



Fair Housing Update, 2022

Charity Williams & Laura Swanson, Tennessee Housing Development Agency



Discrimination



...is being treated differently than others.

- **Not all Discrimination is illegal**

Illegal Discrimination = Covered Issue (Housing) + Covered Basis (Protected Class)

Ex: Refusing to rent housing to an individual(s) because... she is a single female with young children...because they do not speak English fluently

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Discrimination

...can also be illegal when a neutral policy or practice has a greater negative impact on a protected class group than on another group of people (adverse or disparate impact) when put into practice.

Ex: Only allowing people who are able to prove they work a full-time job to apply for housing. This discriminates against people with disabilities who may not be able to work full-time but can afford the apartment.










Review of Fair Housing Laws & Practices
Promoting Equal Housing Opportunity

FAIR HOUSING
MAKES U.S.
STRONGER

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Fair Housing Act

Prohibits discrimination when renting or buying a home, getting a mortgage, seeking housing assistance, or in other housing-related activities based on **race, color, national origin, religion, sex (orientation & gender identity), familial status and disability.** (42 U.S. Code § 3601-3619 & 3631)

Purpose of the FHA – to remove barriers that perpetuate segregation and impede fair housing choice.

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Fair Housing Act

In the **Sale or Rental of Housing**, taking the following actions based membership in a protected class is prohibited:


- Refusal to sell or rent, or to otherwise make unavailable, a dwelling;
- Setting different terms, conditions or privileges, or differences in the provision of services or access to facilities in connection with housing
- Falsely denying that housing is available for inspection, sale, or rental
- Denying access to other services, organizations or facilities (such as the MLS) that relate to the business of selling or renting dwellings,
- Use of advertising that expresses a preference for or against certain persons because of their membership in a particular protected class,
- Blockbusting- persuading owners to sell property cheaply or rent because of the fear of people of another race or class moving into the neighborhood/area.

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Fair Lending

In **Mortgage Lending**: No one may take any of the following actions based on membership in a protected class:

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan.



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Fair Lending Settlement

**National Community Reinvestment Coalition
v. First Tennessee Bank**

Complainant alleged that First Tennessee Bank disproportionately denied loan applications from African American and Hispanic borrowers, while also not placing branches in minority-concentrated areas in Chattanooga, Knoxville, Memphis, and Nashville.

Settlement reached in Feb. 2016.

- First TN to put \$1.5 million in a subsidy fund to provide interest rate reductions on home mortgages and down payment or closing cost assistance to qualified areas in the identified areas.
- Partner with one or more "community-based" organizations to provide home repair or other grants and provide credit, financial, homeownership, or foreclosure prevention services to residents in the affected areas.
- Contribute \$270k over 3 years to support these partnership efforts
- Provide \$105k to fund similar services to be provided by the National Community Reinvestment Coalition

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HUD v. Well Fargo Settlements

➤ March 2021 - Wells Fargo allegedly denied a mortgage loan intended to be used on a group home for persons with disabilities.

Settlement Agreement: Wells Fargo Bank agreed to pay \$125,000 to the victim of the discrimination and "provide fair housing training for its employees, including home mortgage consultants, managers and underwriters."

➤ March 2014 - Families filed complaints alleging that Wells Fargo bank discriminated against pregnant borrowers and women on maternity leave by not approving loans until the women were back at work full-time.

Settlement Agreement: Wells Fargo paid a total of \$165,000 among six affected families; created a fund with at least \$3.5 million to compensate other claimants; established new underwriting guidelines that comply with the FHA; provided employees with fair housing training.

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Limited English Proficient (LEP) individuals do not speak English as their primary language and/or have a limited ability to read, speak, write, or understand English.

FHA prohibits restricting access to housing based on LEP; use of LEP as a pretext for unequal treatment based on race/national origin; selective application of a language-related policy. **Denying equal access to LEP individuals may violate FHA national origin protections.**

Recent case example: *DHUD, Conciliation/ Voluntary Compliance Agreement with Cascade Village Apartments II, LP, in Sacramento, CA & management company, FPI Management, Inc., (FPI)*

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The FHA makes it unlawful to:

➤ Refuse to make **reasonable accommodations** in rules, policies, practices or services to afford a person with a disability equal opportunity to use and enjoy a dwelling.

➤ Refuse to permit, at the expense of the person with a disability, **reasonable modifications** to existing premises if the modifications are necessary to accommodate a person with a disability to occupy the premises.

Reasonable accommodations & modifications are a change, exception or adjustment to a rule, policy, practice, service or a modification/structural change to a housing unit that allows a person with a disability an equal opportunity to use or enjoy a dwelling unit.


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**“Handicap”
or
“Disability”**

What does it mean?

- A physical or mental impairment which **substantially** limits 1 or more **major** life activities
 - Walking, talking, seeing, hearing, speaking, learning, working, etc.
- A record of an impairment
- Being regarded as having such an impairment (whether a person has an impairment or not).

Exceptions: current, illegal use or addiction to a controlled substance or conduct toward a person solely because a person is a transvestite.



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What is Reasonable?

Housing providers can ask for **documentation** of:

- Verifying existence of a disability,
- Description of the needed accommodation, and
- An explanation of the nexus between the disability and the requested accommodation.

Documentation = health care provider, peer support group, a non-medical service agency, or a reliable 3rd party in a position to know about the individual's disability.


- ❖ If the **disability and the need are obvious**, asking for documentation is not appropriate.
- ❖ If a request is denied, housing provided should engage in the interactive process to discuss alternatives.
- ❖ Alternatives should not be proposed if the requested one is reasonable.



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**FHA &
Assistance
Animals**

- All kinds of animals can assist a person with a disability
- No requirement for special training or certification
- No pet deposit required
- Breed, size, and weight restriction not applicable
- Housing provider can require that the animal be well-behaved, vaccinated, and cleaned up after




FHA Design & Construction

FHA, as amended in 1988, established **standards for accessible design** in construction; applies to multi-family dwellings (buildings with 4 or more units) built for 1st Occupancy after 3/13/1991 as follows:

- ❖ All units in buildings with elevators
- ❖ Ground floor units in buildings without elevators

Accessibility Requirements

- ✓ Accessible building entrance on accessible route
- ✓ Accessible, usable and public and common use areas
- ✓ Usable doors
- ✓ Accessible route into and through covered dwelling unit
- ✓ Light switches, electrical outlets
- ✓ Reinforced walls for grab bars
- ✓ Usable kitchen and bathrooms




Accessibility Recent Case Law Ex.

Ability Center of Greater Toledo v. James E. Moline Builders Inc., 478 F.Supp.3d 606 (2020)

Facts: Public interest advocacy groups and resident of senior citizen residential development filed suit against entities allegedly responsible for design and construction of development, claiming violation of Fair Housing Amendments Act (FHAA) due to lack of handicapped accessible front entrances to free-standing separate units at development.

Holding: The District Court held that "public use" under FHAA required units' front entrances to be handicap accessible. Further noting, whether one is a wheel-chair bound neighbor, friend, or family member, a political candidate, or a repairman - all are making "public use" as they approach a Brooklyn Park unit's sidewalk-adjointing front door.



FHA Special Issues

"Otherwise make unavailable" --Domestic Violence:

Domestic violence victims, at least 90% of whom are female, often face eviction under the following policies:

- > "One Strike" policies for violence in the unit
- > Limits on police calls/nuisances ordinances
- > Policies holding victims responsible for conduct of their "guests"

These neutral policies can have a **disparate impact** on women and be violations of the Fair Housing Act.

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FHA
Special
Issues

“Otherwise make unavailable” -- Criminal Records:

HUD cautions housing providers on the use of criminal history as a factor in the approval of a prospective resident.

- Should be sure that the policy or practice assists in **protecting resident safety and/or property.**
- Must show that the policy or practice is necessary to achieve a **substantial, legitimate, nondiscriminatory interest.**

Blanket prohibitions without individualized inquiry or assessment will **not** meet this burden.

- Arrest alone not permissible
- Consider nature and severity of offense, time since conviction, behavior in intervening time

HUD Guidance:
https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPHASTANDCR.PDF

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Fair
Housing &
Advertising

Types of advertising/statements covered:
Print ads, TV commercials, radio ads, photos, brochures, flyers, pamphlets, postcards, internet advertising, verbal statements

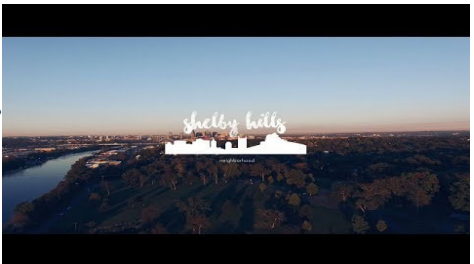
Exclusionary Ad Examples:

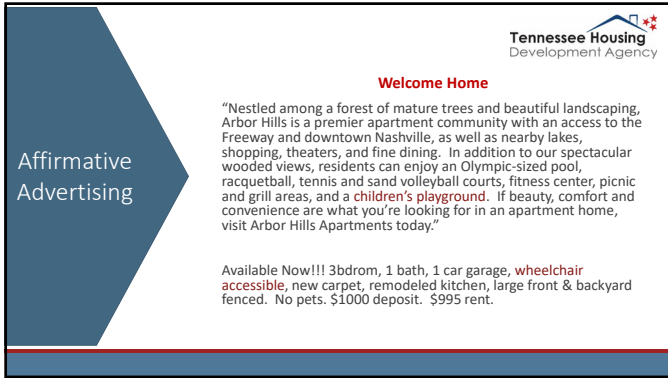
\$950 / 1br- 1000sqft – APT FOR RENT in my home for rent. Private entrance. Patio. 1000sqft. 1 BR. All furniture furnished. All utilities/internet. \$950 per month. \$450 security deposit. No pets!! Background checks (must pass). Ref and emp. record. **Singles or couples.** Calls only.

East Nashville home for rent. \$1095/mo. 2 BR. 1 BA. Cats & dogs only. Perfect for **singles and roommates.** Home is ready now.

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Fair
Housing &
Advertising



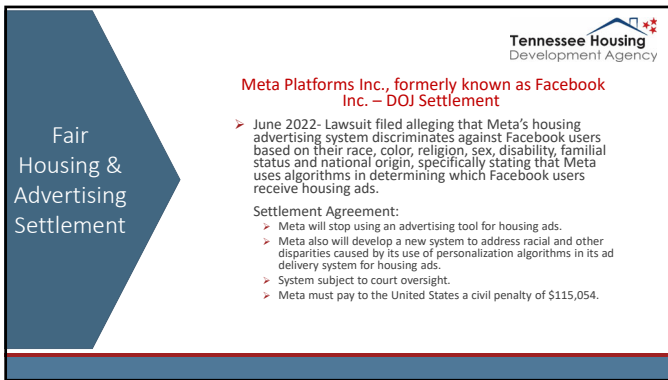


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Welcome Home

“Nestled among a forest of mature trees and beautiful landscaping, Arbor Hills is a premier apartment community with an access to the Freeway and downtown Nashville, as well as nearby lakes, shopping, theaters, and fine dining. In addition to our spectacular wooded views, residents can enjoy an Olympic-sized pool, racquetball, tennis and sand volleyball courts, fitness center, picnic and grill areas, and a children’s playground. If beauty, comfort and convenience are what you’re looking for in an apartment home, visit Arbor Hills Apartments today.”

Available Now!!! 3bdrom, 1 bath, 1 car garage, wheelchair accessible, new carpet, remodeled kitchen, large front & backyard fenced. No pets. \$1000 deposit. \$995 rent.



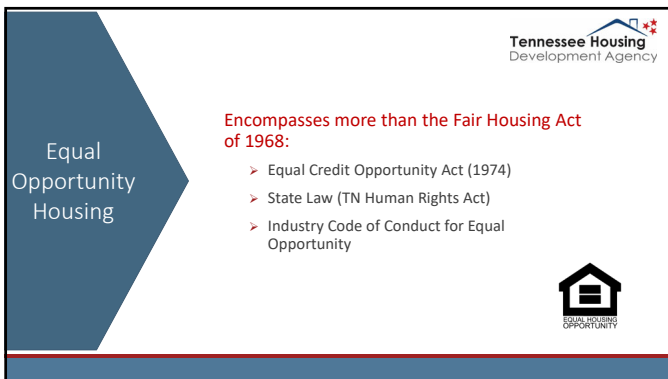
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Meta Platforms Inc., formerly known as Facebook Inc. – DOJ Settlement

- June 2022- Lawsuit filed alleging that Meta’s housing advertising system discriminates against Facebook users based on their race, color, religion, sex, disability, familial status and national origin, specifically stating that Meta uses algorithms in determining which Facebook users receive housing ads.

Settlement Agreement:

- Meta will stop using an advertising tool for housing ads.
- Meta also will develop a new system to address racial and other disparities caused by its use of personalization algorithms in its ad delivery system for housing ads.
- System subject to court oversight.
- Meta must pay to the United States a civil penalty of \$115,054.




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Equal Opportunity Housing

Encompasses more than the Fair Housing Act of 1968:

- Equal Credit Opportunity Act (1974)
- State Law (TN Human Rights Act)
- Industry Code of Conduct for Equal Opportunity




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Equal Credit Opportunity Act (ECOA)

Prohibits discrimination in any aspect of a credit transaction based on: **Race/color, National Origin, Religion, Sex, Marital status, Age***, receipt of Income derived from any public assistance program, or an applicant's exercise, in good faith, of any Right under the Consumer Credit Protection Act.

Home Mortgage Disclosure Act (HMDA) -requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages.

* Provided the applicant has the capacity to enter into a contract



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Tennessee Human Rights & Disability Acts

Prohibit discrimination in housing, employment & accommodation based on **race, color, creed, religion, sex, disability, familial status or national origin.**

- > Are substantially equivalent to the Fair Housing Act
- > **Tennessee Human Rights Commission (THRC)** ensures compliance with state law & Title VI of the Civil Rights Act of 1964.
- > THRC is certified as a Fair Housing Assistance Program (FHAP) by HUD to provide education & enforce Fair Housing violations (investigate & settle complaints).

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Realtor® Code of Ethics

Under Article 10 it states:

REALTORS® shall not deny equal professional services to any person or... be parties to any plan or agreement to discriminate against a person or persons on the basis of **race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.**

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of **race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity.**



Current Fair Housing Issues & Trends

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Need for Accessible Housing Options


Almost a quarter of the Tennessee population will be 65+ by 2030. 1 in 4 Tennesseans has a disability.

Significant need among older adults & individuals with a disability for **accessible & affordable** housing.

Many also need help connecting to or would benefit from living in close proximity to supportive services, such as personal care assistance, transportation, behavioral health services, etc.

A small share of housing in TN is truly accessible or even "visitable," particularly single family homes.

Multifamily properties subject to FHA Design requirements discussed earlier have "modest" accessibility requirements.



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Legacy of Redlining


Redlining continues to significantly impact neighborhood segregation across the US today.

Tracts originally graded 'A' in HOLC maps have significantly better outcomes today in the health of residents, crime, income, environmental quality, and economic opportunity with tracts graded 'D' (hazardous) having significantly worse outcomes.

For more information:
Read: *Color of Law* (Rothstein), *Race for Profit* (Taylor), *Know your Price* (Perry), etc.

Mapping Inequality- to view the continued impact of redlining on communities today. <https://dsl.richmond.edu/panorama/redlining/>

NHFA Redlining Toolkit <https://nationalfairhousing.org/issue/redlining/>



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Appraisal Bias

Why It Matters.....


De-valuing assets in communities of color exacerbates the racial wealth gap for millions of households— a gap already exacerbated by the legacy of redlining.

- Can result in a higher required down payment if appraisal does not match sales price (or cause sale to fall through).
- Or result in a downward price renegotiation, helping the buyer, but reducing the seller's financial gains, which may in turn, hinder that family in purchasing their next home.

A widespread pattern of undervaluation in communities of color can impact an entire neighborhood & create a new form of redlining.

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Interagency Task Force



Property Appraisal and Valuation Equity (PAVE) Plan

"Throughout the 20th century, people of color were denied equitable access to housing Despite the passage of civil rights laws, most notably the Fair Housing Act, that were designed to ensure equal opportunity for home ownership, market value disparities persist and are a significant factor in today's sprawling racial wealth gap."

<https://pave.hud.gov/sites/pave.hud.gov/files/documents/PAVEActionPlan.pdf>

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Executive Order 13985

"Advancing Racial Equity and Support for Underserved Communities Through the Federal Government"

Signed on President Biden's first day in office;

Directs federal agencies to evaluate whether their policies produce racially inequitable results when implemented and to make the necessary changes to ensure underserved communities are properly supported.

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Housing Equity Action Plans

- ❖ Department of Housing & Urban Development (HUD) Equity Action Plan- <https://www.hud.gov/equity>. Top priorities:
 1. Racial wealth gap & homeownership gap
 2. Criminal justice barriers to housing
 3. Intersection of housing & environmental justice
- ❖ Both **Freddie Mac & Fannie Mae** are prioritizing reducing the racial homeownership gap in their respective equity plans.

<https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf>

<https://www.fanniemae.com/media/43636/display>
- ❖ Federal Housing Finance Administration (FHFA) is also reviewing lending programs through an equity lens.

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US Dept. of Justice

Systemic race and national origin discrimination in housing and lending is a key DOJ priority with a focus on:

- Residential & racial segregation- building on work of AGs across the country & HUD FHEO to litigate pattern of practice cases
- Intersection of criminal justice and housing- disparities perpetuate racial segregation
- Sexual harassment and housing-24 pattern of practice cases in past year by DOJ

DOJ is filing "statement of interest" briefs in private cases that involve housing discrimination (Ex. [Austin, et al. v. Miller, et al case](#))

Recent DOJ lawsuit (OCC referral) against Trustmark National Bank on the basis of redlining. Civil monetary settlement resolves allegations that Trustmark engaged in the discouragement of prospective applicants in majority Black and Hispanic neighborhoods in the Memphis MSA from applying for mortgage loans, in violation of the FHA and the ECOA.

Federal Financial Regulators

Consumer Financial Protection Bureau • Federal Deposit Insurance Corporation • National Credit Union Administration • Board of Governors of the Federal Reserve • Office of the Comptroller of the Currency

Regulators have announced a renewed focus on Fair Lending enforcement & combatting discrimination to include:

- Focus on redlining (including digital redlining & algorithmic bias) & Appraisal Foundation standards/equity issues
- Consumer Financial Protection Bureau issued recent rulemaking that clarified discriminatory acts are applicable under the unfairness doctrine in Dodd-Frank (as well as ECOA).
- Office of Comptroller of the Currency (OCC) is working to enhance Fair Lending examinations by conducting fair lending risk assessments (using HMDA data) for every bank supervised.

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Notable Real Estate Settlements, 2022

National Fair Housing Alliance with 20 fair housing orgs. reached a landmark \$53 million agreement with Fannie Mae to resolve claims that their Real Estate Owned (REO) properties in majority-Black and Latino communities were managed unfavorably. Will help rebuild & strengthen communities of color in 39 metro areas.

-NFHA has REO-related Conciliation Agreement with Wells Fargo Bank, N.A & similar REO cases pending against Deutsche Bank; Bank of America; US Bank; Safeguard Properties; Cyprexx Services; Asset Management Specialists.

NFHA & Redfin Settlement Agreement -NFHA with 9 fair housing orgs. alleged that Redfin's policies that limit or deny services for homes priced under certain values can perpetuate racial segregation and contribute to the racial wealth gap.

Redfin agreed to change its minimum housing price policy, alter other practices, and pay \$4 million to settle the suit.



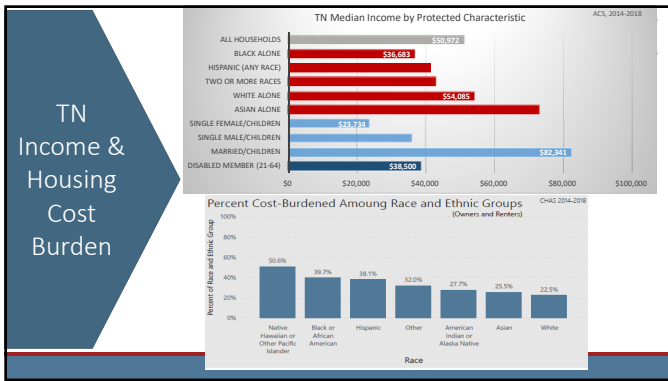
Fair Housing Barriers/Trends, Tennessee
THDA Research

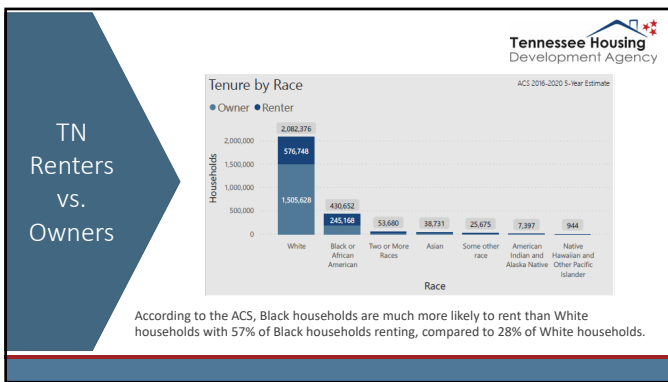
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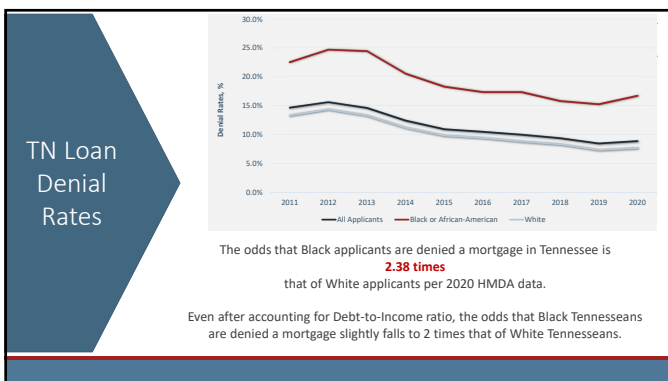
Barriers to Housing Choice

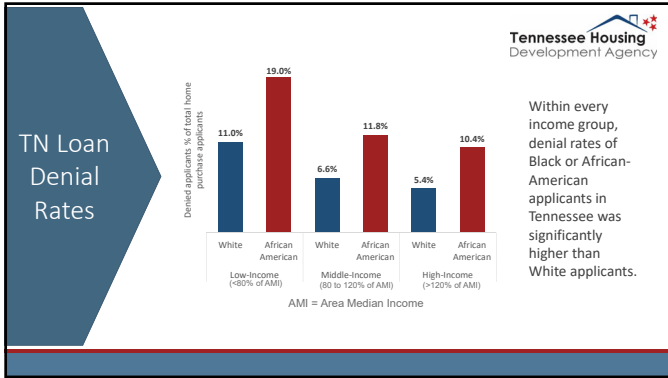
- Lower income & wealth
- Debt to income ratio (student debt particular issue)
- Poor or no credit (or non-conventional credit)
- Eviction &/or criminal history
- Rising housing costs (rent, mortgage, utilities)
- Lack of/challenges utilizing rental subsidies
- Reluctance of banks/lenders to deal with additional requirements/paperwork of loan programs targeted to lower income HH or for special purposes or with DPA

Barriers are often exacerbated for vulnerable or historically marginalized populations, such as those belonging to a protected class.











Make sure your clients are aware of their rights under the Fair Housing Act.

- See HUD.gov, NRA & NFHA for posters/PSAs that may be posted in your offices, on your websites, on your social media.

Listen to clients' experiences (when buying and selling); identify potential Fair Housing violations & report any bad actors to the HUD hotline or to the Tennessee Human Rights Commission (800) 251-3589.

LET'S MAKE UNFAIR HOUSING HISTORY.



Promote Diversity & Inclusion in your work.

Realtors- provide similar information on listings to all clients and let them tell you where they want to live (avoid steering).

If you are working with a client (or have a friend/family member, etc.) who is having difficulty securing a loan, refer them to a **certified Homebuyer Educator** to review their credit; determine why they may be facing obstacles & help them overcome those obstacles (see THDA approved Homebuyer Educators <https://thda.org/pdf/Alphabetical-List-of-Approved-Trainers.pdf>).

Maintain awareness of lenders offering **Down payment Assistance and targeted or special purpose loan programs** in your area to expand access to homeownership.

What are we Doing at THDA?

LET'S MAKE UNFAIR HOUSING HISTORY.

Visit www.thda.org

- ❖ THDA Housing Education Program
- ❖ THDA Great Choice Loan Programs (moderate income borrowers); **Great Choice Plus (6% or \$6,000 for downpayment assistance)**
- ❖ Covid-19 Rent & Mortgage Relief Programs (Anyone affected by Covid-19 economic hardship)- Call Center information online
- ❖ Rental & Utility Assistance Programs (ELI households)
- ❖ Affordable Rental Development Programs (LI households)
- ❖ Home Repair/Energy Efficiency Programs (LI households- focus on seniors & disabled)
- ❖ Fair Housing Outreach & Partnerships

Resources



National Association of REALTORS® (NAR) – www.NAR.realtor/fair-housing

Fair Housing Essentials for Realtors: <https://cdn.nar.realtor/sites/default/files/documents/Fair-Housing-RE-Brokerage-Essentials-Chapter-06-2016.pdf>

REALTOR® Code of Ethics, Article 10, Standard of Practice 10-5 – [2022 Code of Ethics & Standards of Practice](#)

National Fair Housing Alliance- <https://nationalfairhousing.org/>

HUD Fair Housing- <https://www.hud.gov/fairhousing>
