

Sexual Harassment and Housing: Rights and Remedies of Tenants



1. Overview of legal theories and remedies

A. What statutes apply?

Statutes establishing a basis for tenants to file suit for discrimination arising from sexual harassment include:

- **42 U.S.C. § 3604:** Courts have held that 42 U.S.C. § 3604, which prohibits discrimination on the basis of sex in the sale or rental of housing, prohibits sexual harassment in housing.
- **42 U.S.C. § 3617:** Under 42 U.S.C. § 3617, a landlord must not interfere with, coerce, threaten or intimidate tenants in the exercise of their rights under the FHA. Courts have held that this provision can apply where a landlord threatens or intimidates a tenant who fails to comply with sexual demands.
- **Other provisions:** State and local anti-discrimination laws are often used in tandem with FHA claims. State tort law claims for injuries such as intentional infliction of emotional distress, assault, battery, or retaliatory eviction may also be available. State contract law claims for breach of the lease or breach of the covenant of quiet enjoyment may also be an option.

B. What are the basic legal theories?

There are three general claims used to allege sexual harassment. Plaintiffs often use a combination of these theories in alleging sexual harassment.

- **Quid pro quo harassment:** The plaintiff alleges that sexual favors were demanded in exchange for housing and housing benefits, such as continued tenancy, rent levels, and repairs.
- **Hostile environment:** The plaintiff alleges that the harassment was so severe or pervasive as to alter the use and enjoyment of her home and to create an abusive living environment.
- **Fair housing interference:** The plaintiff alleges that the defendant intimidated, threatened, or interfered with the plaintiff's exercise or enjoyment of her rights under the FHA.

C. Is the analysis similar to employment sexual harassment claims?

Most courts look to employment sexual harassment cases for guidance in deciding claims involving sexual harassment in housing. Accordingly, advocates bringing FHA sexual harassment claims will likely benefit from consulting with employment attorneys regarding potential strategies. Some commentators have criticized the courts' reliance on employment cases, arguing that a tenant's expectations of privacy and security in the home differ from those expectations in the workplace. At least one court has agreed, stating that "The Court is not persuaded that sexual harassment at work is akin to sexual harassment in one's own home by one's own landlord who just so happens to also have a key to the house." Quigley v. Winter, 584 F. Supp. 2d 1153 (D. Iowa 2008).

D. Who are the plaintiffs?

Plaintiffs in FHA sexual harassment cases may include the aggrieved tenant, persons who lived with the tenant and were injured by the tenant's eviction or threatened eviction, and fair housing councils. Courts

have held that homeless shelter residents can state a claim under the FHA, even if they did not provide any consideration, because providing shelter constitutes rental of a dwelling under the FHA. Woods v. Foster, 884 F. Supp. 1169 (N.D. Ill. 1995).

D. Who are the defendants?

Defendants may include the perpetrator of the harassment, and, in certain circumstances, the perpetrator's employer. If an owner or property manager knew or should have known about the harassment and failed to remedy the situation promptly, the owner or manager can be held vicariously liable for the acts of the employee.

One court has held that a tenant stated a claim against a condominium owners association where the association was aware that another tenant had repeatedly shouted sexist epithets at her and threatened to rape and kill her. *Reeves v. Carrollsburg Condominium Unit Owners Ass'n*, No. 96-2495, 1997 U.S. Dist. LEXIS 21762 (D.D.C. Dec. 18, 1997). None of the reported decisions involving sexual harassment under the FHA involves tenant against tenant harassment. However, a property owner or manager could be liable if he or she knew of tenant-on-tenant harassment and did not take remedial action.

E. What are the options for enforcement?

Options for seeking redress for incidents of sexual harassment include:

- **Administrative complaint:** Tenants may choose to file a complaint with HUD, or with the state's fair housing enforcement agency. A tenant filing a complaint with HUD must do so within one year of the incident of sexual harassment.
- **Department of Justice litigation:** HUD may opt to refer a complaint to the Department of Justice if it finds that a complaint is of larger public importance. Based on the complaint, the Department of Justice may then file suit on behalf of the tenant in federal court. The tenant has a right to intervene in this suit.
- **Filing a civil action:** Tenants may choose to file a civil action in state or federal court. Claims for sexual harassment under the FHA must be filed within two years of the incident of sexual harassment.

F. What are the remedies?

Potential remedies for plaintiffs in FHA sexual harassment cases include:

- **Compensatory damages**, including compensation for emotional distress, relocation costs, and inconvenience.
- **Punitive damages**, in cases where the defendant intentionally or flagrantly violated the law.
- **Injunctive relief**, such as an injunction ordering the defendant to cease the harassment, to train employees, to prohibit eviction except for good cause, or to perform repairs or other actions that were the subject of the lawsuit.
- **Attorney's fees and costs**

2. Quid pro quo claims

A. What are the elements of a quid pro quo claim?

A plaintiff may establish a quid pro quo claim for sexual harassment by proving that:

- The plaintiff was subjected to a demand for a sexual favor;
- The plaintiff experienced the demand because of her sex; and

- Housing benefits were explicitly or implicitly conditioned on performance of the sexual favor.

One incident alone is sufficient to sustain a claim of quid pro quo sexual harassment. HUD regulations specifically address quid pro quo sexual harassment, stating that prohibited actions under the FHA include “denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.” 24 C.F.R. § 100.65(b)(5).

B. Examples of successful quid pro quo claims

- Quigley v. Winter, 584 F. Supp. 2d 1153 (D. Iowa 2008). A tenant requested that her landlord return her security deposit, and his response was to stroke her stomach and say, “my eagle eyes haven’t seen everything yet.” The tenant’s theory was that the landlord was intimating that he would only return the deposit if she engaged in a sexual act with him. The landlord did not return the deposit. The court held that this evidence was sufficient for a reasonable jury to return a verdict finding quid pro quo harassment.
- Shellhammer v. Lewallen, 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff’d*, 770 F.2d 167 (6th Cir. 1985). *Shellhammer* was the first federal case to hold that sexual harassment in housing violates the FHA. The owner of the tenant’s building asked her to pose for nude photos. When she refused, she and her husband were evicted. The district court found that the eviction was in response to the tenant’s rejection, and that the owner’s conduct constituted quid pro quo sexual harassment.

C. Example of an unsuccessful quid pro quo claim

- Honce v. Vigil, 1 F.3d 1085 (10th Cir. 1993). A tenant made arrangements to move into a mobile home on the owner’s lot. Before the tenant moved in, she repeatedly rejected the owner’s requests for dates. Once the tenant moved in, she and the owner had a series of disputes regarding improvements to the property. The court rejected the tenant’s quid pro quo claim, finding that the landlord’s refusals to make the improvements were justifiable and that the tenant failed to establish a causal connection between the owner’s actions and her rejection of his advances.

3. Hostile housing environment claims

A. What are the elements of a hostile housing environment claim?

A plaintiff may establish a hostile housing environment claim for sexual harassment by proving that:

- The plaintiff was subjected to verbal or physical conduct of a sexual nature;
- The plaintiff was subjected to this conduct because of her sex;
- This conduct was unwelcome; and
- This conduct was sufficiently severe or pervasive to alter the use and enjoyment of the home and to create an abusive living environment.

B. What constitutes severe or pervasive conduct?

In contrast to quid pro quo harassment, a plaintiff may need to demonstrate more than one incident of harassment in order to establish a hostile housing environment claim. Some of the factors courts consider include the frequency of the harassing conduct; whether the harassment was part of a pattern and practice of conduct; whether the conduct extended beyond offensive remarks; and the severity of the conduct. Some courts have found that isolated or sporadic sexually inappropriate acts are not sufficiently pervasive and severe to constitute sexual harassment under the FHA.

C. **Examples of successful hostile housing environment claims**

- Brillhart v. Sharp, 2008 WL 2857713 (M.D. Pa. July 21, 2008). After completing repairs at the tenant's lot, the owner of a mobile home park grabbed the tenant's breasts, demanded sex, tried to pull the tenant's legs apart, and exposed himself. After the tenant repeatedly refused the owner's demands, he warned her that "I do this all the time and I evict anyone who tries to press any charges." The owner continued to harass the tenant after the incident by staring and winking at her. The tenant moved because of the owner's conduct. The tenant suffered from nightmares and a nervous breakdown, which led to a suicide attempt. The court readily found that the owner's conduct was severe and pervasive. The court rejected the owner's argument that his conduct resulted from senile dementia, rather than intentional discrimination. The court found that intentional discrimination on the basis of sex in cases involving sexual propositions should be recognized as a matter of course. The court also noted that the tenant introduced allegations of similar sexual assaults against six other women.
- Glover v. Jones, 522 F. Supp. 2d 496 (W.D.N.Y. 2007). The court found that there was a triable issue of fact as to whether a property manager subjected a tenant to a hostile environment where the manager repeatedly stated his desire to have sex with the tenant, put his tongue in her mouth, hugged her, put his arm around her, and touched her breast. The court rejected the property owner's argument that the manager was acting outside the scope of his employment and that the owner was therefore not vicariously liable for the manager's conduct. The court found that the manager's position as the owner's agent aided in his perpetration of the unlawful conduct. For example, his position as manager gave him the opportunity to visit the tenant's unit whenever he wanted.
- Beliveau v. Caras, 873 F. Supp. 1393 (C.D. Cal. 1995). After making a repair in the tenant's apartment, the building's resident manager grabbed her breasts and buttocks. The court found that any such touching would support a sexual harassment claim under the FHA, particularly where the battery was committed in the tenant's own home by a person whose role was to provide a safe environment. The court denied the defendant's contention that a single incident cannot be so severe or pervasive as to alter the conditions of the tenant's housing environment.

D. **Examples of unsuccessful hostile housing environment claims**

- Hall v. Meadowood Ltd., 7 Fed. Appx. 687 (9th Cir. 2001): The court found that the tenant failed to establish a hostile housing environment where the conduct at issue occurred only occasionally and was not severe, physically threatening or humiliating.
- DiCenso v. Cisneros, 96 F.3d 1004 (7th Cir. 1996). The landlord allegedly made one unwelcome advance by inviting the tenant to exchange sex for rent, while touching the tenant's arm and back. The court found that the incident did not create a hostile environment because it was isolated, the landlord did not touch an intimate part of the tenant's body, and did not threaten her with physical harm. The court also noted that the incident was less offensive than other incidents that courts have held did not constitute sexual harassment in the workplace.
- Honce v. Vigil, 1 F.3d 1085 (10th Cir. 1993). The owner of a mobile home lot repeatedly asked a tenant on dates prior to her occupying the premises. The owner later refused to complete improvements to the tenant's lot. The court found that the behavior did not create a hostile housing environment because it did not include sexual remarks or requests, physical touching, or threats of violence. The court also noted that other tenants of both sexes endured mistreatment by the landlord. According to the court, "Because the conduct was neither sexual nor directed solely at women, it is not actionable under the hostile housing environment theory."
- Shellhammer v. Lewallen, 1 Fair Hous.-Fair Lending Rep. 15,472 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985). The court found that a tenant failed to establish a pervasive and

persistent conduct creating a hostile environment where the plaintiff introduced evidence of two requests for sexual favors in a four-month period.

4. Fair housing interference claims

A. What are the elements of a fair housing interference claim?

A plaintiff may establish a fair housing interference claim by proving that:

- She engaged in activity protected under the Fair Housing Act;
- The defendant subjected the plaintiff to an adverse action in the form of coercion, intimidation, threats or interference; and
- There was a causal connection between this adverse action and the protected activity

B. Example of a successful fair housing interference case

- Grieger v. Sheets, 689 F. Supp. 835 (N.D. Ill. 1988): The court found that the tenant stated a fair housing interference claim where the landlord repeatedly demanded sexual favors from the tenant, the tenant refused the landlord's demands, and the landlord consequently refused to repair the tenant's home, damaged the property, threatened not to renew the lease, and forced the tenant to give up her dog. Additionally, the landlord threatened the tenant's husband for encouraging his wife not to comply with the landlord's sexual demands.

5. HUD's sexual harassment guidance

- **Questions and Answers on Sexual Harassment under the Fair Housing Act (Nov. 17, 2008):** This memorandum from HUD's office of Fair Housing and Equal Opportunity (FHEO) addresses general questions about sexual harassment in housing under the FHA. According to the memorandum, "HUD may publish a rule on this topic in the future." Among other things, the memorandum states:
 - If an individual submitted to sexual conduct, that conduct still may have been unwelcome and a claim may be filed.
 - Sexual harassment claims may be filed even if the victim did not experience the loss of a housing opportunity or some tangible economic loss.
 - Sexual harassment does not have to be motivated by sexual desire to violate the FHA.
 - A property manager who knows or should have known about sexual harassment perpetrated by his or her employees, agents, or contractors but fails to take action to stop it is directly liable for any resulting harm.
 - Some courts have held owners and managers liable in situations where they knew of tenant-on-tenant harassment and did not take remedial action.
 - It is a violation of the FHA for a female property owner or manager to sexually harass a male tenant
 - It is a violation of the FHA for a property owner or manager to sexually harass a tenant even if the harasser and victim are the same sex.
 - A sexual harassment victim is not required to follow the particular sexual harassment reporting procedures of the owner or manager.
- **Fair Housing Act Regulations Amendments Standards Governing Sexual Harassment Cases, 65 Fed. Reg. 67,666 (Nov. 13, 2000):** This proposed rule would have amended HUD's FHA regulations to establish the standards HUD will use in sexual harassment cases. Although HUD sought comments on the proposed rule, a final rule was never published.

6. HUD's investigation of sexual harassment cases

HUD FHEO has investigated and issued charges of discrimination in several cases involving sexual harassment:

- **United States v. Calvert:** In 2006, HUD issued a charge of discrimination against a property manager who made repeated sexual advances against a disabled Section 8 tenant, twice in the presence of her children. The Department of Justice later filed a complaint in federal district court and obtained a settlement decree requiring the manager to pay \$165,000 to six tenants.
- **Website:** For a list of cases in which HUD FHEO has issued discrimination charges, see <http://www.hud.gov/offices/fheo/enforcement/>.

7. Department of Justice litigation on housing and sexual harassment

Between January 2001 and March 2008, the Justice Department's Civil Rights division filed 16 FHA cases alleging sexual harassment. Several of these actions were filed or settled in 2008. The Justice Department may initiate a suit if the complainant shows a pattern of discrimination or raises a socially important issue.

- **United States v. Mitchell:** In September 2008, the Justice Department entered into a consent decree settling its claims against a landlord for \$1 million, the largest monetary settlement the Department has ever obtained in an FHA sexual harassment case. The Department alleged that the landlord subjected 12 female tenants to verbal sexual advances and unwanted touching; entered their apartments without permission or notice; granted and denied housing benefits in exchange for sexual favors; and took adverse action against tenants when they refused or objected to his sexual advances.
- **Website:** For a list of FHA sexual harassment cases filed by the Justice Department, see <http://www.usdoj.gov/crt/housing/fairhousing/index.html>

15. Resources on sexual harassment and housing

- *Actions Under the Fair Housing Act (42 U.S.C.A. §§ 3601 et seq.) Based on Sexual Harassment or Creation of Hostile Environment*, 144 A.L.R. Fed 595 (2009 Supp.)
- Legal Momentum, *Sexual Harassment in Housing: A Primer* (2003), www.legalmomentum.org/site/PageServer?pagename=publications_4
- Jill Maxwell, *Sexual Harassment at Home: Altering the Terms, Conditions and Privileges of Rental Housing for Section 8 Recipients*, 21 WIS. WOMEN'S L.J. 223 (2006).
- Robert G. Schwemm & Rigel C. Oliveri, *A New Look at Sexual Harassment Under the Fair Housing Act: The Forgotten Role of § 3604(c)*, 2002 WIS. L. REV. 771 (2002).