

December's Enduring Legacy: From Emancipation to Equitable Housing

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By Gwen Roy-Harrison



Every December, we are encouraged to reflect on a defining milestone in American constitutional and civil rights history – the ratification of the 13th Amendment on December 6, 1865. This amendment abolished involuntary servitude, legally closing the door on an era of slavery in which entire communities were denied autonomy, dignity, and the most basic conditions of safety and freedom. However, the abolition of slavery did not guarantee equal access to shelter, property, or equitable protections in the marketplace. Those rights have been shaped over more than a century of legislation, advocacy, and heated litigation.

For those in the multifamily housing industry — owners, operators, managers, and developers — December offers a historical reminder and a practical moment to reexamine how this legacy informs modern-day obligations under the Fair Housing Act (FHA). Understanding how far the law has evolved helps us understand why compliance is not simply a regulatory matter, but a continuation of a long and unfinished civil rights effort.

A Brief History of Post-Emancipation Housing Exclusion

Following formal emancipation, formerly enslaved people faced numerous additional hurdles. Although slavery was now outlawed, discriminatory practices (e.g., Black Codes, Jim Crow segregation, sharecropping systems, and violence) denied African Americans safe, stable, and equitable access to housing. In the decades that followed, local and federal policies entrenched segregation across society. Racially restrictive covenants, exclusionary zoning, government-backed redlining, and federal underwriting systematically barred Black families and other minorities from homeownership, quality rental housing, and opportunities for wealth accumulation. Many of these policies persisted well into the 20th century, long after they were socially discredited and, ultimately, legally banned. The Fair Housing Act exists because of this legacy. Housing professionals now operate within a framework designed to dismantle prior patterns of subversive discrimination.

A Turning Point: The Fair Housing Act

The Fair Housing Act was enacted in April 1968, amid national mourning following the assassination of Dr. Martin Luther King Jr. Its passage marked a watershed moment — explicit recognition that discrimination in housing perpetuated systemic inequality and necessitated federal intervention. The Act prohibits discrimination in any housing-related transaction, including any action or inaction taken related to renting or selling housing, based on:

- Race
- Color
- National Origin
- Religion

- Sex (including gender identity and sexual orientation)
- Familial Status
- Disability

Despite this landmark law, the housing marketplace shifted from overt exclusion to more subtle practices. Instead of engaging in explicit acts of discrimination based on the protected classes above, facially neutral policies were implemented that had either the intended or unintended effect of discriminating against people based on their protected class. Regulations, case law, and HUD guidance have continued to evolve in the years since the passage of the Fair Housing Act in response to modern iterations of discrimination that past lawmakers did not foresee. For example, the Fair Housing Amendments Act of 1988 was enacted in response to some of these changes.

Further, HUD's guidance has since incorporated "disparate treatment" and "disparate impact" in its definition of unlawful discrimination in housing. Disparate treatment is an overt or explicit policy that dictates different terms, conditions, or services to someone because of their protected class. This is often the most obvious form of discrimination, because the policy on its face is discriminatory. On the other hand, disparate impact discrimination involves a seemingly neutral policy that has the unintended (or perhaps subliminally intended) effect of discriminating against a particular protected class because they are the ones most likely (or solely) to be negatively affected by the policy. Examples of disparate impact discrimination may include: criminal record screenings, credit screenings for victims of domestic violence, zoning barriers to supportive housing, disregarding disability accommodations, predatory marketing, or algorithmic rental determinations. Notably, in late 2025, HUD announced that it intends to cease all enforcement of disparate impact claims and focus solely on disparate treatment complaints. This could drastically shift the fair housing enforcement landscape and have unexpected repercussions for multifamily regulatory compliance. In sum, this is why the housing industry's compliance obligations are dynamic and constantly changing.

What Multifamily Professionals Can Learn From This Legacy

Compliance Requires Adaptability & Intuition

Discrimination does not have to be intentional to be illegal. A legally compliant and otherwise neutral policy can still have a discriminatory impact. Courts continue to scrutinize how tenant screening, occupancy limits, advertising strategies, and property safety policies may disproportionately harm certain protected classes. Owners and managers of multifamily properties should conduct annual disparate-impact audits and seek counsel if a policy is having biased results on a particular demographic.

Accessibility Is a Civil Rights Issue

Since the Fair Housing Amendments Act of 1988, multifamily developers have been required to incorporate basic design and construction accessibility features. Increasingly, litigation and DOJ enforcement are focused on persistent non-compliance. Moreover, discrimination complaints based on "disability" status or failure to grant a reasonable accommodation continue to be the most prevalent, accounting for more than 50% of the complaints filed each year. Treat accessibility as a civil rights mandate, not a line-item cost.

Stay Attuned to Evolving Protected Classes

Recent interpretations make clear that sexual orientation, gender identity, and gender expression fall under the Fair Housing Act's sex-based protections. Some state and local jurisdictions have codified these expressions into articulated protected classes. HUD's enforcement priorities continue to expand as courts interpret the Fair Housing Act in light of broader civil rights movements. From the housing provider's perspective, it's clear that a broader interpretation of protected characteristics is the safer option.

Risk Management & Reputation: Algorithms and AI Tools Are the New Frontier

Automated tenant-screening products and digital advertising platforms may unintentionally replicate historical biases — repeating old patterns of exclusion with new technology. Owners should demand transparency from screening vendors and ensure human review before any adverse decision is issued, particularly given HUD's guidance on criminal record screening

and the push for an individualized assessment of a person's criminal history. Investors and insurers increasingly view fair housing compliance as a key component of responsible operations. Violations, even for inadvertent screening errors, carry not only civil penalties but also reputational harm. In an increasingly competitive market, with a push for more transparency, eyes are on housing providers.

Honoring December's Legacy Through Fair Housing Leadership

The abolition of slavery was the beginning of a transition toward civil rights, and the Fair Housing Act remains one of the strongest tools we have to dismantle the residual discriminatory structures that followed emancipation. For the multifamily housing industry, compliance is more than adherence to a regulatory framework — it is stewardship of the idea that housing should be safe, accessible, and free from discrimination for every person, regardless of their background. This December, as we reflect on our nation's journey from emancipation to the present, the work is not finished. Each applicant screening decision, each accommodation request, each accessibility plan, and each interaction with a resident or prospect is part of our ongoing civil rights legacy.