discrimination Filed Under the Fair Housing Act, as amended Manatee County, Florida</b>											
FY	Filed At	Total Cases	Race	AA	NA	Asian	National Origin	Religion	Gender	Disability	Familial Status
			White								
2000-2004	HUD	9	0	3	0	0	0	0	2	4	1
2000-2004	FHAP	33	0	8	0	0	4	0	1	14	6

### **City of Bradenton**

Fair housing complaint information for the City of Bradenton was received from the City of Bradenton FHAP and is documented in the chart below. Some of the complaints filed may also be included in the overall Manatee County complaint data profile above.

<b>Total Cases of Housing Discrimination filed with the City of Bradenton FHAP</b>		
Date Filed:	Date Closed:	Reason:
10/17/03	12/15/0	Complainant withdrew complaint
6/8/02	10/6/04	Case closed as a result of complainant refusal to accept modification agreed upon.
4/29/04	12/15/04	Complainant withdrew complaint
1/18/05	3/9/05	Closed due to failure of complainant to cooperate.
1/28/05	3/9/05	Closed due to failure of complainant to cooperate.

Four cases dealt with refusal to allow accommodation and one for refusal to allow modification.

## **6. Conclusions and Implications for Fair Housing Barriers**

The State of Florida and the City of Bradenton both have fair housing laws that are substantially equivalent to the federal Fair Housing Act while Manatee County does not. The City of Bradenton has a FHAP that investigates fair housing complaints and works to educate the community and professionals on fair housing issues. The current level of complaints is about average, indicating that potential complainants are aware of their rights under fair housing law. Over the past four years, 42 complaints have been received and investigated through HUD and either the State of Florida FHAP or City of Bradenton's FHAP.

Manatee County currently receives over \$2.3 million per year in Community Development Block Grant and HOME entitlements while the City of Bradenton receives \$552,863 in CDBG entitlements. The County and City operate housing programs funded with these allocations that work to address housing priorities defined in their Consolidated Plans. The County's housing priorities include the maintenance of existing affordable housing stock, producing new affordable housing for low-income renters and owners, and providing assistance to low-income households with housing problems. The City's housing priorities include housing construction and the purchase of existing housing stock with the assistance of CDBG funds for down payment, closing cost assistance for first time homebuyers, and homeless persons/individual rental assistance reimbursement.

A review of County zoning code revealed that manufactured housing is not allowed in single family residential districts. Although, manufactured housing is allowed in three manufactured housing districts, the village district, and the planned mixed used district the inflexibility in allowing it to be introduced into single family districts restricts an affordable housing alternative that could be used for replacement or infill housing.

A review of Bradenton's zoning code did not reveal any major concerns.