# February 2025
# MPT-1 Item

*Turner v. Larkin*

**Turner v. Larkin**

**FILE**



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**Tan & Singh Law Offices LLC**
740 East Broadway, Suite 200
Centralia, Franklin 33402

**MEMORANDUM**

**To:** Examinee
**From:** Elise Tan
**Date:** February 25, 2025
**Re:** Peter Larkin—Defense of housing discrimination claim

Our firm has been retained to defend landlord Peter Larkin in a housing discrimination claim brought by Martin Turner. Turner, a single parent with three minor children, applied to rent a two-bedroom apartment from Larkin. Larkin declined Turner's application. Turner claims that Larkin refused to rent to him for discriminatory reasons in violation of the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq*. Larkin claims that he declined the rental application for nondiscriminatory reasons, that he has a long-standing preference for renting to married couples, and that he has a policy of only renting this apartment to a maximum of three people.

Turner filed an administrative complaint with the US Department of Housing and Urban Development (HUD) alleging that Larkin had violated the Fair Housing Act by refusing to rent because of Turner's familial status. The matter has been assigned to an administrative law judge. I attach the factual narrative from Turner's HUD administrative complaint. I also attach a summary of an interview that I conducted with Larkin and a text exchange that Larkin had with a previous prospective tenant for the apartment.

Please draft an objective memorandum to me analyzing the legal and factual arguments that we should raise in Larkin's defense and the legal and factual arguments that Turner may raise in support of his claim. Your memorandum should clearly state the legal test(s) that will be applied to Turner's claims, and you should evaluate the likelihood of success of Larkin's arguments. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your conclusions.

**Excerpt from HUD Administrative Complaint form**

February 11, 2025

**How were you discriminated against? State briefly what happened:** I was moving from San Francisco to Centralia in Franklin so that I could be closer to my parents. My spouse died two years ago, and I am a single parent of three children: Martha, age 16; Maura, age 12; and Max, age 6. On November 6, 2024, I saw an advertisement online for a two-bedroom apartment in downtown Centralia that was close to my parents' place. I am employed as a data analyst, and I can easily afford that apartment on my income. I have a good rental history and good credit. I texted the number listed and asked if the apartment was still available. The landlord texted back, leading to this exchange:

Me: Hi. I saw the listing for the apartment in Centralia. Is it still available?

Landlord: Hi. This is Pete Larkin, the landlord. Yes, it is still available. Are you married?

Me: No, I'm widowed.

Landlord: Would anyone else be living there?

Me: Yes, my three kids. Two girls and a boy, ages 6, 12, and 16.

Landlord: I don't know. I need to think about that. I'll get back to you.

The landlord never got back to me. I'm convinced he wouldn't rent to me because I have kids. I checked back on Craigslist over the next two months. The apartment continued to be listed for rent.

**Do you feel that you were discriminated against because of your race, color, religion, sex, national origin, familial status (families with children under 18), or disability?** Yes, familial status.

Martin Turner

Martin Turner

**Tan & Singh Law Offices LLC**

**FILE MEMORANDUM**

**From:** Elise Tan
**Date:** February 24, 2025
**Re:** Interview with client Peter Larkin

I met with our client Peter Larkin this morning to discuss the Fair Housing Act administrative complaint filed by Martin Turner. Larkin verified that the text exchange described in the complaint is accurate and complete. The following summarizes Larkin's answers to my questions.

**Tell me about your experience as a landlord.** I've owned rental apartments for about 20 years. I first got into it to supplement my salary as an accountant. I now do it full time. I own seven buildings, all in the Centralia area. This building is one of the larger ones I own. It's a five-floor building with 20 units.

**Do you live in the building?** No. I live in a townhouse about a mile away.

**Where did you place the advertisement for the apartment? What, exactly, did the advertisement say?** I placed it on Craigslist. It said this: "Two-bedroom apartment for rent in downtown Centralia. New kitchen appliances. Sunny second-floor walkup. $2,200/month rent, utilities included. Call or text 555-2346."

**Why did you say that it would be a problem to rent to Turner?** There were two problems. First, he's single. I really don't like to rent to unmarried people because I like to have two incomes for each apartment that I rent. It just makes me feel more comfortable that the rent will be paid on time. Second, I have a policy of renting that particular apartment to a maximum of three people, and with his kids, there would have been four people.

**Did you rent the apartment to another person? When?** It took me a couple of months, but ultimately I was able to rent the apartment to a married couple.

**Can you tell me more about your preference for married people?** Again, it is a financial and stability thing. I want to have married couples with two incomes, and I want to reduce the likelihood that one person is going to move out in the middle of the lease. If they are married, it's less likely that only one of the tenants will pay their rent. I've been a landlord for a long time, and I have a bunch of other apartments that I rent

out. Based on my experience, married people are just more stable in their relationships and are more likely to pay their rent on time. They are just more financially stable than single people. I've turned down single people and unmarried couples who have applied for that apartment before.

**Did you think that Mr. Turner could afford to rent the apartment?** I didn't get to the point of asking him for financial information. He might have had a good job. He might have good credit. I don't have any reason to think otherwise. But as I said, I prefer to rent to married couples because in my experience they are more stable financially. A couple of years ago, I rented to a single guy with a good income. He lost his job and left town, and I was left with no rental income for months. I learned that people who have good jobs sometimes lose them. It doesn't matter how good your credit is if you lose your job. Couples break up. Sure, married people sometimes get divorced, but they are more likely to stay together than unmarried people.

**What about your policy of having a maximum of three people in that apartment?** It is a pretty small apartment—only 500 square feet. But for me, the major issue is the character of that neighborhood. There are a lot of younger people in their early 20s who live there. It's close to Slate Street, which has a lot of nightclubs. I've had problems with young people cramming four people into a two-bedroom apartment to keep their housing costs down. So for two bedrooms in that area, my policy is to rent to at most three people, ideally including a married couple.

**Did you have any problem with Turner having minor children?** Not specifically. As I mentioned, I want to rent to married couples for financial reasons, and my policy of having at most three people in that apartment is about the total number of people in the apartment. I wouldn't want four people in there, whether they are adults or children.

**Have you rented to married couples with children before?** Yes. I do that often. For example, I'm renting an apartment in this same building to a married couple with two children right now. But that's a much bigger three-bedroom apartment on the fifth floor. I wouldn't mind having a married couple with one child in the apartment that Turner wanted to rent.

**Have you applied your policy to other potential renters?** Yes. I turned down a group of four single people in their 20s for this same apartment two years ago. Here is the text exchange that I had with one of them:

Jake: Hello. My name is Jake. I'm looking for apartments in Centralia. Is the apartment that you listed still available?

Larkin: It is. Tell me about yourself. Are you married? Would it be just you in the apartment?

Jake: I'm single. It would be me and three of my friends.

Larkin: Oh. Sorry. I really prefer to rent to married couples. And I want at most three people in that apartment—it is pretty small.

Jake: You seriously care about whether I'm married?

Larkin: Yes. I've found that married couples pay their rent on time and are less likely to flake out on me.

Jake: That's stupid. But whatever—I'll find another place.

**Excerpts from the United States Fair Housing Act, 42 U.S.C. § 3601 *et seq*.**

**§ 3602 Definitions**

As used in this subchapter . . .

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

**§ 3603 Effective dates of certain prohibitions**

. . .

(b) Exemptions. Nothing in [section 3604] shall apply to—

. . .

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

**§ 3604 Discrimination in the sale or rental of housing and other prohibited practices**

[I]t shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

. . .

**Excerpt from the Centralia Municipal Housing Code**

**§ 15 Maximum Occupancy of Dwellings**

(A) No dwelling shall be occupied by more than the number of people permitted in this section.

(1) 300 square feet or less: no more than two people.

(2) 301–450 square feet: no more than three people.

(3) 451–700 square feet: no more than four people.

(4) 701–900 square feet: no more than five people.

(5) 901–1,100 square feet: no more than six people.

(6) 1,101–1,300 square feet: no more than seven people.

**Karns v. U.S. Department of Housing and Urban Development**
(15th Cir. 2006)

Angela Karns filed an administrative complaint with the US Department of Housing and Urban Development (HUD) claiming that property owner Fiona Dickson had violated the Fair Housing Act (FHA), 42 U.S.C. § 3604(a). At issue is whether Dickson's comments to Karns indicated a refusal to rent to Karns on the basis of "familial status." After a hearing, the administrative law judge (ALJ) concluded that Karns had failed to prove that Dickson's statements indicated a refusal to rent on the basis of Karns's familial status. Karns petitioned for review of the ALJ's decision. We hold that Karns proved her claim of discriminatory conduct and therefore reverse.

**BACKGROUND**

Karns filed an administrative complaint with HUD alleging that Dickson violated 42 U.S.C. § 3604(a) by engaging in discriminatory conduct when she told Karns that she would not rent an apartment to her because Karns was not married and had two children.

At the hearing, Karns testified that, in 1998, she was looking for an apartment for herself and her two children (then ages five and nine) when she saw a newspaper advertisement for a two-bedroom apartment for rent in Smithtown, Franklin. On August 21, Karns spoke by phone to Dickson. Karns wrote detailed notes of the conversation:

**Karns:** I was calling about the apartment in Smithtown.
**Dickson:** How many are in your family?
**Karns:** Three. 1 adult & 2 small children.
**Dickson:** Are you married?
**Karns:** No.
**Dickson:** (Long pause) I don't know. I've got to pay my mortgage. I'll think about it and get back to you.

Dickson never called Karns back. On September 17, Karns noticed another newspaper advertisement for the same apartment that listed the same telephone number. She again called Dickson to inquire about the apartment, but unlike before, Karns stated that she was single and had no children. She again took detailed notes:

**Karns:** I called about the apartment.
**Dickson:** How many are in your family?
**Karns:** One—just me.
**Dickson:** Do you work?

**Karns:** Yes, at Smithtown Bank.
**Dickson:** Well, the apartment has a large dining room, kitchen, two bedrooms. It's on the 1st floor. . . . I can show the apartment on Monday . . .

The ALJ concluded that Karns had failed to show by a preponderance of the evidence that Dickson had violated § 3604(a) because Karns had not proven that the telephone calls with Dickson indicated discrimination based on familial status rather than a concern over financial matters. Karns claims that the ALJ erred.

## DISCUSSION

### Karns Established Her Claim for Discrimination Based on Familial Status.

We apply the three-part burden-shifting test set forth in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), for evaluating claims of discrimination under 42 U.S.C. § 3604(a). First, plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence. To establish a prima facie case of discrimination under the FHA, plaintiffs must show (1) that they are a member of a protected class, (2) that they applied for and were qualified to rent the dwelling, (3) that they were denied housing or the landlord refused to negotiate with them, and (4) that the dwelling remained available. The term "applied for" is interpreted broadly and includes inquiries into the availability of a dwelling. "Qualified to rent" means that the individual meets such factors as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background.

Second, if a plaintiff establishes a prima facie case of discrimination, a presumption of illegality arises and the burden shifts to the defendant to articulate legitimate nondiscriminatory reasons for the challenged policies. Finally, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

The FHA defines "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with" a parent or someone with an equivalent custodial relationship. 42 U.S.C. § 3602(k).

It is undisputed that at all relevant times, Karns had two children under the age of 18 who resided with her. Karns demonstrated that she was denied housing. She inquired

about renting the apartment and was qualified to rent the apartment. Dickson, the property owner, refused to negotiate with her. The apartment remained available when Karns made her second call on September 17 to inquire about the apartment. Thus, Karns has made a prima facie case of discrimination based on familial status under the FHA.

The ALJ accepted Dickson's argument that she "was clearly more concerned with financial matters than the makeup of Karns's family" because Dickson expressed her need to "pay [her] mortgage." Karns argues that Dickson's financial argument is pretext for discrimination based on familial status. We agree.

Dickson asserts two nondiscriminatory reasons for her refusal to negotiate with Karns: (1) she was concerned about Karns's finances and (2) she was concerned that Karns was unmarried. The evidence shows that both of these asserted reasons are pretextual. Dickson's statements in the August 21 conversation do not support the ALJ's conclusion that Dickson's only concern was Karns's ability to pay the rent. After learning that Karns was an unmarried mother of two small children, Dickson declined to negotiate with Karns for the rental. In fact, that Karns was an unmarried mother of two small children was all that Dickson knew about Karns at that point. Dickson had not asked a single question about Karns's finances (nor did she at any point in the conversation). She possessed no information whatsoever about Karns's income, credit history, assets, or liabilities. For all Dickson knew, Karns could have been a multimillionaire. Under these circumstances, substantial evidence does not support the ALJ's conclusion that Dickson refused to rent to Karns on August 21 because she was concerned about Karns's ability to pay the rent. Rather, Dickson's refusal to rent the apartment armed only with the knowledge that Karns was a single mother of two small children indicates that Dickson assessed Karns's ability to pay rent based on her familial status, not on her financial situation.

Dickson's argument that the August statements indicate a nondiscriminatory reason for denial based only on Karns's *marital* status, not one based on her familial status, is also unsuccessful. The FHA does not include marital status among its protected classifications. *See* 42 U.S.C. § 3604(a) (omitting "marital status" from categories of protected classes under the FHA).

In support of this argument, Dickson points to her question in the August call about Karns's marital status. During the September call, however, Dickson agreed to show the apartment, thinking that Karns was single. The evidence thus demonstrates that in the August conversation it was Karns's representation that she had children, not the fact that she was unmarried, that constituted the reason for Dickson's refusal to rent to her.

Karns has demonstrated that Dickson's asserted reasons for nondiscrimination were pretexts for her refusal to rent to Karns due to her familial status. Accordingly, the ALJ's conclusion that Karns failed to establish a violation of § 3604(a) is not supported by substantial evidence.

Reversed.

**Baker v. Garcia Realty Inc.**
United States District Court for the District of Franklin (1996)

This matter is before the court on plaintiffs' motion for summary judgment on their housing-discrimination claim, brought pursuant to 42 U.S.C. § 3604. The plaintiffs, Sheldon and Peggy Baker, are a married couple with five minor children. The family decided to relocate to Creekside, Franklin, because Sheldon Baker had been accepted into a graduate program at nearby Aberdeen University. On June 9, 1994, he traveled from Olympia to Creekside to obtain an apartment for his family. Upon his arrival in Creekside, Baker approached employees of defendant Garcia Realty and requested to see an apartment. Soon thereafter, employees of Garcia showed him two apartments located at 632 Hinman Avenue in Creekside. Baker completed an application for Unit 1A, a three-bedroom apartment. In his application, Baker disclosed that he intended that his spouse and five minor children would live with him, for a total of seven people in the unit.

Around June 23, an employee of Garcia informed Baker that his rental application had been rejected. The stated basis was Garcia's occupancy policy, which provided for a maximum occupancy of four people in a three-bedroom apartment. Under Garcia's "bedrooms plus one" occupancy policy, a maximum of three people may occupy a two-bedroom apartment, a maximum of four people may occupy a three-bedroom apartment, and a maximum of five people may occupy a four-bedroom apartment.

**DISCUSSION**

The Fair Housing Act (FHA) makes it unlawful to "refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . familial status." 42 U.S.C. § 3604(a). "Familial status" refers to the presence of minor children in the household. 42 U.S.C. § 3602(k).

The Bakers are claiming that Garcia's occupancy policy, while facially neutral, had a disparate impact on them because of their familial status. In this type of case, the Fifteenth Circuit applies a three-part disparate-impact analysis: (1) the plaintiff tenant first must make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect; (2) if the plaintiff makes this prima facie showing, the burden then shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and (3) if the

defendant landlord meets the burden at step two, the burden shifts back to the plaintiff, who may then prevail only if they can show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect. Courts apply this disparate-impact analysis when we are analyzing a facially neutral policy. This analysis resembles, but is distinct from, the *McDonnell Douglas* test that is used to analyze claims that a landlord discriminated against a tenant through specific actions that may be ambiguous.

**A. Prima Facie Case**

Here the Bakers have established a prima facie case of disparate impact. Garcia's "bedrooms plus one" policy clearly impacts families with minor children more than it does the general population. Minor children frequently share bedrooms, and families with minor children tend to have larger households than families without minor children at home.

**B. Nondiscriminatory Reason for Policy**

Thus, the burden now shifts to Garcia to articulate one or more substantial, legitimate, nondiscriminatory interests served by its policy. Garcia asserts that its occupancy policy avoids the risk of large groups of Aberdeen students overpopulating units in an attempt to reduce their rental payments. Garcia has articulated a substantial, legitimate, nondiscriminatory interest served by its practice—avoiding renting to groups of college students.

**C. Overbreadth and Less Restrictive Means**

Accordingly, the burden now shifts back to the Bakers to demonstrate that Garcia's policy is overbroad or that there is a less restrictive means to achieve Garcia's goal of avoiding renting to groups of college students. The Bakers argue that Garcia's policy regarding the number of people living in apartments of various sizes is overbroad because it is far more stringent than the requirements of the Creekside Municipal Code. Like many municipalities, the City of Creekside sets maximum occupancy limits on the number of people who can live in housing units of different sizes. Unlike Garcia's policy, which is stated in terms of number of people per bedroom, the Municipal Code is stated in terms of number of people per square foot of living space. Unit 1A is a 1,700-square-foot, three-bedroom apartment. The Code permits up to eight people to live in an apartment of this size. Occupancy of the unit by the seven members of the Baker family would therefore

be permitted under the Code. In contrast, the Garcia policy states that three-bedroom apartments like Unit 1A can be occupied by a maximum of four people.

The Fifteenth Circuit has held that in cases of alleged familial-status discrimination, a significant mismatch between occupancy limits set by a municipal code and those set by a landlord is evidence that the landlord's limit is overbroad. Although there is no specific mathematical formula, Fifteenth Circuit case law indicates that a significant mismatch would occur, for example, where a landlord limits occupancy to two people in an apartment that, under the applicable local housing code, can be occupied by four people. Here, the number of people permitted to occupy Unit 1A under the Creekside Code—eight—is significantly greater than the number permitted under Garcia's policy—four. The Bakers therefore are correct that this difference constitutes a significant mismatch and provides evidence that the Garcia policy is overbroad.

The Bakers can also show that Garcia could use a less restrictive means of meeting its stated goal of avoiding renting to large groups of college students. Among other things, the Bakers have demonstrated that the information collected by Garcia's rental application easily allows the rental company to tell the difference between a group of college students and a family with minor children protected by the familial-status provisions of the FHA. Garcia offers no explanation for why it applies the occupancy policy regardless of whether those seeking to inhabit its apartments are college students as opposed to families with children far too young to attend Aberdeen University.

The Bakers could have met their burden either by showing that Garcia's "bedrooms plus one" policy is overbroad or by showing that the goals of that policy can be achieved with a less restrictive means. They have shown both. Accordingly, the motion for summary judgment is GRANTED.