

GUIDE TO FAIR MORTGAGE LENDING AND HOME PRESERVATION



**FAIR HOUSING
LEGAL SUPPORT
CENTER & CLINIC
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What does this guide cover?

This guide is intended to provide some basic information concerning your rights under federal and state laws to be treated fairly when making home lending transactions. Additionally, it outlines some of the federally-sponsored home loan modification and refinance programs designed to help people preserve their home ownership. However, each individual situation is unique, and this guide should not be relied upon to provide legal advice in individual circumstances. Persons who are seeking advice should consult a competent attorney or HUD approved counseling agency, whose services are free.

What is Fair Lending?

Fair lending is an integral part of fair housing. Fair housing laws, both federal and state, prohibit discrimination in housing against persons in protected classes. Protected classes under the fair housing laws are listed in the table on page 4. In recent years additional new laws, rules, and regulations have been put in place to protect homebuyers from some of the discriminatory mortgage lending that led to the national lending crisis of recent years. However, unfair and predatory lenders are still a threat to the unwary homebuyer.

What is Predatory Lending?

Some lenders deliberately target individuals for unfavorable mortgage loan terms. This is generally referred to as “predatory lending.” While this term is descriptive of bad acts, it is not a precise legal term. It may include high cost loans or loans that have terms that make them difficult for the borrower to repay. A variety of laws, state and federal, prohibit certain predatory practices. Predatory lending practices may also violate fair housing laws if they target persons in protected classes. Where an unfair lending practice violates fair housing laws, victims may be entitled to greater remedies than the remedies available under various anti-predatory and consumer protection laws. Therefore, it is very important to seek advice if you believe that you have been unfairly treated in any way regarding a mortgage loan.

What is meant by Home Preservation?

Home preservation refers to any act or protection that assists homeowners to avoid losing their homes as a result of legal action taken by a lender or loan servicer. For many people, a home is their most valuable asset, and homeowners should be cautious if issues arise with their lenders or loan servicers. Borrowers in these circumstances should seek expert advice sooner than later. A minor problem that might easily be cleared up if acted upon quickly can become a serious matter if ignored or allowed to get worse. There are programs available and new rules in place to help homeowners

who experience financial problems that impact their ability to repay their mortgage. In Illinois there are specific legal protections for the borrower if a mortgage loan goes into default and a lender initiates foreclosure proceedings. Again, getting good advice is a homeowner's best defense to keeping their home in these circumstances.

What federal laws protect mortgage borrowers from discriminatory lending practices?

There are a number of powerful federal laws that protect mortgage borrowers from discrimination. Two of the most important are The Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA).

The FHA applies to almost any activity related to finding a place to live: renting, buying, selling, obtaining insurance, as well as mortgage lending and servicing (those activities related to the administration of a loan after it is made). While the FHA identifies specific protected classes of individuals (see table below), its protection extends to communities as well as individuals. Anyone who is injured by a discriminatory housing practice can file a complaint, not only those who are themselves in one of the protected classes. This includes buyers, sellers, renters, family members, neighbors, community residents, municipalities and local government agencies and organizations. Thus, a person whose property values are negatively affected by the discriminatory actions of a lender or borrower in the community may have a basis to seek a legal remedy.

The ECOA prohibits discrimination in the extension of credit.

This Act also identifies protected classes of individuals and specific categories of information (see table on page 4).

- The law's protections apply to any organizations or people who regularly extend credit. This includes: banks, small loan and finance companies, retail and department stores, credit card companies, and credit unions. Everyone who participates in the decision to grant credit or in setting the terms of that credit, including real estate brokers who arrange financing, must comply with the ECOA.
- Creditors may ask for information about race, ethnicity, or sex in certain situations, but they may not use this information when deciding whether to give you credit or when setting the terms of your credit. It is important to remember that not everyone who applies for credit gets it or gets the same terms. Factors like income, expenses, debts, and credit history are among the criteria lenders use legitimately to determine a borrower's creditworthiness. What lenders are prohibited from doing is using protected class information or status when considering creditworthiness. The ECOA is enforced by the Federal Trade Commission.

State and local human rights laws also provide remedies for discriminatory lending practices.

What are the protected classes established by various government laws and ordinances?

Table of Protected Classes and Categories

PROTECTED CLASS	FEDERAL	
	ECOA	Fair Housing Act
Race	Yes	Yes
Color	Yes	Yes
National Origin	Yes	Yes
Religion	Yes	Yes
Sex	Yes	Yes
Familial Status	No	Yes
Disability	No	Yes
Ancestry	No	No (1)
Age (40 and older)	Yes	No
Order of protection status	No	No (2)
Marital status	Yes	No
Sexual orientation	No	No (3)
Military status	No	No
Unfavorable military discharge	No	No
Gender identity	No	No (4)
Parental status	No	No (5)
Source of income, including Section 8 vouchers	Yes	No
Good faith exercise of rights under Consumer Credit Protection Act	Yes	No

1. *The FHA interprets ancestry to be under national origin.*
2. *Under the FHA, domestic abuse may be covered under sex discrimination.*
3. *Under the FHA, some instances of sexual orientation may be covered under sex discrimination.*
4. *Under the FHA, gender identity may be covered under sex discrimination.*
5. *Under the FHA, parental status may fall under familial status.*

ILLINOIS

Illinois Human Rights Act

Cook County Human Rights Ordinance

City of Chicago Fair Housing Ordinance

Yes**Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****Yes****No****Yes****Yes****No****Yes****Yes****No****Yes****Yes****No****No****No**

What are some examples of practices that may be predatory or that violate fair housing and fair mortgage lending laws?

- It is illegal for a lender to refuse to make a mortgage loan to someone based on one of the protected classes. It is also illegal to refuse to provide information regarding loans for the same reason. These protections apply to communities as well as individuals.
- It is illegal for a lender to impose different terms or conditions, such as higher interest rates, points, or fees based on a protected class. This applies whether the lender is making a new loan or purchasing an existing loan.
- It is illegal to discriminate in appraising the value of property.
- It is illegal for a lender's advertising to reflect a preference based on a protected classification or to target advertisements for sub-prime loans to minority neighborhoods while advertising prime-rate loans in white neighborhoods.
- It is also illegal to "steer" individuals, based on their protected status, into or away from desirable neighborhoods or favorable loans and into less desirable neighborhoods or unfavorable loan terms.
- Some lenders charge excessive fees to some borrowers, but not to others. Typical competitive loans have upfront fees of 1% or less; predatory mortgage loans may include fees totaling as much as 5% or more of the loan amount. Such a practice is illegal if it is applied on the basis of a protected class.
- Predatory mortgage lenders often add burdensome prepayment penalty fees for refinancing the loan. This practice makes it difficult for a borrower to obtain more favorable interest rates and loan terms by refinancing a sub-prime loan. Such a practice is also illegal if it is applied on the basis of a protected class. In some cases, it may violate state and federal consumer protection laws.
- Some mortgage lenders pay brokers a "yield spread premium" (YSP) when the broker sells a borrower a loan with a higher interest rate. This premium is not required to be disclosed to the borrower until the loan closes. Borrowers who use a broker to arrange their mortgage financing should ask if there is a YSP before closing on the loan. New rules have been put in place to address this practice.
- "Loan flipping" is a practice where a lender convinces a borrower to refinance mortgage loan without making providing meaningful benefit to the borrower. Each new loan closing generates fees that can amount to thousands of dollars without an offsetting reduction in the actual loan repayment. "Loan flipping" can be predatory.
- "Teaser rate" adjustable rate mortgages that offer interest rates that are low enough to keep the initial monthly payment affordable, but then jump to a dramatically higher rate in a few years, making the loan unaffordable to the borrower, may be predatory.

- It is not uncommon for lenders to sell a home mortgage loan or to change the company they use to service a home loan. Problems arise when the continuity of loan payments is interrupted in this process. The transfer of a loan account may be incomplete or documents may be lost in the process. Homeowners frequently face a daunting task of getting such errors straightened out with the new servicer. While not necessarily illegal, such practices can be highly distressful to the borrower. New rules have been put in place to reduce the impact of such transfers.

Who is the CFPB and how do they help homeowners?

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 created the Consumer Financial Protection Bureau, an independent government agency. The CFPB has jurisdiction over banks, credit unions, securities firms, payday lenders, mortgage servicing operations, foreclosure relief services, debt collectors, and other financial companies that operate in the United States.

The Act specifically authorizes the CFPB to take action to prevent unfair, deceptive, or abusive practices in the offering of a consumer financial product or service. It defines “fair lending” as the “fair, equitable, and non-discriminatory access to credit for consumers.”

In 2014, the CFPB issued new rules intended to help alleviate some of the most common problems facing home mortgage loans.

Lenders are now required to make “Qualified Mortgages” to help assure that borrowers can afford to repay the loan over the life of the loan.

New rules were issued to address Yield Spread Premium abuses. If a borrower pays a broker directly for arranging for a loan, that broker cannot also be paid by anyone else for the same transaction.

New rules were issued to mortgage servicers requiring them to be more responsive to borrower inquiries.

- Servicers are now required to a clearly understood monthly statement so that borrowers can see how payments are being credited.
- Servicers are required to fix mistakes promptly.
- Servicers are required to credit payments as of the day they receive them.
- Servicers are required to provide borrowers with adjustable rate mortgage loans sufficient notice of interest rate changes so that borrowers can seek alternative financing or make other adjustments in their spending.
- Borrowers who fall behind in their payments now have additional protections to correct problems before foreclosure actions can be initiated by a servicer.

Where can a victim of unlawful lending practices go for a remedy?

Victims of discrimination may sue individually in court or they may file a complaint with an administrative agency. Complaints under the Fair Housing Act must be filed with the U.S. Department of Housing and Urban Development (HUD) within one year from the time of the discriminatory act. This time limit is known as a “statute of limitation.” Additionally, a fair housing complaint may be filed in state or local court within two years of the last act of discrimination, but the time may be extended if a timely complaint is filed with HUD. A borrower may file a complaint in court without first filing with an administrative agency. The FHA allows for money damages, including punitive damages in court actions, to be paid to the victim as well as for lawyers fees and court costs. Complaints can also be filed with the CFPB. ECOA complaints must be filed in federal court.

There may be advantages to filing an administrative complaint rather than a lawsuit:

- There are no court filing fees.
- The person filing the complaint may be represented by an attorney, but isn't required to be represented.
- The administrative agency will investigate and try to resolve the matter through a process called “conciliation,” and
- The statute of limitations for filing the lawsuit will be extended during the period of the administrative process, and
- If there is an administrative hearing as a part of the process, there is a right to appeal the outcome of that hearing.

Complaints can also be filed with the Illinois Human Rights Commission. Relief under the Illinois Human Rights Act may include: fines, affirmative relief, actual damages for embarrassment and humiliation, fees, and civil penalties. Such relief is not designed to provide relief for a single individual and a complaint will not stop a foreclosure lawsuit. Additionally, borrowers can file complaints with the Cook County Commission on Human Rights or the City of Chicago Commission on Human Relations.

What happens if a homeowner's financial circumstances change dramatically during the life of a home mortgage loan?

There are two federal programs that are designed to help homebuyers in such circumstances.

The Home Affordable Modification Program (HAMP) is designed to help financially struggling homeowners avoid foreclosure by modifying loans to a level that is affordable for borrowers now and sustainable over the long term. The program provides clear and consistent loan modification guidelines that the entire mortgage industry can use. The HAMP includes incentives for borrowers, servicers and investors.

- HAMP is designed specifically to help homeowners impacted by financial hardship. Under HAMP, the loan can be modified to reduce the monthly mortgage payment to no more than 31% of the borrower's gross (pre-tax) monthly income. If eligible, the modification permanently changes the original terms of the mortgage.
- A HAMP modification may be an option if:
 - The borrower is not eligible to refinance.
 - The borrower is facing a long-term hardship
 - The borrower is behind on the mortgage payments or likely to fall behind soon.
 - The loan was originated on or before January 1, 2009.
 - The loan is owned by Fannie Mae or Freddie Mac – or the loan is serviced by a participating mortgage company.



(Continued)
What happens if a homeowner's financial circumstances change dramatically during the life of a home mortgage loan?

The Home Affordable Refinance Program (HARP) was introduced to enable people with negative equity, but who are otherwise up-to-date with their mortgage repayments, to refinance without the need to take out private mortgage insurance (PMI).

- In order to qualify for a HARP refinance:
 - The mortgage must be owned or guaranteed by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), and must have been made prior to May 31, 2009. If the mortgage loan was originally made by another lender, it must have been acquired by Fannie or Freddie by that date.
 - The borrower must be current on the payments, not behind.
 - The borrower must not have been behind on mortgage repayments by 30 days or more in the past six months, and must not have been late on any payment more than once over the past year.
 - The borrower must not have previously refinanced the home under the HARP regulations – unless the refinancing was done with Fannie Mae and completed between March and May 2009.
- The central issue in a HARP has to do with Private Mortgage Insurance (PMI) and it hinges on the percentage of equity the borrower has in the loan after the refinancing. The rules and conditions are more complex than can be covered in this brochure. Borrowers are encouraged to seek counseling from a HUD-approved housing counseling agency or a financial advisor for details.

How can government agencies be contacted for help or more information?

For general information as well as instructions and forms for filing complaints, contact one of the following agencies. The HUD website also has the names and phone numbers of HUD-approved housing counseling agencies and counselors.

Federal

U.S. Department of Housing and Urban Development (HUD)

www.hud.gov
312.353.5680

The Federal Trade Commission

www.ftc.gov
312.960.5633

The Consumer Financial Protection Bureau

www.consumerfinance.gov
1.855.273.2392

State

Illinois Department of Human Rights

www.illinois.gov/dhr
312.814.6200

Illinois Attorney General

www.illinoisattorneygeneral.gov/consumers/filecomplaint.html
312.814.3000

Illinois Department of Financial and Professional Regulation (IDFPAR)

www.idfpr.com
312.814.4500 or 888.473.4858

Illinois Housing Development Authority

www.ihda.org
312.836.5200

Cook County Commission on Human Rights

www.cookcountyil.gov/human-rights-commission-on
312.603.1100

City of Chicago Commission of Human Relations

www.cityofchicago.org/city/en/depts/cchr.html
312.744.4111

Other local governments may have their own commissions or agencies to address lending problems that are unfair or predatory.

UIC JOHN MARSHALL LAW SCHOOL FAIR HOUSING LEGAL SUPPORT CENTER & CLINIC

UIC John Marshall Law School Fair Housing Legal Support Center was established in 1992. The Center educates and trains the public on fair housing law and provides legal assistance to those private and public organizations and persons seeking to eliminate discriminatory housing practices.

The Clinic is devoted exclusively to fair housing training and enforcement. Its unique nature allows it to assist persons in receiving and retaining the housing of their choice, thereby building and strengthening neighborhoods and communities.

UIC John Marshall Law School
Fair Housing Legal Support Center & Clinic
300 S. State Street
Chicago, IL 60604

Phone: 312.987.2397 | Fax: 312.427.9438

Email: fairhousingcenter@jmls.edu

www.jmls.edu/fairhousing



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