

2150 FEDERAL CIVIL RIGHTS: §§ 1981 & 1982 ACTIONS

(Plaintiff) has alleged that (defendant) has deprived (him) (her) of a federal civil right by discriminating against (him) (her) (in renting an apartment) (in purchasing a home) (making the contract in issue). The federal law states:

All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . . (42 U.S. Code § 1981)

All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold and convey real and personal property. (42 U.S. Code § 1982)

Before you can answer question 1 "yes," you must find the following:

First, that (plaintiff), attempted (or offered) to lease an apartment as described in the evidence from (defendant) and was ready, willing and able to pay (defendant)'s rental price.

Second, that (defendant) refused to lease to (plaintiff), or to negotiate for the rental of or otherwise made unavailable, or discouraged or denied (plaintiff) an apartment.

Third, that race was a substantial factor actually operating as a basis for (defendant)'s conduct even if not the sole basis for (defendant)'s refusal to lease.

COMMENT

This instruction and comment were originally approved by the Committee in 1983. Editorial changes were made in 1993 to address gender references in the instruction. No substantive changes were made to the instruction.

Section 1981 applies also to discrimination based upon ethnic affiliation, national origin, or alienage as well as race. Guerra v. Manchester Terminal Corp., 498 F.2d 641 (5th Cir. 1974); Manzanares v. Safeway Stores, Inc., 593 F.2d 968 (10th Cir. 1979).

The U.S. Supreme Court has declared that Section 1982 prohibits both public and private acts of racial discrimination in the sale of or rental of housing. Memphis v. Greene, 451 U.S. 100 (1981); Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).

Instances of unlawful discrimination in housing transactions may also be remedied by applying the provisions of the Fair Housing Act of 1968 (Title VIII), 42 U.S.C. § 3601, et seq. A claim under § 1982 is independent from a claim based on the Fair Housing Act. Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). The coverage of the Fair Housing Act is more limited than § 1982 in that Title VIII does not cover the sale or rental of a single-family house by the owner if the owner does not own more than three such houses at one time, sells or rents without the use of a real estate broker, and does not advertise in violation of the Act.

This instruction is derived from Sandford v. R. L. Coleman Realty Co., 573 F.2d 173 (4th Cir. 1978).