

Are Individuals Infected With The Human Immunodeficiency Virus (HIV) Protected By The Fair Housing Amendments Act Of 1988?

The Fair Housing Act (42 U.S.C., 3601-3631) prohibits discrimination on the basis of physical or mental handicaps. The law defines "handicapped" as "a physical or mental impairment which substantially limits one or more of such person's major life activities".

42 U.S.C., 3602(h)(1); C.F.R., 100.201. Section 3604(f)(1) makes it unlawful:

to discriminate in the sale or rental, or otherwise make unavailable or deny a dwelling to any buyer or rental because of a handicap of:

- (A) that buyer or renter;
- (B) a person residing in or intending to reside in that dwelling after it was so sold, rented or made available; or
- (C) any person associated with that buyer or renter.

Section 3617 further provides that:

it shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on having account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected...

Those individuals infected with the HIV virus and AIDS sufferers are protected by the Fair Housing Law due to the defeat of an amendment that attempted to exclude those with communicable diseases. 24C.F.R., 100.201. The legislative history from Congress provides as follows:

The Fair Housing Amendments (sic Act, like Section 504 of the Rehabilitation Act of 1973, as amended, is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream.

It repudiates the use of stereotypes and ignorance and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.

People with Acquired Immune Deficiency Syndrome (AIDS) and people who test positive for the AIDS virus have been evicted because of the erroneous belief that they pose a health risk to others.

All of these groups have experienced discrimination because of a prejudice and aversion - because they make non-handicapped people uncomfortable. H.R 1158 clearly prohibits the use of stereotype and prejudice to deny critically needed housing to handicapped persons. The right

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to be free from housing discrimination is essential to the goal of independent living." 1988 U.S. Code Cong. & Admin. News 2179.

Consequently, the Fair Housing Act prohibits discrimination against those infected with the HIV virus. However, the Fair Housing Act does not protect those whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. 42 U.S.C., 3604(f)(9); 24 C.F.R., 100.202(d). In the case of an HIV infected individual, the protected status under the Fair Housing Act would be lost upon a showing that such person, purposely intended to inflict the virus upon other individuals.

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