

Chapter 10

The Fair Housing Amendments Act of 1988: Creating New Housing Opportunities for Women

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Women and their children are the group most affected by the housing crisis. Few single mothers are homeowners; most rent their homes, paying a substantial percentage of their income for housing. Women of color bear a disproportionate burden of poverty and housing needs. This burden is made heavier by discrimination; women who maintain families face discrimination because of sex, marital status, income source, and the presence of children. While it is difficult to totally change discriminatory behavior, it is possible to reduce its incidence by making it illegal. Victims have to be educated about their rights, and perpetrators of discriminatory practices have to be punished by levying severe monetary penalties.

The adoption of the Fair Housing Amendments Act of 1988 has demonstrated that developing and enforcing enabling legislation can address and mitigate the problems faced by women in gaining access to safe, decent, affordable housing of their choice. This paper discusses provisions under the Fair Housing Amendments Act of 1988 and their implications for women seeking housing. What the law does and does not do is reviewed, followed by a summary of the nature and extent of progress made in eliminating discriminatory housing practices against women. In conclusion, an analysis of the obstacles that remain is presented, with recommendations for overcoming them, so that the Fair Housing Law can indeed remove some of the obstacles now impeding women who seek housing.

A Profile of the Problem

Alice and her two children, Tom and Sally, are escaping an abusive family situation. Alice is determined to make things work. She has a job and a few good friends to support her. Once she finds an apartment to rent, she can get on with her life, raise her children, and put the past behind her. She stays with friends temporarily, doubling up while she hunts for her apartment with optimism. But everywhere she goes she finds doors slammed in her face.

We have no apartments for you. We rent only to young, single people. You will feel out of place here.

This is an adults only community. We don't allow children under 18 years of age to live here.

You will have to rent a three-bedroom apartment. We cannot allow your son and daughter to share a bedroom. Can you afford that?

The rents here are probably too high for a single mother like you but I'm sure we can work out an arrangement, honey.

Hope turns to despair as Alice finds herself moving further and further away from her chosen area of residence, resigned to accept a long commute to her job, to change her children's school, and to move away from the support of her friends. Perhaps her story will end in a homeless shelter, or worse, on the street. Alice's story illustrates the problems faced by countless women in the United States. According to the National Coalition against Domestic Violence, one out of three women will experience domestic violence in her lifetime. The latest nationwide statistics report that approximately 374,000 women and their children are given emergency housing in 1,200 shelters annually, and approximately 150,000 are turned away for lack of room. These numbers are increasing. A Ford Foundation report claims that 50 percent of all homeless women and children in this country are fleeing domestic violence.

The lack of adequate affordable housing and federal assistance for low-income persons affects women in poverty more severely than any other group. Their predicament is exacerbated by widespread discrimination against families with children, and by numerous other forms of housing discrimination faced by women. *Female Headed Households*, a report published by the Office of Policy Development and Research (Limmer:1978), documented statistics on the housing problems faced specifically by women and children in poverty. According to the report, women heads-of-household and their children lived disproportionately in substandard housing and paid a higher percentage of their incomes for housing compared with the national average. If a woman was black, Hispanic, or headed a large family, she was more likely to be poorly housed. Other studies and research in conjunction with lobbying by housing advocacy groups finally led to the amendment of the Fair Housing Act to prohibit discrimination against families with children.

Despite this, the significance of change in family life and the prevalence of women-maintained households are not yet an integral part of public consciousness. Single mothers are still regarded as a deviation from the family norm, societal liabilities instead of assets. This is because most are poor and have limited access to opportunities for self-sufficiency. The following section describes the problems women continue to face and discusses the complexity of associated issues.

Diminishing Stock of Affordable Housing

Affordability of housing is a growing problem. While housing-related costs have risen significantly, the supply of low-cost rental housing is disappearing. In 1970, there were 9.7 million units that rented for \$250 or less (30 percent of a \$10,000 annual income). By 1985, that number had dropped precipitously to 7.9 million (National Low Income Housing Coalition, 1990). There are now more than two low-income households for each affordable unit in the inventory. Affordable housing for the poor has decreased by 19 percent between 1978 and 1985 (U.S. Bureau of the Census et al., 1989). Though the homeless are the most visible manifestation of the affordable housing crisis, much of the problem remains hidden and undocumented. Many households are paying more than 50 percent of their income for rent or doubling up with other families to stay housed (Dolbeare, 1990). Today, nationally, one out of five single mothers is living doubled up, a step away from homelessness (Pearce, 1990).

Growth in Households of Women and Children in Poverty

In the last quarter century, the number of poor households headed by women has doubled, with increases of roughly 100,000 each year (Pearce, 1990). According to a study conducted by the National Women in Housing Task Force, more than two-thirds of all poor renter households with children are maintained by women. Conservative census figures report that in 1988, single mothers supported 23.7 percent of all families with children under 18 (U.S. Bureau of the Census, 1989). More recent statistics cite the number of single-mother households as 8.8 million (Pearce, 1990). Poverty is the norm for women-maintained renter families with children; with a poverty rate of 58 percent in 1986, they were more than three times as likely as other renter families to be poor. Sixty percent of these poor women-maintained families with children were living in unsubsidized, private sector units.

Women in poverty are not a homogenous group. This makes understanding the complexities of their problems even more difficult. Some women are the sole support of their children through choice or as a result of the death of a spouse, separation, or divorce. Many have been victims of abuse, violence, or incest. Influenced by family, partners, peers, or the pain of their circumstance, some single mothers have backgrounds of substance abuse (Sprague, 1991). Furthermore, this group is

composed of homeless women, battered women, displaced homemakers, rural women, elderly women, women in public housing and other groups of women with special needs, each having distinctive circumstances and problems with no one clear solution.

Single-women-maintained families with children are often invisible, doubling and tripling up with other families, living in abandoned housing, old cars, and even chicken coops and campsites. Many single mothers, particularly those who are homeless, are virtually alone in the world. In a research study, most homeless women cited their social worker or their children as their only supportive relationship (Bassuk et al., 1987). According to the National Coalition for the Homeless, both census and poverty figures record only those who have addresses. Single-mother households, therefore, are counted only if they have a home or if they are not sharing homes with relatives, in which instance they are counted as part of the relative's family. A single mother does not report that she is homeless unless this qualifies her for housing because without adequate housing she risks losing her children to foster care. Homeless women whose children are in foster care are recorded as homeless single women. The Coalition estimates that single mothers and children comprise 40 percent of the homeless population and are cited as the fastest growing subgroup of the homeless. Based on the number of women who live doubled up and the fact that many homeless single-mother households are not included in any count, approximately 3 million women and close to 5 million of their children may need housing and services to bring stability to their lives (Sprague, 1991).

Cracks in Federal Assistance Approaches

Although HUD provides subsidies to over 4.3 million households, this is only one-third of those in need (Zigas:1990). While the number of households subsidized today is a substantial increase over the number helped in 1980, housing assistance has not kept pace with the growth of the problem.

There is a widespread misconception that if women could manage to get off welfare and acquire jobs, their housing problems would disappear. Many women who have difficulties in finding affordable housing already have jobs; employment has not solved their housing problems. A full-time minimum wage job pays less than \$7,000 a year. At 30 percent of income for shelter, this provides no more than \$175 monthly for housing costs, far less than the amount usually needed (National

Women and Housing Task Force, 1991). In addition, in about 32 states, the maximum public assistance cash benefit for a family of three is below 50 percent of poverty level (Shapiro and Greenstein, 1988). To compound matters, the average waiting period for most assisted housing is 22 months.

Problems Compounded by Discrimination

Women-maintained families face discrimination because of sex, race, marital status, and income source. In addition, they have had to contend with limited housing options because of widespread discrimination against children in rental housing. In 1980, HUD released a nationwide survey showing that 25 percent of all rental units excluded children; another 50 percent of the units limited families' access by imposing restrictions on the age, number, and sex of children. Of the families that were interviewed in the survey, 50 percent had recently experienced difficulty in finding housing because of exclusionary policies and 20 percent were living in less desirable housing because of these policies. Other studies of local housing markets have confirmed that child discrimination is widespread in numerous states across the nation (Morales, 1988).

The nationwide emergence of housing discrimination against children is related to long-term demographic trends. The number of households in the United States has grown much faster than the population because of the higher proportion of single-person households (and childless couples). This significant increase in smaller households adversely affects housing opportunities for families with children in two ways, by increasing the demand for housing, and increasing the number of childless (and therefore preferred) adults competing for it.

A study of the racial composition of single-women-maintained families indicates that discrimination against children falls with particular severity on Hispanic and Black households. Four-fifths of Hispanic women householders have children, as do four-fifths of Black women householders, compared to three-fifths of all female householders (Women and Housing Task Force, 1991). Other factors that have a discriminatory impact on the housing opportunities available to women include sexual harassment in housing, prejudiced advertising, zoning regulations that prevent the building of group homes for women such as homes for battered women, and discriminatory practices in the sale, rental, and financing of housing.

The Response

One approach to combating the problems enumerated so far is the adoption of appropriate legislation and enforcement mechanisms at the federal level. In response to what had become a growing problem, the Fair Housing Amendments Act of 1988 addressed the issue of discrimination faced by women seeking housing. It is one example of enabling legislation that improves women's access to available, affordable housing. Through enforcement, education, and outreach, the law provides victims with information about their rights. In the event of discrimination, the victim has recourse to monetary and compensatory remedies. Together, this results in increasing housing opportunities for women. This legislation, though not drafted only with women in mind, has a profound impact on the particular situation of women. It addresses the concerns of women seeking shelter, whether as single parents or, more generally as individuals seeking housing that is safe and responsive to their needs.

An Overview of the Fair Housing Amendments Act of 1988: One Step In the Right Direction

"The Fair Housing Amendments Act of 1988" (Public Law 100430) was passed by the 100th Congress on September 13, 1988. The Act, effective on March 12, 1989, was the result of more than ten years of congressional effort to amend the 1968 Fair Housing Act. The Amendments added handicap and familial status to the classes protected from discrimination and expanded the enforcement powers of the Departments of Housing and Urban Development, and of Justice. The Fair Housing Act specifically prohibits discrimination in the sale or rental of dwellings; in residential real estate-related transactions; and in the provision of services and facilities in association with such activities on the basis of race, color, religion, sex, disability, familial status, or national origin.

Overall, the Fair Housing Amendments Act expands protection under the law to families with children and persons with disabilities, creates additional administrative remedies and enforcement mechanisms for housing discrimination, prohibits discrimination in all kinds of residential financing, and imposes stiff civil penalties for violations. The new Act also requires reasonable modification of dwellings to accommodate persons with disabilities, and that the design and construction of certain new multifamily dwellings scheduled for first occupancy after March 13, 1991, meet stipulated adaptability and accessibility requirements. Highlights

of the stronger enforcement provisions of the 1988 Amendments include the following:

- The Act extends the time for filing a complaint from 180 days after the alleged discriminatory act occurred to one year after the discriminatory act occurred or terminated.
- It empowers the HUD Secretary to investigate complaints of interference, coercion, or intimidation filed by any person exercising a fair housing right.
- The HUD Secretary is authorized to initiate an investigation of housing practices without a complaint and to file a complaint.
- The Attorney General is entrusted with the power to seek prompt judicial action on behalf of a complainant, when authorized by the HUD Secretary.
- Finally, the Act sets stringent time frames for HUD investigation and resolution of complaints.

These administrative and judicial processes are significant because they provide victims of discrimination with an avenue of redress other than private litigation when HUD's conciliation efforts fail.

The U.S. Department of Housing and Urban Development anticipates the new regulatory structure established by the Act to lead to more aggressive enforcement of the Act. The increase in the number of complaints and resulting conciliations experienced since the legislation is expected to lead to greater compliance, particularly in the new protected categories of persons with disabilities and families with children. Current provisions of the Act prohibit the following discriminatory practices:

- Refusing to sell, rent, negotiate for, "or otherwise make unavailable or deny" a dwelling;
- Discrimination in the "terms, conditions, or privileges of a sale or rental" of a dwelling or in the "provision of services or facilities in connection therewith";
- Making or publishing any discriminatory statement in regard to a sale or a rental;
- Misrepresenting the availability of a dwelling;
- Inducing a person to sell or rent any dwelling by representations about the presence of members of a protected class in the neighborhood; and
- Discriminating in access to real estate services.

The law also adds a new section prohibiting discrimination in residential real estate transactions and in the terms or conditions of such transactions. These transactions include the making of loans for the purchase of a dwelling, the making of loans secured by residential units, and the "selling, brokering, or appraising of residential real property."

Historically, to encourage compliance by the private sector, HUD has relied upon Voluntary Affirmative Marketing Agreements (VAMA's) with national organizations representing components of the housing industry. With respect to the Fair Housing Act, HUD has signed voluntary agreements with the National Association of Home Builders, the National Association of Real Estate License Law Officials, National Association of Realtors, National Association of Real Estate Brokers, and the National Apartment Association. The goal is for individuals of similar income levels in the same housing market area to have similar choices in housing regardless of race, color, religion, sex, national origin, familial status, or disability. By signing the VAMA's, these groups agreed to promote equal opportunity in the sale, rental, and financing of housing; to institutionalize affirmative marketing principles in their day-to-day operations; and to encourage their state and local affiliates to sign and implement similar agreements at the state and local levels.

What the Law Does: Implications for Women in Search of Housing

Discrimination against Families with Children

Families with children have more difficulties finding and remaining in suitable housing than families without them. Until recently, many families had no remedy against the property owner who denied housing on the grounds of an adult-only policy, overly restrictive occupancy standards, or other age-restrictive practices. The recently enacted federal law, however, provides significant new remedies for discrimination against families with children, and thus creates new housing opportunities for families.

In 1980 approximately three-fourths of the nation's housing supply was unavailable to families with children because of various policies and procedures in effect, according to an estimate by the U.S. Department of Housing and Urban Development. Discriminatory policies were implemented through "excess person" surcharges, a "no kids" rule, larger than usual security or damage deposit requirements, noise regulations, or limiting use of certain facilities and services to adults. The Fair Housing Amendments Act now prohibits discrimination based on familial status. This provision by definition covers households in which a minor (a person under 18) is domiciled with:

- a parent,
- a person having legal custody of the minor, or
- a designee of the parent or person having legal custody of a minor child.

The definition of familial status also includes pregnant women and those in the process of securing legal custody of a minor child. The protected class thus includes virtually all households with children. The impact of the new law is most significant in the 34 states that do not have fair housing protection for families with children. Although there were 16 states that did already have such protection, the federal law is stronger than most of these states' nondiscrimination laws, so families in these states benefit as well (Morales, 1988). Under the Amendments, families with children have the same rights as other protected groups.

- Families with children have the right to live on any floor of a high-rise building;
- Owners and managers are not permitted to preclude families with children from living in a dwelling of their choice under the pretext of implementing stringent "occupancy codes and standards";
- Mobile home parks are covered by the Fair Housing Act and specifically by the familial status provisions; and
- Facilities segregated by familial status, i.e., with "adult only" and family sections, are unlawful.

More subtle forms of discrimination are also unlawful. For example, housing complexes commonly restrict families with children to certain buildings, floors, or units. In many cases, families with children are relegated to the least desirable units in a complex. The practice of segregating units by age or family status is essentially a refusal to sell or rent because a family with children is barred from certain units. Another common barrier to families' obtaining the housing they desire is overly restrictive occupancy standards. Property owners frequently exclude families with children from units by unduly restricting the number of occupants to a unit. Families can combat this by taking one of two approaches: they can show that the occupancy standards are intentionally designed to exclude families with children, or if they cannot prove intentional discrimination, they should be able to rely on statistical proof that overly restrictive occupancy standards have a disparate impact because they exclude a greater proportion of households with children than childless households. Several courts have held that policies having a disparate

impact constitute unlawful discrimination under the Fair Housing Act.

Zoning and Group Homes

State governments and local planning and zoning boards will have to examine their local requirements closely to ensure that their codes comply with the new fair housing amendments. Some jurisdictions have taken a proactive stance and have already reviewed their own ordinances. Cambridge, Massachusetts, for example, has eliminated the requirement for a special-use permit for group homes, as well as its space requirement and density restrictions. The State of Michigan will no longer alert local agencies and neighborhood organizations to plans to open group homes nearby. Kansas has expanded its State authority over local zoning. In fact, the only thing a jurisdiction can legally regulate now, relative to group homes, is the number of occupants, and even these must reflect public health and safety concerns.

Current regulations and zoning ordinances are formulated on the premise of someone's home being separate from work. Typically the regulations limit some residential areas to single-family houses and may further limit the number of unrelated persons that can occupy these houses. The Fair Housing Amendments prevent communities from instituting such exclusionary zoning practices. They represent the first step toward helping to formalize the sort of housing Joan Forrester Sprague describes in her book *More Than Housing: Lifeboats for Women and Children*. (Lifeboat housing encompasses a wide realm of housing choices that take into account the specific needs of women. It includes newly constructed as well as rehabilitated housing, transitional and permanent housing, providing for sharing space, child care, and social support services when necessary.)

Sexual Harassment in Housing

Sexual harassment is a criminal violation of federal and state law. It is a federal offense for someone willfully to intimidate, coerce, or interfere with any person either orally, in writing, or by other means, in connection with a residential real estate-related transaction. This includes many forms of sexual harassment, ranging from the landlord or agent (superintendent, maintenance worker, rental manager, etc.) making sexual comments or innuendoes, to actual physical assault.

Sexual harassment in housing is a new, largely unlitigated area. It is believed to be both widespread and unreported. Its victims often endure a cross

between employment discrimination and domestic violence, feeling they have no safe haven from the perpetrator. Single mothers in poverty are particularly vulnerable to landlords or apartment managers who inflict sexual extortion. When faced with the threat of eviction, most mothers tend to cling to their homes. Now the Amendments offer legal recourse to victims of this type of harassment, shifting the power balance significantly, and enabling single women and mothers to gain more control over their living situations.

Discriminatory Residential Lending Practices

Discrimination in financing of real estate-related transactions (sales, home improvement, capital construction) is now prohibited by the Fair Housing Amendments Act. Most home purchases require some form of financing from the seller, from a bank or savings and loan, or from a commercial mortgage company. The new law expands the types of financing covered to include activities relating to the purchase of loans, transactions involving the secondary mortgage market incorporating the purchase and pooling of mortgage loans and the terms and conditions of the sale of securities issued on the basis of such loans. Prohibited activities also include discrimination in the servicing of such mortgages. Typically, it has always been more difficult for women to secure real estate financing and obtain mortgages, particularly on a single income. The new law offers some measure of relief from the subtle discriminatory practices that have pervaded this arena.

Education and Outreach Initiative

Under the federal Fair Housing Initiatives Program (FHIP), HUD is authorized to make grants to, or enter into cooperative agreements with State or local government agencies, public or private nonprofit organizations, or other institutions that are administering programs to help eliminate discriminatory housing practices. The Education and Outreach component of FHIP provides funding for the purpose of developing, implementing, or coordinating education and outreach programs designed to inform the public of their rights under the fair housing law. Funded activities include the development of national, regional, and local media campaigns, and other special efforts to educate the general public and members of the housing industry about their fair housing rights and obligations.

A National Media Campaign funded under FHIP and coordinated by the National Fair Housing Alliance, an umbrella organization of 60 private, nonprofit fair

housing agencies, was launched in 1991 to instruct the public about fair housing issues. One of the foci of the campaign was to generate an awareness about the new protected category of families with children and about sexual harassment in housing. Women as the casualties of discriminatory housing practices can seek justice only if they are aware of their rights and the remedies available to them by law. Education and outreach efforts serve the important function of "getting the message out." Knowledge about the new law empowers people, alerts them to subtle forms of discrimination, and enables them to seek justice.

What the Law Does Not Do

Exemptions for Housing Older Persons

The Fair Housing Amendments Act does not outlaw housing specifically designed for older persons. In establishing the protection for families with children, Congress and the civil rights community agreed that senior citizens have legitimate needs for specialized housing, and the Act clearly exempts housing for older persons from the "familial status" provision. Certain housing for older persons may exclude children, but must first demonstrate that it meets the special needs of older Americans. Housing may qualify for the "older persons" exemption if it meets one of several criteria:

- It is provided under a state or federal program specifically designed and operated to assist older persons; or
- It is intended for and occupied solely by persons 62 and over; or 80 percent of the units are occupied by at least one person 55 years of age or older, and it provides significant facilities and services for older persons, and it publishes and adheres to policies and procedures that demonstrate its intent to provide housing for persons over 55.

Fair housing advocates claim that these exemptions have to some extent resulted in a scramble by current adult-only communities to satisfy the requirements of housing for older persons, especially the 55-and-over criteria, in order to preclude the entry of families with children into the adult housing communities.

The Fair Housing Amendments Act does not require evictions of current residents of adult communities. The Act includes a transition provision intended to prevent the eviction of current residents of housing facilities that now exclude children and intend to continue to do so under one of the provisions of the older persons housing exemption. Current residents of such housing need not be counted toward qualification under the 62 and over,

or 55 and over, exemptions, provided that new residents meet the relevant age restrictions and that other relevant criteria are also met. Fair housing advocates are worried that, even though the law prohibits such actions, landlords of 55-and-over communities have sought to terminate the tenancies of families with children by requiring compliance with the adult-only rule. According to Christopher Brancart, a fair housing attorney from California, it is not unusual for landlords to defend familial status cases with the argument that current adult tenants are exempt from new 55-and-over rules, but that children must go (Brancart, 1991). This has the effect of evicting families, because parents are extremely unlikely to send their children away in order to remain in an apartment or a mobile home.

Legitimate Regulations Still Applicable

The Fair Housing Amendments will not force landlords or owners to rent or sell to families who are unsuitable residents for other legitimate reasons. The Act does not alter existing landlord-tenant laws that allow landlords, managers, and owners to refuse or evict residents on legitimate grounds: bad credit history, lease violations, or disruptive behavior, provided these criteria are equally applied to a childless resident as they are to a "family with children."

This stipulation has the effect of licensing landlords to reject applicants on the grounds of poor or inadequate credit history, according to fair housing advocates. Single-women-maintained families are particularly affected by these criteria. Traditionally, single women often have poorly established credit ratings. Frequently, the income of a single-parent does not meet the income criteria based on unit size, as established by landlords. And, paradoxically, acceptable unit size for a family is determined by number of occupants. So, the larger the family maintained by a single woman, the less likely it is that she will be able to find suitable housing. In addition, the prohibition of familial status discrimination does not preclude the construction of apartment buildings with small units, such as efficiencies.

Reasonable Occupancy Standards Allowed

The Fair Housing Amendments Act specifically states that "reasonable occupancy standards," which govern the number of persons that may occupy a unit, will not be affected. HUD General Counsel Francis Keating (Keating, 1991) has attempted to clarify HUD's position on occupancy standards and policies; owners and managers may develop and implement reasonable

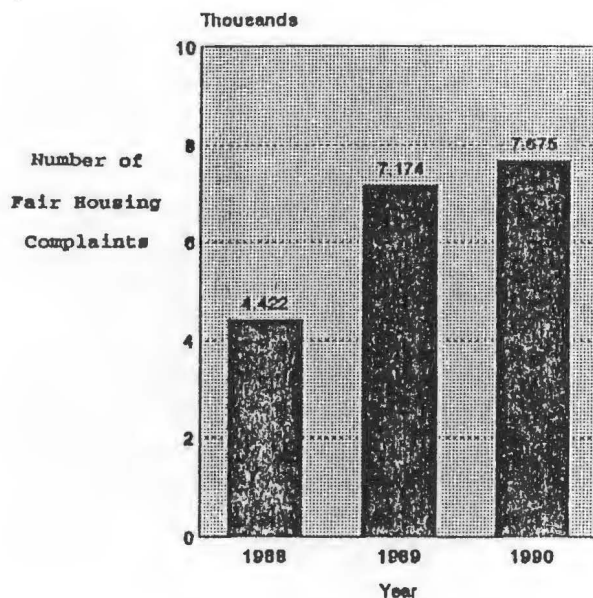


Fig. 1: Increase in Annual Fair Housing Complaints.

occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. In the event of a complaint alleging discrimination on the basis of familial status, HUD will carefully examine any such nongovernmental restriction to determine whether it operates unreasonably to limit or exclude families with children. When HUD reviews occupancy cases, it will consider several criteria to determine whether an occupancy policy is reasonable or not:

- Size and number of bedrooms
- Size of unit
- Configuration of unit
- Age of children
- Other physical limitations of housing
- State and local law

In addition, other factors, such as discriminatory rules about the use of common facilities, and enforcement of occupancy policies only against families with children, will be examined to determine whether an occupancy policy is discriminatory (an occupancy policy that limits the number of children per unit is likely to be deemed discriminatory as opposed to one that limits the number of people per unit).

Fair housing advocates expect this position to have a disproportionate impact on single-women-maintained families; a mother with three children may find herself

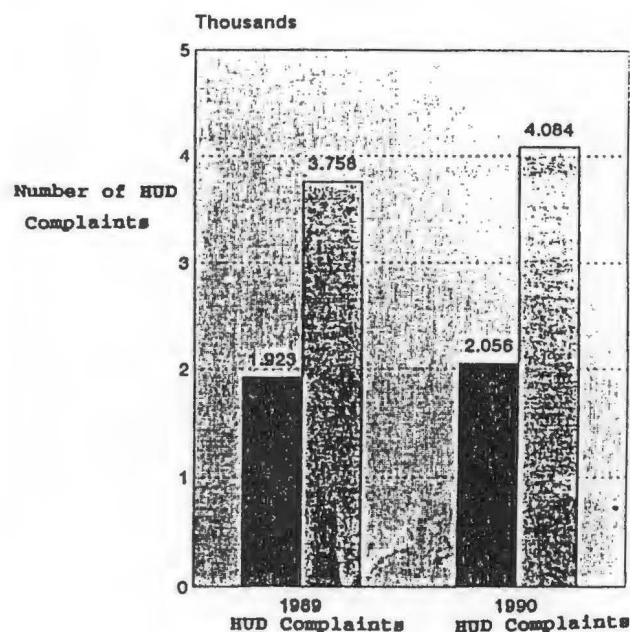


Fig. 2: Basis of HUD Complaints.

unable to rent a two-bedroom apartment due to occupancy standards that stipulate a two-person-per-bedroom maximum. Lisa Mihaly of the Children's Defense Fund fears that HUD investigators, rather than using the Keating clarifications as guidance for evaluating evidence, will use the two-per-bedroom limit as a definitive test, and a shortcut to disposing of cases. Numerous advocacy groups, including the National Council of La Raza and the NAACP Legal Defense Fund, are seeking further clarifications of the allowable occupancy standards.

The Nature and Extent of Progress Made in Eliminating Discriminatory Housing Practices against Women and Children

"Enforcing fair housing for all, equally the same for everybody everywhere is our goal," HUD's Assistant Secretary for Fair Housing and Equal Opportunity Gordon Mansfield has said (Mansfield, 1990). In working toward this goal, HUD has achieved many milestones since the passage of the Fair Housing Amendments Act of 1988. Accomplishments under the Act are reported to Congress annually. The data presented are taken from "The State of Fair Housing, Report to the Congress Pursuant to Section 808(e)(2) of the Fair Housing Act, 1989 and 1990" (Fig. 1).

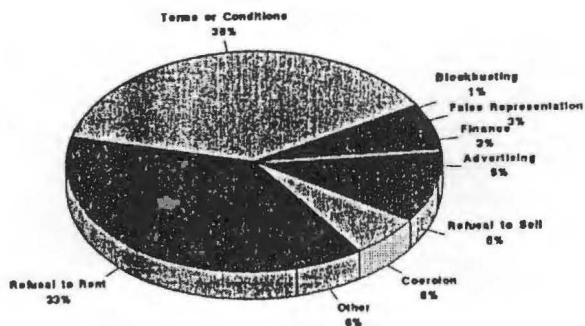


Fig. 3: Overview of Issues Raised by Complainants in Post-Act 1989.

Summary of Achievements

Increase in Annual Fair Housing Complaints

Since its passage, the Fair Housing Amendments Act has had a profound impact on the receipt and processing of fair housing complaints. HUD complaints more than tripled from the previous year. In part, the increase was due to the new prohibitions against familial status and handicap discrimination.

A record 7,675 Fair Housing complaints were filed with HUD and State and local agencies in 1990, exceeding the number filed in 1989, also a record, by more than 500.

Familial Status as Basis of Discrimination

After the Amendments took effect, more than half of the HUD complaints alleged discrimination on the basis of familial status (Fig. 2).

Four-fifths of all HUD complaints in post-Act 1989 alleged only one basis of the discrimination, while the remainder were filed on multiple bases. Most of the single-basis complaints were familial status complaints and included the following:

- Challenges to housing providers' claims to exemptions as housing for older persons.
- Occupancy limits applied to children but not adults.
- Refusal to rent to families with children under a certain age.
- Exclusion of children from services provided to adults.

To facilitate resolution of the growing volume of complaints, HUD signed a total of 34 contracts with State and local agencies for investigating familial status

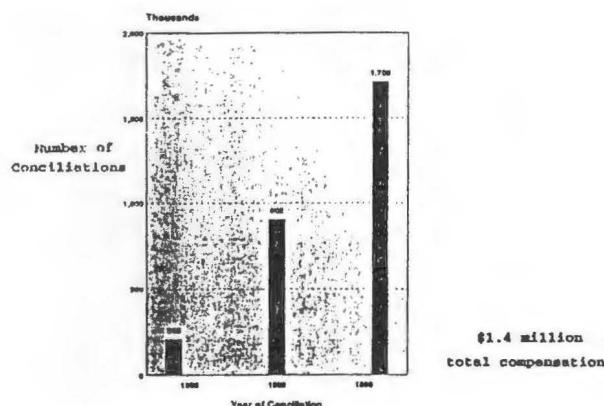


Fig. 4: HUD Conciliations.

and handicap discrimination complaints. These contracts have greatly expanded HUD's resources for processing complaints. Sex discrimination accounted for about 15 percent of all allegations by 1990, including allegations of:

- Sexual harassment
- Differential terms and conditions
- Refusal to approve a mortgage application

Complaints alleging coercion, intimidation, threats, or interference with fair housing rights more than doubled by 1990, reflecting a growing public awareness regarding HUD's jurisdiction to handle these complaints (Fig. 3).

Effective Processing of HUD Complaints

The 1988 Amendments also had a significant impact on the processing of HUD complaints. The new law resulted in:

- A great increase in the number of investigations and successful conciliations.
- Substantially more relief for complainants through conciliation agreements.

In 1990 HUD successfully conciliated 1,709 complaints. Thus, conciliations grew from an average of 17 a month prior to passage of the Act to 142 a month in 1990. For the first three months of 1991, HUD reports processing 586 complaints (Prentice Hall, 1992). The enforcement authority vested in HUD by the 1988 Amendments has been an important factor in amplifying HUD's ability to achieve successful conciliations (Fig. 4).

After passage of the Amendments Act, the total value of successful conciliations increased six times. This increase was due to :

- Growth in the number of effective conciliations.
- Escalation in the amount of each conciliation (an average of \$500 more per conciliation than such amounts prior to the passage of the 1988 Amendments).

HUD obtained over \$14 million in relief for conciliations in 1990—and complainants secured housing in nearly 30 percent of all conciliated cases.

A notable occurrence was that HUD and the Department of Justice obtained prompt judicial action for complainants eight times in 1989. Six of these instances were related to complaints based on familial status, while two were based on race. The first temporary restraining order (TRO) that HUD obtained under the Fair Housing Amendments Act illustrates the effectiveness of the new mechanisms of prompt judicial relief: the TRO was obtained on behalf of a family of four that had located a vacant apartment uniquely suited to its needs. The apartment had enough bedrooms, the location would enable the children to continue attending desirable schools, the rent was affordable. However, while attempting to rent the apartment, the family was told that the apartment was unavailable to families with children. When contacted by HUD, the owner refused to keep the apartment available until this issue was resolved, and further, the owner refused to process the family's application. HUD authorized the Attorney General to issue a TRO. Later, the respondents settled the case, as a result of which the family was able to move into the apartment. The family was also awarded three months' free rent. This example also illustrates that the Fair Housing Amendment Act has dramatically improved HUD's ability to conciliate disputes successfully, to obtain the respondent's agreement to take action that protects both the interests of the complainant and others who may be similarly situated, and the public, and is acceptable to both the complainant and to HUD.

Reasonable Cause Determinations

Complaints that are not conciliated are investigated by HUD, which then makes a "cause" or "no reasonable cause" determination based on whether the findings indicate that discrimination has or has not occurred. Only a few cases in which the Act has been violated are likely to reach the stage of a HUD determination, since

many respondents are willing to conciliate disputes prior to a formal HUD finding. In 1990, HUD made "cause" determinations in 81 cases which were distributed across the nation. They covered a broad range of activities. Almost 75 percent of all charges alleged familial status discrimination.

Administrative Law Judge Hearings and Civil Enforcement

Subsequent to a charge of "reasonable cause for discrimination" being issued by HUD's Office of General Counsel, the discrimination case can be heard by an Administrative Law Judge (ALJ), or before a U.S. District Court Judge. Administrative Law Judges, just like the district court judges, can, in the event of a Fair Housing Act violation, order the respondent to provide relief including:

- Compensation for actual damages, including pain, humiliation, and suffering.
- Injunctive relief, such as making housing available to the aggrieved persons.
- In addition, if appropriate, attorneys' fees and other equitable relief and civil penalties, as high as \$50,000 in a single case, can also be recovered.

An Administrative Law Judge cannot impose punitive damages.

In 1990, administrative law judges found Fair Housing Act violations in twelve of the thirteen cases tried. They awarded a total of \$33,079 in damages to aggrieved persons and assessed \$18,000 in civil penalties. Interestingly, nine of the twelve cases were against one mobile home park and resulted in a single decision, which awarded the complainants a total of \$9,988 in damages and assessed the park \$2,000 in civil penalties. The judge found that the park failed to demonstrate that it qualified as housing for older persons and that, therefore, by excluding children it violated the Fair Housing Act. In addition to the foregoing procedures, the 1988 Act continues to permit enforcement by direct civil action filed by the aggrieved party. The statute of limitations on such direct action has been extended to two years. A previous cap of \$1,000 on punitive damages in such actions has been eliminated.

In all, HUD, the Department of Justice, and State and local agencies obtained more than \$25 million in settlements, damages, and penalties—a testimony to the effectiveness of the Fair Housing Amendments Act of 1988.

Other Activities

The Department of Justice defended the Government in two lawsuits challenging the constitutionality of the Act's familial status provisions and HUD's implementing regulations. Thus, overall, through the first quarter of 1991, HUD continues to make a significant contribution in the struggle to achieve fair housing for all. The successes detailed above are indicators of the strides made in addressing equal housing opportunity for women seeking safe, decent, and affordable housing of their choice.

Comments from the Fair Housing Advocate Community

The generally skeptical fair housing advocate community acknowledges the positive contribution of the Fair Housing Amendments Act of 1988. According to the advocates, single women, especially single minority women, who are often single parents too, face the most obstacles of finding safe, affordable housing. They also face tremendous discrimination and harassment. A large number of all fair housing complaints are from this group.

Where enforcement is undertaken by private centers of fair housing, where a network of these centers exists, there has been a dramatic impact on housing discrimination. For example, in cities where fair housing advocates are active, 99 percent of the newspapers do not accept advertisements that specify "no children." In another instance, the effectiveness of the new Amendments is evinced by examples such as a case in Toledo, Ohio, recently settled by private fair housing groups for \$20,000.

In some cases, ensuring equal opportunity in housing is merely a matter of educating the community about the letter and spirit of the law. Once educated, most housing providers are eager to comply with the law. Others who would find ways to circumvent it hesitate to do so once they are aware of the legal recourse open to potential victims. So, in effect, the very presence of an active network of private, nonprofit fair housing groups within a locality serves as a deterrent.

Success Stories

Measuring the extent of the progress made or measuring the impact of legislation requires one to identify parameters with which to evaluate success. Looking at the big picture involves accumulating data and statistics

to determine the extent of progress. At the micro level, however, it is the actual instances where provisions under the new law have made a real difference in people's lives that offer heartening evidence of the positive impact of enabling legislation.

Landlord Delores Rollhaus refused to rent her house in Wright City, Missouri, to Lisa M. Soliz and her daughter. Rollhaus told Soliz that she preferred to rent her house to a single man and not to a single mother. She also expressed concern about the ability of a woman to care for her property. Rollhaus made similar remarks to a single mother with three children who subsequently inquired about the house at Soliz's request.

The HUD Administrative Law Judge presiding over the case ruled that the landlord did not give Soliz legitimate reasons for rejecting her application. In addition, the landlord did not ascertain whether Soliz's acquaintance had a job or could afford the rent before refusing her tenancy. Rollhaus was ordered to pay the complainant Soliz \$2,860 in compensatory damages and a civil penalty of \$3,000 [*HUD v Rollhaus*, HUDALJ No 07-90-0309-1, (HUD Office of Administrative Law Judges, 12/9/91)] (*Fair Housing-Fair Lending*, 1992).

Numerous other similar cases have been resolved both through the district courts and through the HUD complaint processing system.

Another story that stands out as unique, and whose ultimate resolution is particularly rewarding, is the Fairfield North case (*Fiedler v Dana Properties*, No S 89-1396 LKK (ED CA); *US v Dana Properties*, No S 90-0254 LKK (ED CA), 1/27/92). This story highlights a problem that had received little attention from courts and public agencies until now: sexual harassment in housing.

Owners of the Fairfield apartment complex have agreed to settle the two sexual harassment suits—one filed by a group of female tenants and the other initiated by the Department of Justice—for a total of more than \$165 million in damages, attorneys' fees, costs, and penalties. These lawsuits have resulted in the largest recorded settlement in a sexual harassment and housing discrimination case.

The episode was one of a two-year litany of unmitigated harassment that an apartment manager named Skinner inflicted on more than 15 women and their children at

the Fairfield North Housing complex. Skinner ran the complex like a fiefdom, physically threatening the women, stealing their welfare checks, and ordering them to pose in lingerie for photographs and watch pornographic films with him. During his tenure, the women claim Skinner molested them, and threatened them with guns. He entered their apartments when they were sleeping or in the shower, tampered with their mail, intercepting food stamps and child-care aid. This often resulted in bureaucratic tie-ups that in some cases resulted in the termination of the women's aid. Skinner routinely threatened the women with removal of their children by reporting them to child protection services and preyed upon their fear of homelessness. He threw some of them out on the street, loudly making an example of them, the women affirmed. The worst part, many women said, was constantly worrying about not having a roof over their heads.

At Fairfield North, where 20 percent of the tenants live in subsidized apartments, many single mothers had fallen into poverty because they were deserted or battered. Indeed it seemed to them that Skinner solicited their tenancy exactly because they were so vulnerable.

Justice did not come easily to these women. They had to undertake an unrelenting quest, seeking assistance from numerous social service, and legal aid-type organizations before they found the lawyers who finally defended their case. Several parties have now settled their claims with individual settlements ranging from \$3,000 to \$60,000. In addition, the defendants have been ordered to pay \$688,000 in lawyers' fees and expenses with a 20 multiplier for the attorneys' fees. The consent decree with the Justice Department requires the defendants to pay \$45,000 in civil penalties and to take affirmative steps to prevent fair housing violations from occurring in the future, in addition to individual damages. The *Los Angeles Times* reported that Skinner himself was in jail awaiting trial on rape charges made by a Fairfield North tenant and her sister.

Levy and Oppenheimer (1992), whose law firm is representing some of the women and children, claim such problems are pervasive among low-income, single-women-maintained families. The right to be free of perpetual harassment in housing is a civil right, and needs to be recognized as one, say the lawyers.

The most significant victory as a result of this case is the ultimate empowerment of the women victims. The women have now formed a group, WRATH: "Women Refusing to Accept Tenant Harassment." Their goal is

to collect nationwide data about sexual harassment in housing and assist other women in situations like theirs.

The Skinner case illustrates the problems faced by numerous single women, problems compounded by the women's lack of awareness regarding their rights and regarding remedies available under the law to victims of discrimination. The law is new. Much confusion and uncertainty still exists about what is allowed, what is prohibited, and what remedies one can obtain for a victim. As case law develops, new interpretations will be made which will help clarify some of the regulations and iron out the controversies. (Information on this case was compiled from newspaper articles, *Fair Housing-Fair-Lending*, 1992, and conversations with attorneys Levy and Oppenheimer [1992].)

The Obstacles That Remain

HUD's record of enforcing the Fair Housing Act is reviewed periodically by the Administrative Conference of the United States, an independent federal agency that issues recommendations on administrative practices. Private fair housing groups and fair housing advocates also observe HUD's performance and monitor the impact of the law. While HUD has made efforts to enforce the mandate of fair housing for all, some inadequacies and problems remain. The impact of administrative and enforcement problems is intensified when the victims of discrimination are not aware of their rights and the provisions of the law. Unfortunately, these circumstances make women, especially single mothers, easy targets for housing discrimination.

A brief analysis of the obstacles to be overcome to enhance fair housing compliance is presented in this section. Information on these obstacles has been compiled primarily through interviews with advocates from private fair housing groups.

Problems with Enforcement

Despite the new option for a hearing before an Administrative Law Judge that is available to victims of housing discrimination, the parties in many fair housing cases continue to choose to resolve their disputes in federal court. HUD's Assistant Secretary for Fair Housing and Equal Opportunity Gordon Mansfield attributes this to the differences in remedies available under both systems. Congress needs to equalize these to address this issue.

As case law develops, oversight in previously processed cases is revealed. For example, a child of a complainant may be omitted from the action, precluding the award of damages. The child in a family subjected to discriminatory behavior is equally a victim. As precedent is established, it is expected that victims of discrimination will obtain fuller remedies.

Shanna Smith (1992), Director of the National Fair Housing Alliance in Washington, D.C., points out that low settlements result in the devaluing of people's pain and suffering as a result of discrimination. The impact is particularly severe when one considers the background of the individual who is discriminated against. In many instances the person is escaping an abusive situation. A high penalty for discriminatory activities serves as a greater deterrent.

Administrative Delays

As a result of the addition of the new categories, families with children and people with disabilities, to the protected classes, the Fair Housing Amendments Act has generated a tremendous volume of cases for HUD to process. As a result, HUD has to cope with a backlog of cases and has to allocate its limited resources to handle them as well as new cases.

Given the magnitude of complaints and its limited resources, HUD is having difficulty meeting the 100-day statutory deadline for completing complaint investigations. There needs to be a sense of urgency in responding to discrimination complaints, particularly when dealing with families with children. For many victims, a quick response may mean the difference between being sheltered or being homeless.

The Administrative Conference of the United States has asked HUD to encourage the use of alternative dispute resolution, and to ensure that its processes are perceived as working fairly (*Fair Housing-Fair Lending*, 1992).

New Regulations

The newness of the Fair Housing Amendments Act has meant that regulations and operating procedures governing many existing programs either do not reflect the law or do not conform to the legislation. Conflicting regulations result in confusion among housing providers and disparate treatment for the program participants. An example of this problem is the existence of widely differing occupancy standards, in the absence of federal standards, promulgated by landlords, apartment manag-

ers, and even public housing authorities. According to some intake regulations followed by housing authorities, children of the opposite sex cannot share a bedroom. Therefore, a mother with a son and daughter would be required to rent a three-bedroom apartment. This puts obvious undue hardship on these families. Rules and regulations for various HUD programs need to be updated to ensure compliance with the new federal fair housing mandate.

In an attempt to clarify HUD's position on occupancy standards, General Counsel Keating circulated a public memorandum which had the effect of ratifying unreasonable occupancy limits, according to fair housing advocates. As a result of discussions with private fair housing groups such as the National Fair Housing Alliance, National Council for La Raza, Children's Defense Fund, the NAACP Legal Defense Fund, and others, General Counsel Keating further clarified HUD's position through a second memorandum: generally a standard of two persons per bedroom is considered acceptable, if applied across the board, and if it proves reasonable in context.

Growth in Subtle Discrimination

In response to questions about whether the letter and spirit of the fair housing law have changed rental and sales practices, fair housing advocates have a mixed reaction. Often housing providers, on learning the requirements of the new law, are eager to comply and have readily changed their previous practices. Others are determined to circumvent the law. In such instances people refine their discriminatory practices and indulge in more subtle forms of discrimination. If you are not suspicious, you may believe there is a genuinely valid reason for the refusal to rent, and not register a complaint. For example, in the rental of units, reasons for refusal such as credit inadequacies, or "other people ahead of you," or simply a delay in processing of an application, may appear legitimate. Often the individual wanting to rent a unit is considering a couple of different alternatives, and does not always have the patience to wait, and ends up accepting another unit. The delay method, according to fair housing advocates, is the best way to deter single-parent families who usually need housing urgently.

Lack of Research

Changes in the extent of discrimination against families with children since the Amendments Act went into effect have not been well documented. No baseline

study, against which the impact of the prohibition of discrimination against families with children could be measured, has been done. The HUD-sponsored Housing Discrimination Studies did not address this category at all, but concentrated instead on race cases. As a result, no primary data exist against which to measure the impact of the Amendments conclusively, particularly when looking at women's access to housing.

Conclusions and Recommendations

Overall, the Fair Housing Amendments Act has made a significant contribution to providing equal housing opportunity for all groups of people. The following recommendations are intended to address the problems discussed and improve the impact of the law on expanding housing opportunities for women.

Cooperation between HUD and Private Groups

The most important factors requiring attention are the current enforcement procedures. Due to the volume of complaints pouring in, it is necessary to expand available investigation and complaint processing resources. Increased cooperation between private fair housing enforcement groups and HUD would facilitate improved testing and complaint investigations at the local level. This would reduce HUD's case load, and further the cause of fair housing for all.

Special consideration should be given to developing mechanisms to respond promptly to complaints where issues of the safety and well-being of women and children is involved. Lengthy processing procedures are neither appropriate nor practical.

At present HUD enters into voluntary agreements with the real estate industry and public housing authorities to encourage voluntary compliance with the fair housing law. Encouraging voluntary agreements by more housing industry groups, perhaps including non-profit housing providers, would have the effect of delegating authority to encourage compliance. In addition, it would enable HUD to monitor compliance with the law by efficient allocation of resources.

Expansion of the Education and Outreach Programs

Education and outreach programs such as the Fair Housing Initiatives Program (FHIP) should be reauthorized by Congress in full. Results of the evaluation of the current program should be incorporated in improving

outreach activities. Educating women about their rights under the Fair Housing Act will alert them to subtle and sophisticated forms of discrimination. In this regard, the real impact of the National Media Campaign, funded by the FHIP program, should also be measured, particularly for the extent of discrimination against women.

The National Media Campaign funded by HUD helped to expand considerably the awareness among victims of housing discrimination. HUD currently sponsors seminars on accessibility to inform all interested parties about the provisions under the new Fair Housing Accessibility Guidelines. Similar seminars on the familial status provision would ameliorate ignorance about the subject.

In an effort to enhance education and outreach activities, HUD created the Fair Housing Information Clearinghouse. The Clearinghouse is a repository of various fair housing materials and resources and should be more widely publicized. Information from the Clearinghouse serves to educate and assist fair housing professionals. In addition, the Clearinghouse can be used as a hub for communication and interaction between the various players involved with fair housing activities. This will prevent duplication of efforts and generate a lively forum for exchange of information and ideas.

Responsive Legislation and Regulation

This paper examines the Fair Housing Act within the context of how it affects women in search of housing. It is necessary to study other legislation similarly, though such legislation was not specifically drafted with women's issues in mind, to determine how it affects women and affects their ability to live and work in an independent fashion.

The National Women and Housing Task Force has compiled a rudimentary list in the document: *Unlocking the Door: An Action Program for Meeting the Housing Needs of Women, 1991*. The National Women and Housing Task Force is a group composed of various housing organizations and individuals that provides information on the nature of the housing crisis as it affects women and generates policy recommendations to the public, policy makers, and Congress. The task force has studied the problem of women and housing in depth, particularly the housing problems of single women and of women raising families alone. The group's conclusions are presented in the report mentioned above and were presented to national policy makers and President Bush in 1989.

Unlocking the Door documents the need for housing advocacy for women. This need must be put on the agenda of national and local policy makers and lobbying organizations. Policies responsive to the needs of women seeking housing will assist in mitigating homelessness among single women and their children.

In addition to policy and legislation, it is necessary to develop significant regulatory guidance for the enforcement of HUD's housing programs in general and the fair housing law in particular. Since the passage of the Fair Housing Amendments Act, HUD has promulgated numerous decisions on an *ad hoc* basis, concerning the scope of the Amendments and the prohibitions against discrimination on the basis of familial status and disability. It would be beneficial to compile these decrees and regulations governing other HUD-administered housing programs in a technical guidance manual. Such a manual would serve to iron out discrepancies between HUD's various housing regulations. It will also serve as an up-to-date reference source, provide clear direction to enforcers of fair housing, and facilitate the compilation of all of HUD's various recent clarifications of the implementation of the Fair Housing Amendments Act of 1988.

In order to empower women, it is essential to ensure that they have access to safe, decent, affordable housing in the location of their choice. The alternative is an inordinate cost to society for a vast population of deprived and dependent women and children. Discrimination against women and children frustrates attempts by single women to take control of their lives—especially when the women are escaping backgrounds of abuse and domestic violence.

Women's need to house themselves, and often their children, is integral to their finding employment and leading self-sufficient lives. The Fair Housing Amendments Act of 1988 is an example of how responsive legislation developed by Congress can begin to address some of the problems faced by women in their attempts to obtain housing. It allows women to pursue housing of their choice that is responsive to their distinctive needs, and empowers them, when denied the opportunity they seek, to obtain redress. Legislation alone cannot, however, resolve all the problems. It needs to be combined with implementing regulations, publicity, and diligent enforcement.

Finally, it is only when the special needs of women are recognized as vital, and are placed on the agenda of

national and local policy makers, that new housing opportunities for women will evolve.

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