

**JURY INSTRUCTIONS
PREPARED IN CONNECTION
WITH HOUSING DISCRIMINATION
CASE**

**THE SHOWING PLAINTIFFS MUST MAKE IN ORDER
TO ESTABLISH A PRMA FACIE CASE OF HOUSING DISCRIMINATION**

In order to establish an actionable violation of the Fair Housing Act, the plaintiff must make an affirmative showing that the challenged actions were either (i) motivated by intentional discrimination, or (ii) resulted in a discriminatory effect. **AUTHORITY:** *Doe v. City of Butler, Pennsylvania*, 892 F.2d 315, 323 (3d Cir. 1989); *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 142 (3d Cir. 1977); *LeBanc-Sternberg v. Fletcher*, 67 F.3d 412, 425 (2d Cir. 1995).

The Plaintiff's burden of proof includes showing either that the Defendant had a "direct discriminatory intent...through direct or circumstantial evidence." **SOURCE:** *Kormoczy v. Dep't of Hous. & Urban Dev.*, 53 F.3d 821, 823-24 (7th Cir. 1995).

**THE SHOWING PLAINTIFFS MUST MAKE IN ORDER TO
DEMONSTRATE THAT THE CHALLENGED ACTIONS
WERE MOTIVATED BY INTENTIONAL DISCRIMINATION**

Determining “whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” **AUTHORITY:** *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

In order to prevail on a claim under the Fair Housing Act, a plaintiff must show that familial status was a motivating factor in the alleged discriminatory action. **AUTHORITY:** *United States v. Branella*, 972 F.Supp. 294, 297-98 (D. N.J. 1997).

**THE SHOWING PLAINTIFF MUST MAKE IN ORDER TO
ESTABLISH THAT THEY WERE DISCRIMINATED AGAINST
AS A RESULT OF “DISCRIMINATORY INTENT”**

To find discriminatory intent, the following factors are considered: (i) discriminatory impact of the challenged practice or policy; (ii) the historical background of the challenged decision; (iii) the “sequence of events leading up to the challenged decision”; (iv) departures from “normal procedural sequences”; (v) departures from normal substantive criteria; and (vi) legislative or administrative history of the challenged decision. **AUTHORITY:** *Rizzo, supra*, 564 F.2d at 142, n. 2 (citing *Village of Arlington Heights, supra*, 429 U.S. at 265).

**THE SHOWING PLAINTIFF MUST MAKE IN ORDER TO
ESTABLISH THAT THEY WERE DISCRIMINATED AGAINST
IN A MANNER SUCH THAT A “DISCRIMINATORY EFFECT”
OCCURRED**

To establish liability under the discriminatory effect theory, a plaintiff must establish a prima facie case that the challenged action has a discriminatory effect on a protected class. **AUTHORITY:** *Rizzo, supra*, 564 F.2d at 148; *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 937 (2d Cir. 1987), *aff’d* 488 U.S. 15 (1988).

Not every action that results in a discriminatory effect is illegal. *Metro. Hous. Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977).

THE SHOWING THAT PLAINTIFF MUST MAKE TO ESTABLISH STANDING TO SUE UNDER THE FAIR HOUSING ACT

To satisfy the Article III standing requirement, a party must meet a three-prong test. First, a plaintiff must demonstrate that it has suffered a concrete, particularized, actual or imminent injury in fact. **SOURCE:** *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The second prong is the traceability or causation requirement. A plaintiff must illustrate a causal connection between the alleged injury and defendants' challenged conduct. **SOURCE:** *Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers*, 141 F.3d 71, 74 (3d Cir. 1998). Lastly, the third prong requires a plaintiff to show that the alleged injury will likely be redressed by a favorable decision. The redressability requirement ensures that legal questions presented to the court will be resolved in a concrete manner, and that they demonstrate a real need for a court to exercise its power. **SOURCE:** *Warth v. Seldin*, 422 U.S. 490, 508 (1975).

Plaintiffs in this case allege in conclusory terms that they were somehow injured, or damaged, as a result of Defendant's alleged refusal to rent housing to them because they had a minor child living in their household. As *Lujan, supra* pointed out, the demonstration of concrete, particularized, actual, or imminent injury in fact is an initial threshold hurdle which Plaintiffs must overcome before any other portion of their case may be heard. In addition to *Lujan, supra*, this proposition has more recently been affirmed in *Louisiana ACORN Fair Housing v. LeBlanc*, 211 F.3d 298 (5th Cir. 2000).

**THE ORDER OF PROOF WHICH MUST BE FOLLOWED BY
THE COURT IN PRESENTING ISSUES TO THE TRIER OF FACT**

The order of proof which must be presented to the trier of fact in an action based on alleged housing discrimination is as follows:

First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Even under a *McDonnell Douglas/Burdine* analysis (see *infra*), the fact finder still must determine that the challenged action was a result of prohibited discrimination.

SOURCE: See *St. Mary's Honor Center v. Hicks*, ___ U.S. ___, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993).

Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection."

Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.. The defendant need not persuade the court that it was actually motivated by the proffered reasons, but it is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff. To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection.

SOURCE: *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), quoted and cited with approval in *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).

Even though both *McDonnell Douglas, supra* and *Burdine, supra*, were employment discrimination suits brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, it has been specifically held that "The three-stage *McDonnell Douglas/Burdine* analysis applies to Fair Housing Act cases." **SOURCE:** *Ring v. First Interstate Mortgage, Inc.*, 984 F.2d 924, 926 (8th Cir.1993), citing *United States v. Badgett*, 976 F.2d 1176, 1178 (8th Cir.1992). Moreover, "FHA discrimination claims are analyzed in the same manner as Title VII discrimination claims." **SOURCE:** *Llanos v. Estate of Coehlo*, 24 F.Supp.2d 1052, 1055 (E.D. Cal., 1998); *Gamble v. City of Escondido*, 104 F.3d 300, 304 (9th Cir.1997).

It should also be noted that "A *McDonnell Douglas* prima facie showing is not the equivalent of a factual finding of discrimination...Rather, it is simply proof of actions taken...from which we infer discriminatory animus because experience has proved that in the absence of any other explanation it is more likely than not that those actions were bottomed on impermissible considerations." **AUTHORITY:** *Sanghvi v. City of Claremont*, 328 F.3d 532 (9th Cir., 2003).

Thus, the *McDonnell Douglas* inference "can but need not result in an ultimate judgment for the plaintiff". In other words, a prima facie case under *McDonnell Douglas* is one in which the plaintiff has met his immediate burden of production, but not necessarily his ultimate burden of

persuasion." *Tex. 450 U.S. 248, 253-56, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981)*. [Emphasis added]

**THE MERE FACT THAT PLAINTIFFS ARE THE PARENTS OF
A MINOR CHILD DOES NOT PROHIBIT A LANDLORD FROM
REFUSING TO RENT A UNIT TO THESE SAME INDIVIDUALS
FOR OTHER REASONS NOT RELATED TO THE CHILD**

Plaintiffs contend in the action at bar that the *only* reason Defendants ultimately rejected their late and defective application and rented to another applicant was because of the fact that Plaintiffs had a minor child as a member of their household.

“...while the Unruh Act prohibits a business establishment from engaging in any form of arbitrary discrimination, the act does not absolutely preclude such an establishment from excluding a patron in all circumstances. As we stated in *Cox*: "In holding that the Civil Rights Act forbids a business establishment generally open to the public from arbitrarily excluding a prospective customer, we do not imply that the establishment may never insist that a patron leave the premises.” **SOURCE:** *Marina Point, Ltd. v. Wolfson*, 30 Cal.3d 721, 180 Cal.Rptr. 496 (1982).

**TO THE EXTENT THAT PLAINTIFFS WERE DAMAGED,
IF AT ALL, BY DEFENDANT'S ALLEGED DISCRIMINATION,
IT WAS PLAINTIFFS' BURDEN TO DO ALL REASONABLY
WITHIN THEIR POWER TO MITIGATE SUCH DAMAGES**

Mitigation of damages by the aggrieved Plaintiff is an appropriate requirement for cases in which a person is denied housing and must find alternative housing. **SOURCE:** *See, e.g., Miller v. Apartments & Homes of N.J., Inc.*, 646 F.2d 101, 111-12 (3d Cir.1981); *Young v. Parkland Village, Inc.*, 460 F.Supp. 67, 71 (D.Md. 1978).

**PUNATIVE DAMAGES ARE NOT AVAILABLE TO PLAINTIFFS
IN HOUSING DISCRIMINATION ACTIONS IN THE ABSENCE OF
A SHOWING OF RECKLESS OR CALLOUS CONDUCT**

Punitive damages are only available in Fair Housing cases when a defendant has shown "reckless or callous disregard for the plaintiff's rights, [or] intentional violations of federal law."
SOURCES: See *United States v. Balistreri*, 981 F.2d 916, 933 (7th Cir.1992), cert. den. 510 U.S. 812, 114 S.Ct. 58, 126 L.Ed.2d 28 (1993), quoting *Smith v. Wade*, 461 U.S. 30, 51, 103 S.Ct. 1625, 1637, 75 L.Ed.2d 632 (1983). See also *Tyus v. Urban Search Management*, 102 F.3d 256 (C.A.7 (Ill.), 1997).