

OHIO CIVIL RIGHTS COMMISSION  
COMMISSIONERS' GUIDANCE MANUAL

[T – 27. OCCUPANCY STANDARDS](#)

[T – 28. TIMELINESS OF CHARGES ALLEGING PREDATORY LENDING PRACTICES](#)

[T – 29. PREGNANCY/MATERNITY LEAVE](#)

[T – 30. RULES AND REGULATIONS RELATING TO CHILDREN](#)

# OHIO CIVIL RIGHTS COMMISSION COMMISSIONERS' GUIDANCE MANUAL

**DATE:** August 1, 2002

**TECHNICAL POLICY** T - 27

**Page No.** 1 of 1

## **T - 27 OCCUPANCY STANDARDS**

As a general rule, an occupancy standard implemented by a housing provider limiting occupancy to two (2) persons per bedroom is presumed reasonable under R.C.4112.02(K)(3). The reasonableness of an occupancy standard, however, is rebuttable. In making this determination the Commission will consider the size and number of bedrooms, and other special circumstances or relevant factors (e.g., past practices, industry standards, local and state restrictions regarding the maximum number of occupants permitted to occupy housing accommodations, etc.)

Notwithstanding the above, an occupancy standard implemented to circumvent the purposes and goals of Fair Housing Law is per se unreasonable.

# OHIO CIVIL RIGHTS COMMISSION COMMISSIONERS' GUIDANCE MANUAL

DATE: March 11, 2004

TECHNICAL POLICY T - 28

Page No. 1 of 4

## T-28 TIMELINESS OF CHARGES ALLEGING PREDATORY LENDING PRACTICES

### T-28.1 The Statute of Limitations Applicable to Predatory Lending Housing Cases

When investigating a housing discrimination charge that contains allegations of predatory lending practices, it is first necessary to determine whether the charge was timely filed. Under R.C.4112.05(B)(1), a person claiming to be aggrieved by a discriminatory housing practice has one year from the date that the alleged unlawful discriminatory practice was committed to file a charge with the Commission. This period is known as a “statute of limitation.” A statute of limitations generally begins to run when the charging party knows, or has reason to know, of the injury that is the basis of his or her action.<sup>1</sup> In a predatory lending or reverse redlining case, the question becomes what is the date that a borrower knows, or through the exercise of due diligence, should know that he or she has been the victim of unlawful discrimination.

For charges alleging predatory lending housing practices, the statute of limitations begins to run one year from the date the borrower signs the final loan papers or becomes liable for repayment of the loan, absent evidence of fraud, concealment, or a pattern and practice of unlawful discrimination. Notwithstanding the exceptions noted below, if the facts in a housing charge or the investigation reveal that the final loan papers were signed more than one year before the charge was filed, the Commission will deem the charge untimely and non-jurisdictional.

In enacting this policy, the Commission adopts the view that a majority of the courts<sup>2</sup> and the U.S. Department of Housing and Urban Development<sup>3</sup> have taken when analyzing the issue under other

---

1 *Hughes v. Vanderbilt Univ.* (6<sup>th</sup> Cir. 2000), 215 F.3d 543, 548.

2 *See, e.g. Associates Home Equity Services v. Troup* (N.J. Ct. App. 2001), 343 N.J. Super. 254, 778 A.2d 529; *Pantoja v. Kiska Const. Corp. of USA* (S.D. N.Y. 2001), No. 96 Civ. 8593, unreported, 2001 U.S. Dist. LEXIS 17374; *DeBerry v. First Gov't Mtg. & Investors Corp.* (D.C.C. 1999), 170 F.3d 1105.

3 “It is our belief (HUD) that in the absence of additional acts by the lender, the actionable act in a predatory lending case is *inducing the victim to sign the loan...*” Letter from Barbara M. Knox, Director Midwest HUB of HUD, to G. Michael Payton, Executive Director, Ohio Civil Rights Commission (6/10/02).

DATE: March 11, 2004

TECHNICAL POLICY T - 28

Page No. 2 of 4

---

fair housing laws. In addition, this position is consistent with general principles underlying statutes of limitations, which are to ensure fairness and to prevent stale claims.<sup>4</sup>

### **T-28.2 Use of the Continuing Violations Theory in Predatory Lending Cases**

If the Commission receives or initiates a charge alleging that a particular lender engaged in a pattern or practice of discriminatory conduct by targeting specific classes or neighborhoods (i.e., predatory lending or reverse redlining), as long as one of the loan closings fell within the one-year limitations period, the Commission will consider the charge jurisdictional to investigate. Under such a situation, the Commission could possibly effectuate remedies for persons whose loans were made outside of the one-year period as part of a global settlement, as long as they were subjected to the same discriminatory pattern as a person whose loan was made within the limitation period.

To invoke this principle, facts must show that a respondent has a policy of discrimination, whether on the basis of solicitation, procurement, or distribution of loans, and that a respondent subjected a number of persons (generally more than two or three) or the same person to a repeated course of the discriminatory policy. Finally, the facts must demonstrate that at least one of the events fell within one-year from the time the charge was filed.<sup>5</sup>

The one-year limitations period for filing a predatory lending charge is not “continued” each time a monthly mortgage payment is made. The U.S. Department of Housing and Urban Development rejected this exact argument.<sup>6</sup> In enacting this policy, the Commission adopts the same position. Similarly, the Commission adopts the policy that the one-year limitations period for filing a predatory lending charge is not “continued” until the completion of foreclosure proceedings.

---

4 *O’Stricker v. Jim Walter Corp.* (1983), 4 Ohio St.3d 84.

5 *Bell v. Chesapeake & Ohio Railway Co.* (6<sup>th</sup> Cir. 1991), 929 F.2d 220, 223.

6 According to HUD, the making of a monthly mortgage payment on an alleged predatory loan is not a separate and actionable act of discrimination. “The continuing violation theory requires continuing unlawful acts.” The monthly mortgage payments are “*merely continuing consequences of an old violation.*” *Id.*, f.n. 3.

DATE: March 11, 2004

TECHNICAL POLICY T - 28

Page No. 3 of 4

---

### **T-28.3 Application of the Discovery Rule to Predatory Lending Cases**

If an otherwise untimely charge raises allegations that the discriminatory conduct was not and could not have been discovered until after the loan papers were signed, a charge may be otherwise jurisdictional. This exception to a statute of limitations is known as the “discovery rule.”<sup>7</sup> However, the Commission will only apply this doctrine where a person, exercising due diligence, did not and should not have known that he or she was harmed.

The inability to understand or comprehend terms of a loan is an insufficient claim under the discovery rule. A person who executes loan documents, even if illiterate or semi-illiterate, is charged with knowledge of what he or she is signing. The claim that a borrower did not or could not read or understand loan documents will not toll the statute of limitations. In addition, the Commission will not accept a general argument that a statute of limitations does not begin to run until after an appraisal is made, as a homeowner is presumed to know the value of his or her home.

### **T-28.4 The Doctrine of Equitable Tolling – Discovery of Fraud, Collusion, or Concealment in Predatory Lending Cases.**

Similar to the discovery rule, the doctrine of “equitable tolling” extends limitation periods when there are inequitable circumstances beyond the victim’s control. “Equitable tolling applies to keep a statute of limitations period from running when inequitable circumstances prevent a plaintiff from suing [or here, a person from filing a charge] before the statutory period run.”<sup>8</sup>

Under this doctrine, a person may challenge conduct after a limitations period has expired, if through no fault of his or her own and in exercising due diligence, he or she was prevented from discovering the misconduct due to inequitable circumstances.<sup>9</sup>

---

7 This doctrine was originally applied in the context of medical malpractice claims, such as when a patient had no reason to know a surgical instrument or sponge had been left in him. *Melnyk v. Cleveland Clinic* (1972), 32 Ohio St.2d 198. It was later extended to tort injuries and other areas, including discrimination claims. *O’Stricker v. Jim Walter Corp.* (1983), 4 Ohio St.3d 84 (torts); *Hicks v. Hines, Inc.* (6<sup>th</sup> Cir. 1987), 826 F.2d 1543 (torts); *Shaw v. Nashville Gas Co.*(6<sup>th</sup> Cir. 2000), No. 99-5958, unreported, 2000 U.S. App. LEXIS 33383 (discrimination).

8 In *Matthews v. New Century Mtg. Corp.* (S.D. Ohio), 185 F. Supp.2d 874.

9 The Commission adopts the position outlined by the United States District Court, Southern District of Ohio in examining predatory lending under the federal Fair Housing Act of 1968 (FHA), the Equal Credit Opportunity Act (ECOA), and implicitly R.C. Chapter 4112. See, *Shaw v. Nashville Gas Co.*, *supra*, citing, *Seitzinger v. Reading Hosp. & Med. Ctr.* (3<sup>rd</sup> Cir. 1999), 165 F.3d 236, 240.

**DATE:** March 11, 2004

**TECHNICAL POLICY** T - 28

**Page No.** 4 of 4

---

For example, if in the charge or investigation, allegations arise that a respondent perpetrated fraud, collusion, or concealment, the one-year limitations period could extend to the date that the person discovered or should have discovered the illegal conduct.

To invoke this doctrine, the Commission must find some evidence that a Respondent took affirmative steps to conceal information; and/or that a Respondent perpetrated fraud against a borrower; and/or that a Respondent conspired to commit fraudulent behavior. Examples include, but are not limited to, home improvement scams; leaving material terms blank in loan papers; withholding copies of loan papers; intentionally over-inflating a borrower's income and/or assets to qualify him/her for a loan; and misrepresenting material loan terms or significant information about the borrower. In addition, there must be evidence that the borrower could not have discovered the conduct despite exercising due diligence.<sup>10</sup>

#### **T-28.5 The Prima Facie Elements of a Predatory Lending Discrimination Claim**

Once it is determined that a predatory lending charge is timely, there must be evidence of discrimination on the basis of a protected class (e.g., race or sex) in order to establish a prima facie case of predatory lending discrimination. Typically, a prima facie case of predatory-lending discrimination requires proof of the following elements: (1) The borrower belongs to a protected class; (2) The borrower was subjected to adverse terms of a loan; (3) The borrower qualified for better loan terms; and (4) similarly situated persons not in the protected class received more favorable loan terms. In addition, predatory lending jurisdiction can be established through other means, including but not limited to, proof that a particular protected class or neighborhood was targeted (reverse redlining) and direct evidence of discrimination.

---

<sup>10</sup> See also, *Bryant v. Mortgage Capital Resource Corp.* (N.D. Ga. 2002), 197 F. Supp.2d 1357, citing, *Pedraza v. United Guaranty Corp.* (S.D. Ga. 2000), 114 F. Supp.2d 1347, 1354. See also, *Foster v. Equicredit Corp.* (E.D. Pa. 1/25/01), No. 99-6393, unreported, 2001 U.S. Dist. LEXIS 1881.

# OHIO CIVIL RIGHTS COMMISSION COMMISSIONERS' GUIDANCE MANUAL

**DATE:** June 3, 2004

**TECHNICAL POLICY** T - 29

**Page No.** 1 of 1

## T – 29 PREGNANCY/MATERNITY LEAVE

R.C. 4112.01(B) and 4112.02(A) require employers to treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment related purposes as all other employees similar in their ability or inability to work. Specifically, women affected by pregnancy, childbirth, or related medical conditions are entitled to at least the same amount and type of leave and/or benefits as other employees who are provided leave and/or benefits for temporary disabling conditions. No employer is required to provide unlimited pregnancy/maternity leave, unless it provides unlimited leave to other employees similar in their ability or inability to work.

Notwithstanding the above, a leave policy implemented to circumvent the purposes and goals of R.C. 4112 is per se unreasonable and insufficient.

# OHIO CIVIL RIGHTS COMMISSION COMMISSIONERS' GUIDANCE MANUAL

DATE: October 7, 2004

TECHNICAL POLICY T - 30

Page No. 1 of 1

## **T – 30 Rules and Regulations Relating to Children**

R.C. 4112.02(H)(4) prohibits any person from discriminating in the terms or conditions of renting housing accommodations because of familial status, and R.C. 4112.02(H)(7) prohibits any person from printing, publishing or making any statement relating to the rental of housing accommodations that indicates any preference, limitation, specification or discrimination based upon familial status. The inclusion of familial status as a protected class under these sections, however, was never meant to limit the ability of landlords or other property managers to develop and implement reasonable rules and regulations relating to the use of facilities associated with dwellings for the health and safety of persons.” 54 Fed. Reg. 3232 (Jan. 23, 1989). Therefore, as a general rule, landlords and property managers are permitted to issue reasonable rules and regulations relating to children, so long as those rules and regulations are motivated by legitimate concerns for the health and safety of all tenants, and not by discriminatory animus against families with children.

Notwithstanding the above, any rule or regulation implemented by a landlord or property manager to circumvent the purposes and goals of R.C. Chapter 4112 is per se unlawful.