

Improving the Accuracy of Maryland's Fair Housing Tests

Background

Fair housing tests are controlled assessments to identify and document discrimination in the housing market. Fair housing testing employs individuals to pose as prospective tenants or homeowners to gather information to determine whether or not a provider is complying with state and federal laws related to fair housing.

Fair housing tests are crucial for

1. **Detection of Discrimination:** Fair housing tests help detect instances of housing discrimination based on factors such as race, ethnicity, gender, disability, familial status, and other protected characteristics.
2. **Enforcement of Fair Housing Laws:** These tests play a critical role in enforcing fair housing laws and regulations. By documenting instances of discrimination, authorities can take legal action against individuals or entities that violate fair housing laws.
3. **Policy Evaluation:** The data collected through fair housing tests can be used to evaluate the effectiveness of existing fair housing policies. If discrimination is consistently identified, it may indicate a need for stronger enforcement or the development of new policies to address specific issues.



Problem

The Department of Housing and Urban Development (HUD) recommends equipping testers with recording devices to faithfully and incontrovertibly capture their interactions with housing agents.

Maryland's all party consent requirement means that fair housing organizations in the state cannot use recommended best practices. This creates a number of challenges for Maryland fair housing organizations and for fair housing enforcement in the state:

- **It doubles the cost of testing.** Instead, fair housing organizations in Maryland must hire two testers for each test, compared to one for each test in other states-doubling the cost of testing because one tester must lead the interaction with the provider while the other listens closely to write down a detailed record of the conversation afterwards.
- **Testing results are less effective.** Our testers must rely on their memory of the event to write a detailed report soon after the interaction.
- **Maryland is one of 11 states that don't allow one party recordings for fair housing tests.** As a state, we have already been conducting these tests for decades. However, without the ability to record, our ability to compile evidence of discrimination is weaker than in 39 other states.

Solution - HB392/SB107

This bill would create a narrowly-tailored exemption to the all-party consent law. It would enable *only* qualified organizations to conduct fair housing without all party consent.



Legend:

- States that allow one-party consensual recording of in-person fair housing tests (Blue)
- States that do NOT (Yellow)

States that allow one-party consensual recording of in-person fair housing tests (Blue): AK, HI, NV, UT, AZ, NM, TX, OK, AR, LA, MS, AL, GA, SC, NC, VA, WV, OH, IN, MI, WI, MN, ND, SD, NE, KS, MO, IL, TN, KY, PA, NY, CT, RI, MA, NH, VT, DE, MD, DC.

States that do NOT (Yellow): WA, OR, CA, MT, WY, CO, ID, NV, UT, AZ, NM, TX, OK, AR, LA, MS, AL, GA, FL, ME, NH, MA, CT, RI, DE, MD, DC.

- The ability to document test experiences through audio recordings provides incontrovertible evidence of illegal housing discrimination, as witnessed in over 12,000 tests conducted across 20 states. Recorded evidence has played a pivotal role in successful fair housing cases, influencing judges and juries to hold defendants accountable for discriminatory conduct.
- **It Protects Testers and Housing Providers.** Having an exact account of a conversation protects testers from any credibility or bias as well as protects housing providers from false allegations, misunderstandings, or faulty memories of testers.
- **Efficient Allocation of Resources.** Saves fair housing organizations money because they can reduce the number of testers used, thereby saving using city, county, state, and federal funds more efficiently and effectively. The use of recorders also allows organizations to maintain the highest investigative standards.
- **There is no right to privacy that would preclude this.** The Department of Justice's Civil Rights Division uses one-party recorders in Maryland and across the country. The commercial discussions that take place are taking place in commercial spaces so should not be considered private.

Support HB392/SB107