

What Board Members Need to Know About
HUD's FHA Harassment Rule Affecting Condos
and
The Fair Debt Collection Practice Act

Presented for
Cummings Property Management, Inc.

By Steve Sowell

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The Fair Housing Act

42 USC §3604. "It shall be unlawful to ...

- discriminate against any person ... in the provision of services or facilities in connection with [a dwelling] because of race, color, religion, sex, familial status, or national origin.

OR

- discriminate against any person ... in the provision of services or facilities in connection with [a dwelling] because of a handicap of
 1. that person; or
 2. a person residing in or intending to reside in that dwelling, or
 3. any person associated with that person.

Michigan Law adds “age” and “marital status.”

- MCL§37.2502: A person engaging in a real estate transaction ... shall not on the basis of religion, race, color, national origin, sex, **age**, familial status, or **marital status** of a person or a person residing with that person discriminate ... in the furnishing of facilities or services in connection with a real estate transaction.

HUD has authority to issue rules:

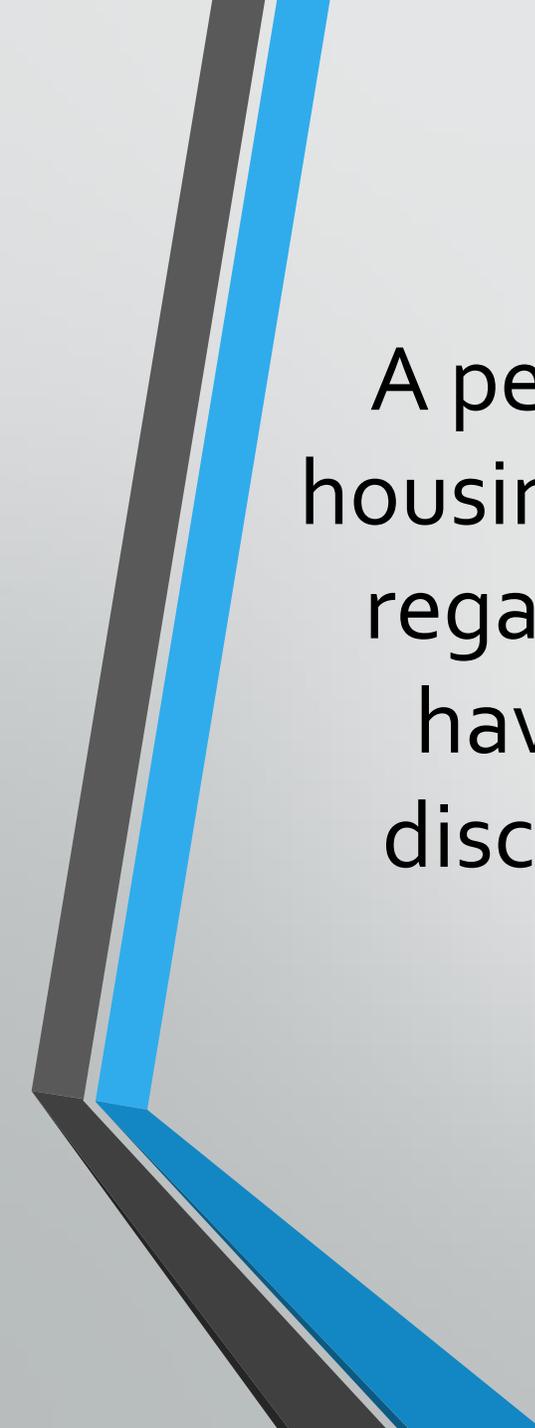
- 42 §USC 3614a: The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title.

A person is **directly** liable for:

- The person's own conduct that results in a discriminatory housing practice.
- Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, when the person knew or should have known of the discriminatory conduct.
- **Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it.**



Prompt action to “correct and end” may not include any action that **penalizes or harms** the aggrieved person. 24 CFR 100.7(a)(2)



A person is **vicariously** liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person know or should have known of the conduct which resulted in a discriminatory housing practice, consistent with agency law.

The Rule recognizes two types of harassment (discriminatory housing practice):

- *Quid pro quo*: unwelcome demand or request to engage in conduct which is made a condition to the provision of services. *24 CFR 100.65(6)*

Quid Pro Quo examples:

- I'll approve that modification request if you go out with me.
- If you don't [engage in a sexual act], your roof won't get fixed.

The Rule recognizes two types of harassment (discriminatory housing practice):

- Hostile environment: unwelcome conduct which is sufficiently severe or pervasive so as to interfere with the use or enjoyment of a dwelling.
 - 24 CFR 100.60(7) subjecting a person to harassment ... that causes the person to vacate a dwelling....
 - 24.CFR 100.65(7) subjecting a person to harassment ... that has the effect of ... denying or limiting services or facilities in connection with the sale or rental of a dwelling.

Hostile Environment examples:

- “Adults only” hours at the pool.
- Comments like “We don’t need “your kind” at our meetings,” or “You don’t belong here.”
- “Blonde” jokes, “Polish” jokes, “Jewish” jokes, etc.
- Allowing “men only” or “women only” events in the clubhouse.



Whether hostile environment harassment exists depends upon the totality of the circumstances.

Factors include:

- nature of the conduct
- the context in which the incident(s) occurred
- the severity, scope, frequency, duration, and location of the conduct, and
- the relationships of the persons involved.



Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated *from the perspective of a reasonable person in the aggrieved person's position.*



A single incident of harassment may constitute a discriminatory housing practice where the incident is sufficiently severe to create a hostile environment, or evidences a *quid pro quo*.

42 USC §3602(d): For purposes of liability, “Person” includes includes one or more **individuals, corporations, ... associations**

- **Both** condominium associations **and** individual board members can be held liable.

Third-Party Conduct:

- A co-owner blocks a handicapped parking space.
- A co-owner exposes himself to another co-owner.
- A co-owner makes racist remarks at the annual meeting.
- A co-owner defaces or destroys another co-owner's religious display/ornament.
- A co-owner "wolf whistles" at females at the pool.

What should a board do?

- Know and understand the law (thanks for coming!)
- Adopt and disseminate a civil rights policy (see the handout)
- Uniformly enforce its policy in accordance with the condominium documents (e.g., send admonition letters, levy fines)



Questions before we move on?

The Fair Debt Collection Practices Act

15 §USC 1692(e): It is the purpose of this [Act] to

- eliminate abusive debt collection practices by debt collectors,
- to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and
- to promote consistent State action to protect consumers against debt collection abuses.

The term "debt collector" means any person:

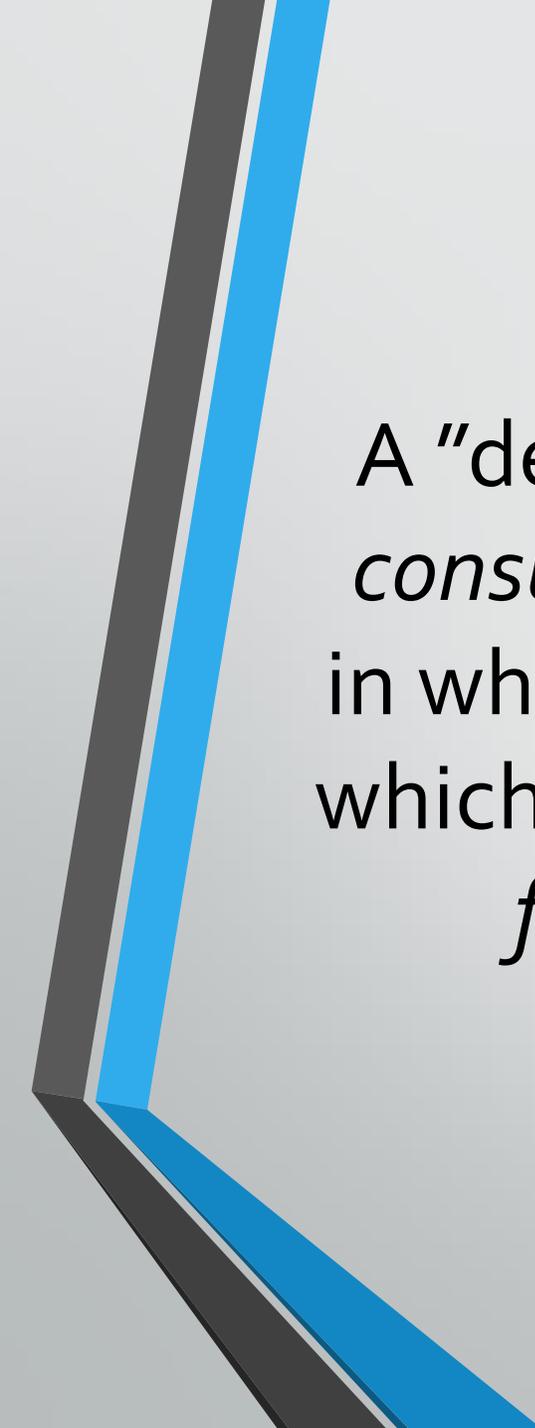
- who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or
- who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.



Lawyers were excluded from the definition of debt collectors until 1986, when the exclusion was eliminated.



Management companies are debt collectors



A "debt" is any *obligation* or alleged obligation of a *consumer* to *pay money* arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are *primarily for personal, family, or household purposes*.



Condominium assessments are debts.

*Haddad v Alexander, Zelmanski, Danner
and Fioritto, PLLC*

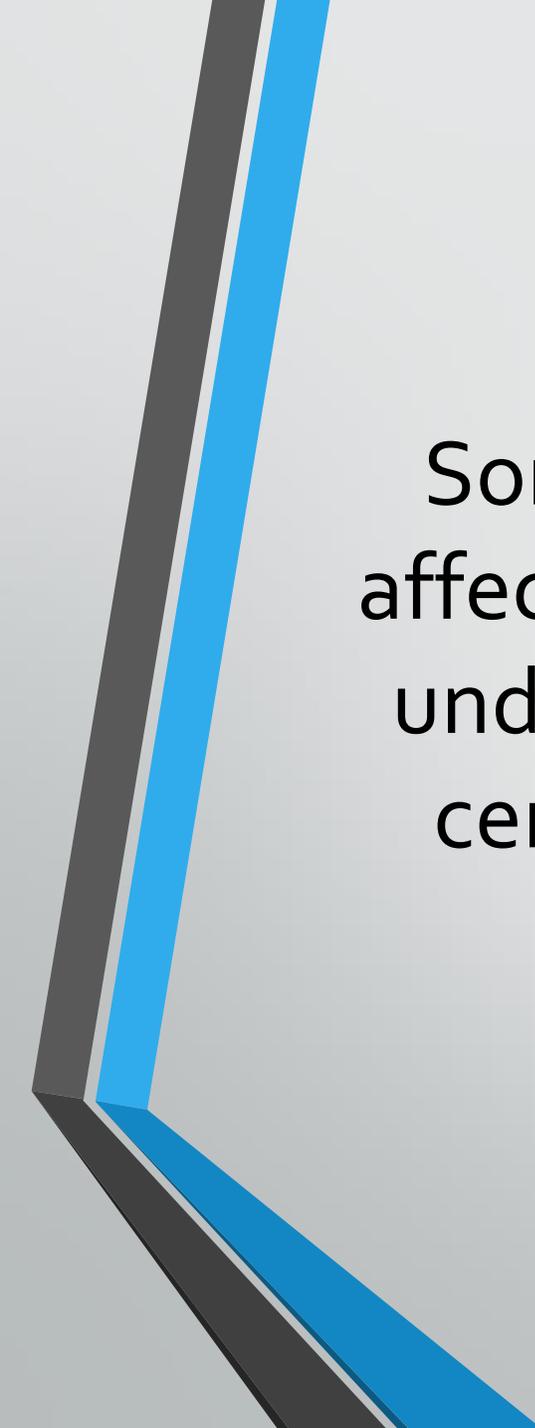
(6th Circuit Court of Appeals, which includes MI).

The Act has provisions that:

- Prohibit certain conduct (e.g., calling before 8:00 a.m. or after 9:00 p.m.)
- Require certain conduct (e.g., ceasing collection when a debt is disputed until verification is provided)
- Require certain disclosures (“This office is a debt collector. Any information obtained will be used to collect a debt.”)

Damages under the Act are significant:

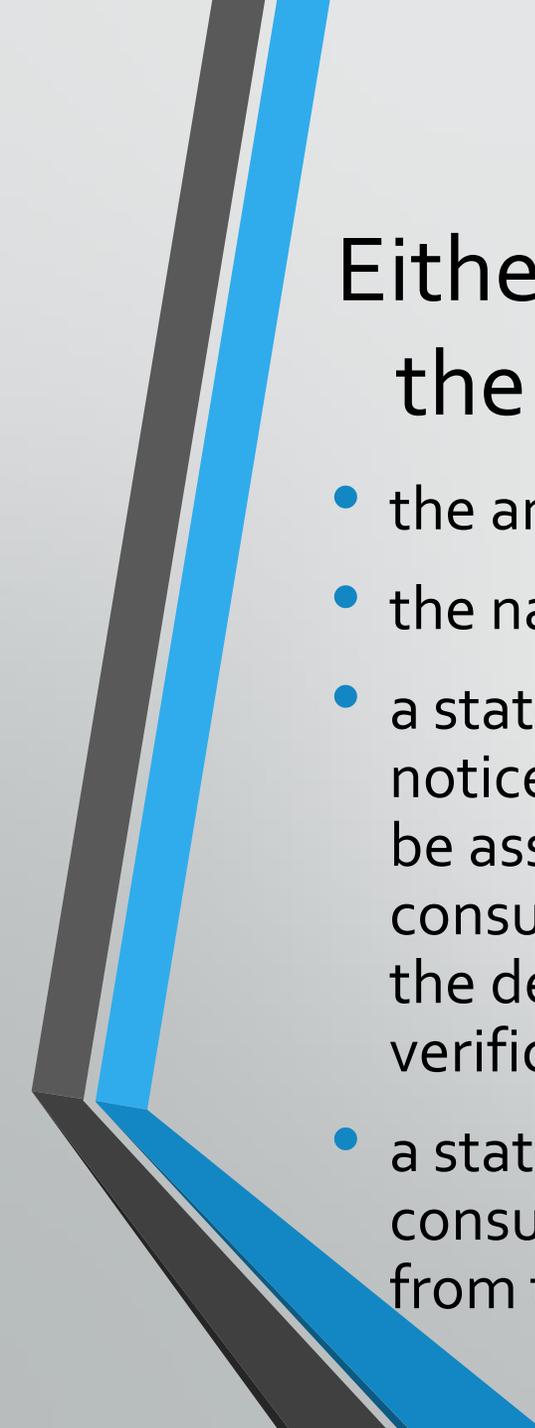
- any actual damage sustained by a violation of the Act.
- additional damages not exceeding \$1,000 *for each violation*.
- recovery of the debtor's costs and reasonable attorney fees.
- in a class action, the lesser of \$500,000 or 1 percent of the net worth of the debt collector.



Some of the requirements and prohibitions will affect collection of assessments. A board needs to understand why the attorney may not undertake certain acts or may be unable to collect certain charges.



Disclosures



Either in the initial communication, or within 5 days, the debtor shall send a written notice containing:

- the amount of the debt,
- the name of the creditor to whom the debt is owed,
- a statement that, unless the consumer, within 30 days after receipt of the notice disputes the validity of the debt or any portion thereof, the debt will be assumed to be valid by the debt collector; a statement that if the consumer notifies the debt collector in writing within the 30 day period that the debt, or any portion thereof is disputed, the debt collector will obtain verification of the debt and the copy will be mailed to the consumer; and
- a statement that upon written request, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.



In every subsequent communication with the
Debtor:

“This office is a debt collector. Any information obtained will be used to collect a debt.”



Without the prior consent of the debtor given directly to the debt collector, the debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his spouse, his attorney, the creditor, the attorney of the creditor, or the attorney of the debt collector.

Co-owner Bob's sister Sally calls:

- Sally says: "I'm Bob's sister and I'm responding to a letter you sent to him...."
 - I say: "The Fair Debt Collection Practices Act prohibits me from discussing a debt with anyone besides the debtor, or someone the debtor authorizes me to speak to in writing. Please have the debtor provide me with authorization."
 - Sally says: "But I just wanted to verify the amount."
 - I say: "The Fair Debt Collection Practices Act prohibits me from ..."
 - Sally says: "But he's in the hospital right now."
 - I say: "If you hold power of attorney, please mail/scan and e-mail/fax a copy."
 - Sally says: "You're just being rude and uncooperative; why won't you talk to me?"
 - I say: "I'm not going to violate federal law just because you think I'm being rude."
- Sally calls the board president complaining about that jerk of an attorney.

Required action:

If the consumer disputes the debt or any portion thereof, the debt collector shall *cease collection of the debt until* the debt collector obtains and mails to the consumer verification of the debt.

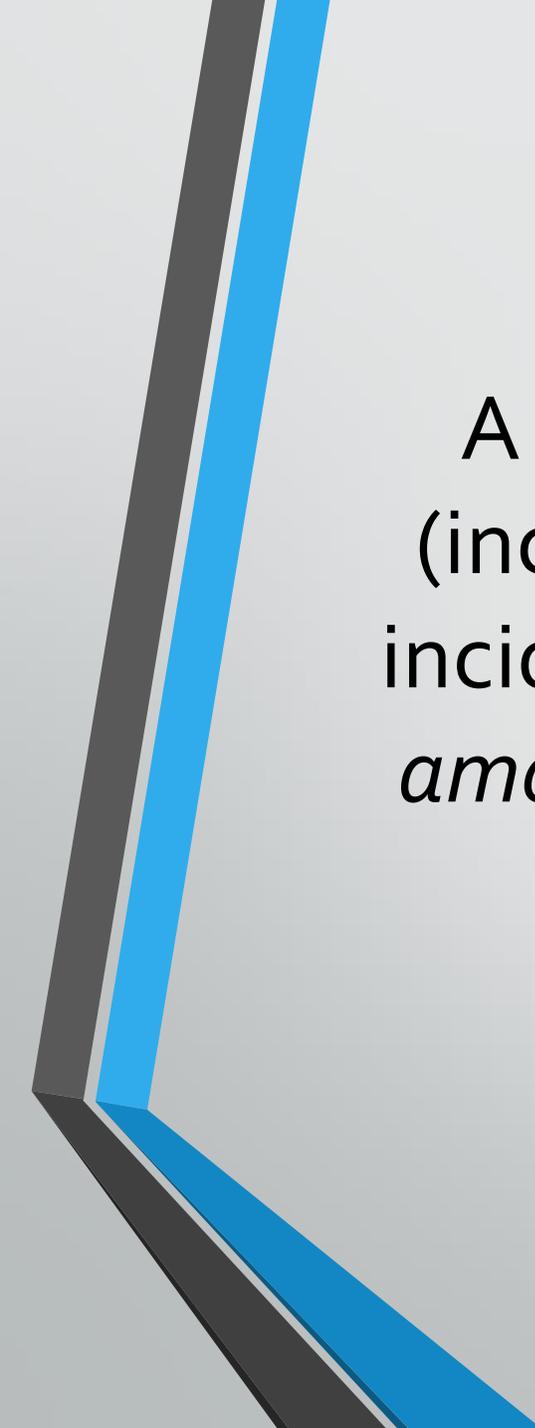


The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

It is a violation of the act to threaten to take any action that cannot legally be taken *or that is not intended to be taken.*

OR

threatening to take any nonjudicial action (e.g., foreclosure by advertisement) to effect dispossession *if there is no present intention* to take possession of the property.



A debt collector may not collect any amount (including any interest, fee, charge, or expense incidental to the principal obligation) *unless such amount is expressly authorized by the agreement creating the debt or permitted by law.*

Late Charges

The MI Condominium Act provides that “sums assessed to a co-owner ... together with ... late charges... *in accordance with the condominium documents*, constitute a lien upon the unit....” MCL §559.208(1)

Examples of condominium document provisions:

- "... late charges in the amount of \$XX per assessment per month...."
- "...late charges in an amount to be determined by the board of directors from time to time...."
- "...late charges pursuant to a schedule promulgated under the authority to issue rules and regulations pursuant to ..."

What if the bylaws don't mention late charges at all?

- “Sums assessed to a co-owner ... together with ... late charges... *in accordance with the condominium documents*, constitute a lien upon the unit....” MCL §559.208(1)
- **Condominium documents** are defined as “the master deed, recorded pursuant to this act, and *any other instrument referred to in the master deed or bylaws* which affects the rights and obligations of a co-owner in the condominium.” MCL §559.103(10)
- Co-owners have an obligation to “comply with the master deed, bylaws, and *rules and regulations* of the condominium project....” MCL §559.165



“The association may levy fines for late payment...”
(and collection of fines for other violations)

Under the MI Condominium Act, fines may be levied only after *notice and a hearing*. MCL §559.206

Other non-assessment charges

- Examples: damage to a common element, failure to maintain plantings
- Do the condominium documents authorize a charge to the co-owner?
- Did the association comply with the condominium documents in making the charge to the co-owner?

Questions?

Steve Sowell

Sowell-Law, PLLC

2 Crocker Blvd. Suite 301

Mount Clemens, MI 48043

586.465.9529

steve@sowell-law.com