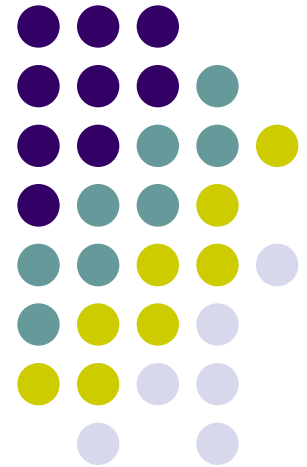


# AGO's Enforcement of Fair Housing Laws in Massachusetts

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Jonathan Miller  
Chief, Civil Rights Division  
Office of the Attorney General

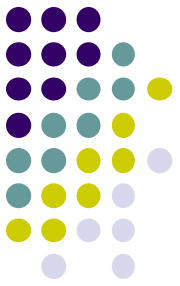




# Relevant Laws

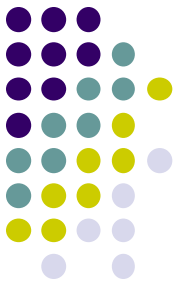
- Federal laws
  - 42 U.S.C. § 3601 *et seq.* (fair housing act)
  - 42 U.S.C. § 1981 (equal rights to make contracts)
  - 42 U.S.C. § 1982 (right to own property) (race)
- State law
  - G.L. c. 151B

# Discriminatory Practices



Covers wide range of conduct, including

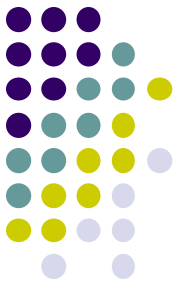
- Refusal to rent/sell
- Steering
- Eviction (e.g., retaliation)
- Different terms and conditions
- Discriminatory written advertisements/verbal statements
- Refusal to give a reasonable accommodation or modification
- Refusal to engage in interactive process
- Oral inquiry into protected status
- and more...



# What is the AGO's Role

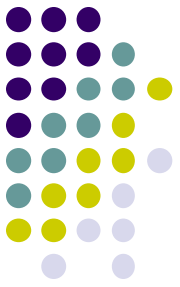
- Statutory mandate to prosecute
  - G.L. c. 151B, § 5
- Authority to pursue violations of the law
  - G.L. c. 93A, § 4
- Obligation to enforce the laws
  - G.L. c. 12, § 10

# How Does AGO Get Involved?

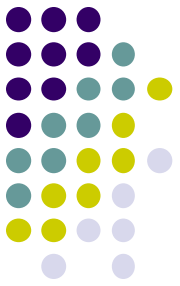


- Following finding of probable cause by MCAD (or other authority) and election of judicial determination under G.L. c. 151B, § 5
- In response to complaints filed with the AGO or following investigations under G.L. c. 93A, § 6

# What happens after AGO gets involved?

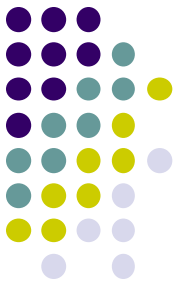


- Review of underlying facts and circumstances
  - Get both sides of the story
  - Evaluate scope of alleged misconduct
  - Determine target's involvement in the housing market
    - Owner-occupied unit versus commercial landlord
- Make determination whether to proceed with litigation



# AG's Involvement, cont'd

- Generally, try to resolve prior to filing
  - Involves input from the complainant(s)
- If unsuccessful, proceed to litigation
- Complainant has right to intervene
  - Can resolve Commonwealth's claims and allow complainant to proceed on her own

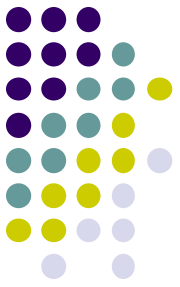


# Resolution by AGO

- Three main components to all AG resolutions
  - Injunctive prohibition against continuing to violate fair housing laws
  - Affirmative steps to ensure no further violation (such as training)
  - Remedy for past harm (payment, deleading, etc.)



# Most Prevalent Forms of Housing Discrimination



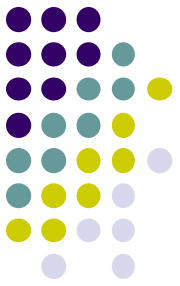
- Discriminatory advertisements/statements
  - No Section 8/ “I don’t want those kind of people”
  - No Children / Apartment not dealed
- Refusal to Rent
  - Source of income (e.g., voucher holders)
  - Familial status
  - Unit not dealed
- Failure to Make Reasonable Accommodation

# Discriminatory Advertisements/Statements



- Express limitations
  - No Section 8
- “Helpful” information
  - No children, because unit is not deledaded
- Implicit limitations/preferences
  - “Seeking professional” / “Perfect for young couple”
- Statements need not be written

# Lawful Reasons to Deny Housing



- Anti-discrimination laws do not require landlords to rent their units to everyone
- Many lawful reasons for denying a unit
  - Cannot afford the rent
  - Has a history of eviction
  - Has a history of destroying property
  - Does not like the Red Sox

# Cannot deny housing to someone because of:



Under the Federal Fair Housing Act

- Race/Color
- National Origin
- Sex
- Religion
- Disability (physical or mental)
- Familial status (family with child under the age of 18, or in process of gaining custody of a child, pregnancy)

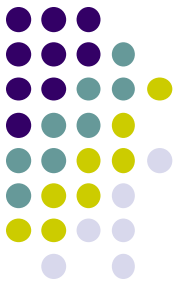
# Under state law, all those previous categories, plus:



- Ancestry
- Sexual Orientation
- Marital Status
- Age
- Receipt of a rental subsidy
- Receipt of public assistance (TANF, SSI, SSDI)
- Service member or veteran

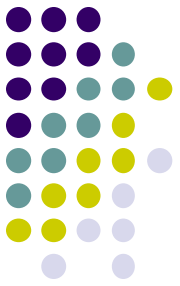
And, effective in July of 2012: gender identity

# Familial Status Discrimination



- Refusal to rent/steering:
  - Lead paint – no children
  - Large families – made-up occupancy standards
  - Supposed “student” housing
- There are some apartment buildings/complexes designed for people 55 and older. This type of housing must meet various requirements.

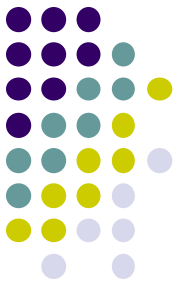
# Exemptions



Certain exemptions apply for familial status:

- A landlord is exempt if the apartment building has two units, and the owner lives in one of them.
- If the building has three units or less and one of the units is occupied by an elderly or infirm person, and the presence of children would cause substantial disruption, a landlord is also exempt.

# AGO Settlement – Familial Status



- Factual Allegations
  - Victim lived with two foster children.
  - Property management company accused her of running a daycare and told her that she could not continue to have foster children in the unit.
- Resolution
  - \$45,000 payment (\$30,000 to victim)
  - Training
  - New policies





# Families and Lead Paint

- State law requires that landlords delead or abate hazardous lead if a child under the age of six (6) lives in a unit
  - Not required to remove all lead paint immediately
    - Have choice between full deleading compliance and interim control
  - Some state and local funding available
- Because deleading is expensive, many landlords decide not to rent to families with children.

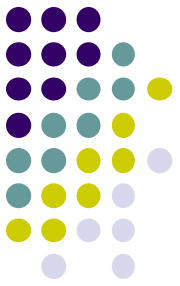
**THIS IS ILLEGAL!**



# Lead Paint Cont'd

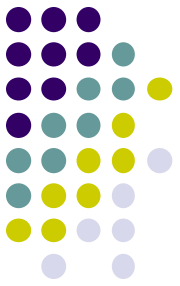
- Common Misunderstanding
  - The obligation to remove lead hazards extends to owner-occupied two-family or multi-unit properties
- Lead paint discrimination generally takes one of these forms:
  - Refuse to show tenants certain properties because they may contain lead paint
  - Stating a preference against families with children
  - Eviction of tenant who has a child or complains about lead paint

# AGO Settlement – Lead Paint



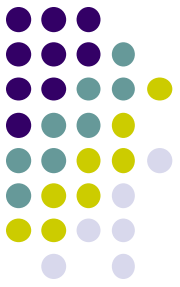
- Factual Allegations
  - Couple owning two units terminated tenancies of two tenants because each had a child under six
- Resolution
  - \$12,300 in payments
  - Deleading of one unit
  - Prohibition against discrimination in future

# Another Lead Paint Settlement

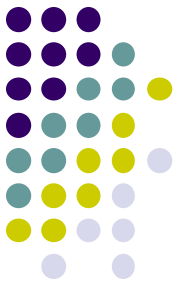


- Factual Allegations
  - Discriminatory advertisement found online
  - Testers called to confirm, with rental agents stating that unit could not be rented by family with children as it was not delead
- Resolution
  - Payment of \$15,000
  - Training for all employees
  - Implementation of new policies

# Other forms of familial status discrimination



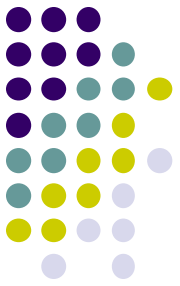
- “You have too many children!”
  - Must determine if the housing provider would let the same number of people reside in the unit if weren’t children
  - Reasonable local and state codes restricting occupancy can be enforced
- “Your children are too loud!”
  - Must determine the reasonableness of the noise (children will create some noise)
  - Only exception: It is a three-family building, and one apartment is already occupied by an elderly or infirm person, and children in the building would pose a hardship for that person



# Rental Subsidy Discrimination

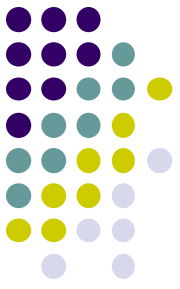
- Unlawful to discriminate against someone because they have a subsidy
- Unwillingness to comply with requirements of program also constitutes violation of G.L. c. 151B (DiLiddo v. Oxford Realty)

# AGO Settlement – Section 8



- Factual Allegations
  - Property management company posted craigslist ads that said “no Section 8”
- Resolution
  - \$10,000 payment
  - Fair housing training
  - Advertising, reporting, and notification requirements

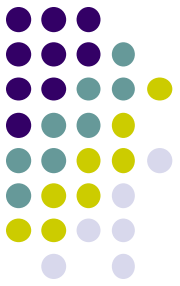
# Another AGO Settlement re: Section 8 Discrimination



- Factual Allegations
  - Defendant persistently harassed tenant in an effort to force her from the house rather than complete repairs required by Section 8 program
  - Repairs included abatement of lead hazards after the tenants two year old grandson came to live with her
  - Due to the defendant's harassment, the tenants were forced to move into a homeless shelter

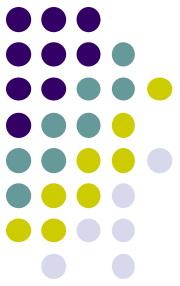


# Section 8 Settlement Cont'd



- Resolution
  - Payment of \$20,000
  - Fair housing training required prior to renting the property out again
  - Ordered to include “Equal Housing Opportunity” statement in all advertisements

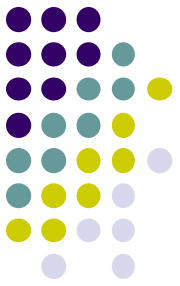
# Disability Discrimination: Reasonable Accommodations and Modifications



- What is a “reasonable accommodation”?
  - A request for a “reasonable accommodation” is a request for an exception or change in the rules, policies, practices or services.
  - The person with a disability must need this change in order to fully use and enjoy his or her housing.
- What counts as a “disability”?
  - A disability can be physical, mental, or emotional. The disability must cause the person to be substantially limited in a major life activity.

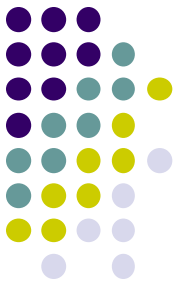
# Reasonable Accommodations

## Cont'd



- What kind of accommodation can one ask for?
  - The options are limitless. Common examples of reasonable accommodations include exceptions to “no pets” policies, transfers to first floor apartments, exceptions to “overnight guest” policies, etc.
- How do I ask for a reasonable accommodation?
  - A request can be made orally or in writing. It can be made by the tenant, or by someone acting on the tenant’s behalf.

# Even more on Reasonable Accommodations....



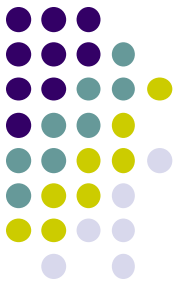
- How much must one disclose about their disability to qualify for an accommodation?
  - If a person's disability is obvious, such as a mobility impairment that requires the use of a wheelchair, proof may not be required.
  - Otherwise, verification of the disability is likely needed.
    - The housing provider can only request information that is necessary to show that the person meets the definition of disabled and that the requested accommodation is directly related to the disability.
    - This verification can come from the tenant, a doctor, or other qualified individual who has knowledge about the tenant's disability.

# One last slide on reasonable accommodations



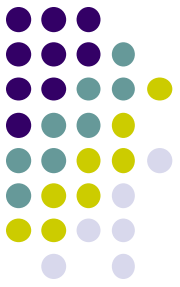
- When can a housing provider deny a request?
  - It depends. A housing provider can deny a request if (1) the tenant does not have a disability, (2) the requested change is not related to the tenant's disability or is not necessary for the person to fully use and enjoy the housing, (3) the accommodation imposes an undue burden on the housing provider, or (4) the accommodation fundamentally alters the nature of the housing provider's services.
- What is the housing provider's obligations after a request is made?
  - Must have an interactive dialogue with the tenant. If a housing provider determines that a specific request is unreasonable, it should have a conversation with the tenant about any possible alternative accommodations.

# Reasonable Modifications



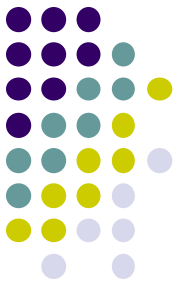
- Reasonable modifications are changes to the physical structure of a house or apartment unit, such as the installation of a ramp, grab bars, or visual doorbells or smoke alarms.
- Generally, the process for making a reasonable modification request is the same as making a reasonable accommodation request. If it is a larger landlord, then he or she may have to pay for the modification.
- Housing providers who have to pay for modifications
  - Owners of subsidized housing
  - Owner of buildings with 10 or more apartment units
  - Owners of 10 or more units that are “contiguously located”

# AGO Settlement – Reasonable Accommodations



- Factual Allegations
  - Large-scale landlord failed to take action on request for installation of grab bars.
  - Tenant fell in the shower, causing injuries.
- Resolution
  - Payment of \$7,500
  - Training for all employees
  - Centralized database to monitor and log requests for reasonable accommodations and mods

# AGO Settlement – Accessibility



- Factual Allegations
  - Apartment complex did not have enough accessible parking and existing spots were used by people without placards
  - Tenant with a placard was told to park in general tenant parking when accessible spaces were full and threatened with towing if she parked in visitor or employee spaces near entrance

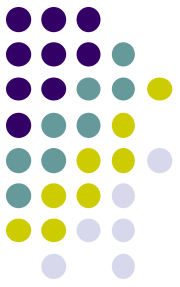


# AGO Settlement – Accessibility Cont'd



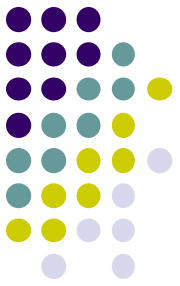
- Resolution
  - Creation of additional accessible parking to meet the need
  - Procedure for enforcement of handicap parking and towing of vehicles illegally parked
  - Notice of rights to tenants and applicants in English and Spanish
  - Designation of a person to handle Reasonable Accommodation request
  - Payment of \$30,000

# Advertising of Accessible Units



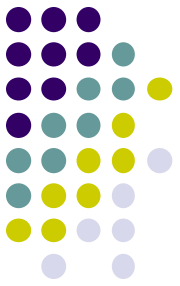
- When a wheelchair-accessible unit becomes available, housing providers are required to alert:
  - Anyone who has requested such a unit in the past 12 months
  - Massachusetts Access Housing Registry

# Gender Identity Protections



- One's own sense of being male or female.
- In the past, people brought cases on behalf of transgender individuals using prohibitions against sex (stereotyping) and disability discrimination.
- The new gender identity law is very broad – it includes gender-related identity, appearance, or behavior.

# Statute of Limitations



Timing is critical

1. MCAD – 300 days
2. HUD – One year
3. State law claims in court – one year
4. Federal law claims in court – two years