

Alpha College Of Real Estate
3 Hour Virginia Fair Housing Correspondence Course 092009

Fair Housing Laws prohibit discrimination on the basis of the protected classes in the sale or rental of dwellings. Agents and brokers in the commonwealth are required to abide by both federal and state statutes with respect to fair housing.

VIRGINIA
FAIR HOUSING REGULATIONS

Effective September 22, 2007

STATUTES

Title 36, Chapter 5.1

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PART I
General Provisions

18VAC135-50-10. Definitions.

The definitions provided in the Virginia Fair Housing Law, as they may be supplemented herein, shall apply throughout this chapter.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise:

"Authorized representative" means (i) an attorney licensed to practice law in the Commonwealth, or (ii) a law student appearing in accordance with the third-year student practice rule, or (iii) a non-lawyer under the supervision of an attorney and acting pursuant to Part 6, §1, Rule 1 (UPR 1-101(A)(1)) of the Rules of the Supreme Court of Virginia, or (iv) a person who, without compensation, advises a complainant, respondent, or aggrieved person in connection with a complaint, a conciliation conference or proceeding before the board. When a complainant, respondent, or aggrieved person authorizes a person to represent him under subdivision (iv) of this definition, such authority shall be made to the board, in writing or orally in an appearance before the board, and shall be accepted by the representative by sending a written acknowledgement to the board or by the representative's appearance before the board.

"Board" means the Real Estate Board or the Fair Housing Board.

"Broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fair housing administrator" means the individual employed and designated as such by the Director of the Department of Professional and Occupational Regulation.

"Fair housing law" means the Virginia Fair Housing Law, Chapter 5.1 (§36-96.1 et seq.) of Title 36 of the Code of Virginia, effective July 1, 1991.

"Person in the business of selling or renting dwellings" means any person who (i) within the preceding 12 months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; (ii) within the preceding 12 months, has participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or (iii) is the owner of any dwelling designed or intended for occupancy by or occupied by, five or more families.

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"Receipt of notice" means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail, or three days after the date of the proof of mailing of first class mail.

Historical Notes

Derived from VR585-01-05 §1.1, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-20. Purpose.

This chapter governs the exercise of the administrative and enforcement powers granted to and the performance of duties imposed upon the Real Estate Board and the Fair Housing Board by the Virginia Fair Housing Law. In accordance with § 54.1-2344 of the Code of Virginia, the Real Estate Board is responsible for the administration and enforcement of the Fair Housing Law with respect to real estate licensees or their agents or employees who have allegedly violated or violated the Fair Housing Law. The Fair Housing Board is responsible for the administration and enforcement of the Fair Housing Law with respect to all others who have allegedly violated or violated the Fair Housing Law.

This chapter provides the board's interpretation of the coverage of the fair housing law regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions.

Historical Notes

Derived from VR585-01-05 §1.2, eff. December 1, 1991.

18VAC135-50-30. General construction.

This chapter shall be construed to further the policies and purposes of the Virginia Fair Housing Law. The board does not intend that a failure by the board to comply with this chapter should constitute a jurisdictional or other bar to administrative or legal action unless otherwise required under this chapter or the law. The board further intends that this chapter shall impose obligations, rights and remedies which are substantially equivalent to those provided by the federal fair housing law and regulations.

Historical Notes

Derived from VR585-01-05 §1.3, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-40. [Repealed]

Historical Notes

Derived from VR585-01-05 §1.4, eff. December 1, 1991; repealed, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

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18VAC135-50-50. Scope.

It is the policy of Virginia to provide, within constitutional limitations, for fair housing throughout the Commonwealth and to impose obligations, rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices because of race, color, religion, sex, handicap, elderliness, familial status, or national origin in the sale, rental, advertising of dwellings, inspection of dwellings or entry into a neighborhood, in the provision of brokerage services, financing or the availability of residential real estate-related transactions.

Historical Notes

Derived from VR585-01-05 §1.5, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-60. Notice.

Whenever any person is required by these regulations to give notice to any other person of any fact, matter, or event, then such notice shall be written, and delivery of such notice shall be sufficient if the person giving notice demonstrates that he has used any of the following methods: (i) certified mail, (ii) personal service which means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served; and (iii) first class mailing with proof of mailing.

This section shall in no way be construed to invalidate delivery of notice in any case in which it can be shown that the person intended to receive the notice actually received it.

Historical Notes

Derived from VR585-01-05 §1.6, eff. December 1, 1991.

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PART II.
Regulated Conduct
Article 1
Prohibited Practices

18VAC135-50-70. Real estate practices prohibited.

This chapter provides the board's interpretation of conduct that is unlawful housing discrimination under §36-96.3 of the Code of Virginia. The list of unlawful discriminatory housing practices contained in §36-96.3 of the Virginia Fair Housing Law is to be construed as broadly as possible. In general, the prohibited actions are set forth under sections of these regulations which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under other sections in these regulations.

Historical Notes

Derived from VR585-01-05 §2.1, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-80. Unlawful refusal to sell or rent or to negotiate for the sale or rental.

Prohibited actions under this section include, but are not limited to:

1. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
5. Evicting tenants because of their race, color, religion, sex, handicap, familial status, elderliness, or national origin or because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of a tenant's guest.

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Historical Notes

Derived from VR585-01-05 §2.2, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-90. Discrimination in terms, conditions and privileges and in services and facilities.

Examples of prohibited actions under this section include, but are not limited to:

1. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Limiting the use of privileges, services or facilities associated with a dwelling because of the race, color, religion, sex, handicap, familial status, elderliness or national origin of an owner, tenant or a person associated with him.
5. Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

Historical Notes

Derived from VR585-01-05 §2.3, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-100. Other prohibited sale and rental conduct.

A. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development.

Prohibited actions under subsection A of this section which are generally referred to as unlawful steering practices, include, but are not limited to:

1. Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin or

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2. because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons in a community, neighborhood or development.
3. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.
4. Communicating to any prospective purchaser that he would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
5. Assigning any person to a particular section of a community, neighborhood or development or to a particular floor or section of a building because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. It shall be unlawful because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons. Prohibited activities relating to dwellings sales and rental practices under this subsection include, but are not limited to:

1. Discharging or taking other adverse action against an employee, broker, or agent because he refused to participate in a discriminatory housing practice.
2. Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, elderliness, or national origin or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Refusing to provide municipal services or property or hazard insurance for dwelling or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

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Derived from VR585-01-05 §2.4, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-110. Discriminatory advertisements, statements and notices.

A. It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, elderliness, or national origin, or an intention to make any such preference, limitation, or discrimination.

B. The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any documents used with respect to the sale or rental of a dwelling.

C. Discriminatory notices, statements, and advertisements include, but are not limited to:

1. Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, elderliness or national origin.
2. Expressing to agents, brokers, employees, prospective sellers, or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, elderliness, or national origin of such person.
3. Selecting media or locations for advertising the sale or rental of dwelling which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

D. Publishers' notice. All publishers shall publish at the beginning of the real estate advertising section a notice such as that appearing in Table III, Appendix I to 24 CFR Part 109, Ch. 1 (4-1-00 edition). The notice shall include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

E. Fair housing poster requirements.

1. Persons subject to §36-96.3 of the Virginia Fair Housing Law shall post and maintain a HUD approved fair housing poster as follows:

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- a. With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or rental of other dwellings) offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.
 - b. With respect to all other dwellings covered by the Virginia Fair Housing Law: (i) a fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and (ii) a fair housing poster shall be posted and maintained at the dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings or at a conspicuous location instead of at each of the individual dwellings.
 - c. With respect to those dwellings to which subdivision 1 b of this subsection applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction and sale or rental.
2. The poster requirement does not apply to vacant land, or any single-family dwelling, unless such dwelling (i) is being offered for sale or rental in conjunction with the sale or rental of other dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 b (ii) of this subsection, or (ii) is being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 a of this subsection.
 3. All persons subject to §36-96.4 of the Virginia Fair Housing Law, Discrimination in Residential Real Estate-Related Transactions, shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.
 4. All persons subject to 18VAC135-50-140, Discrimination in the Provision of Brokerage Services, shall post and maintain a fair housing poster at all their places of business.
 5. Location of posters. All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services.
 6. Availability of posters. All persons subject to this part may obtain fair housing posters from the Virginia Department of Professional and Occupational Regulation. A facsimile may be used if the poster and the lettering are equivalent in size and legibility to the poster available from the Department of Professional and Occupational Regulation. Any person who claims to have been injured by a discriminatory housing practice may file a complaint with the administrator pursuant to Part III of this chapter.

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Derived from VR585-01-05 §2.5, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-120. Discriminatory representations on the availability of dwellings.

A. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin, to provide inaccurate or untrue information about the availability of dwelling for sale or rental.

B. Prohibited actions under this section include, but are not limited to:

1. Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin preclude the sale or rental of a dwelling to a person.
3. Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Limiting information by word or conduct regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
5. Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes

Derived from VR585-01-05 §2.6, eff. December 1, 1991.

18VAC135-50-130. Blockbusting.

A. It shall be unlawful to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, elderliness, or national origin or with a handicap.

B. Prohibited actions under this section include, but are not limited to:

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1. Engaging in conduct (including uninvited solicitations for listing) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.
2. Encouraging any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, elderliness or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

Historical Notes

Derived from VR585-01-05 §2.7, eff. December 1, 1991.

18VAC135-50-140. Discrimination in the provision of brokerage services.

Prohibited actions under this section include, but are not limited to:

1. Setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Imposing different standards or criteria for membership in a real estate sales, rental, or exchange organization because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes

Derived from VR585-01-05 §2.8, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-150. [Repealed]

Historical Notes

Derived from VR585-01-05 §2.9, eff. December 1, 1991; repealed, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

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18VAC135-50-160. Discrimination in the making of loans and in the provision of other financial assistance.

A. It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. Prohibited practices under this section include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, elderliness or national origin.

Historical Notes

Derived from VR585-01-05 §2.10, eff. December 1, 1991.

18VAC135-50-170. Discrimination in the purchasing of loans.

A. It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, elderliness or national origin.

B. Unlawful conduct under this section includes, but is not limited to:

1. Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons in such neighborhoods or communities.
2. Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

C. This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this

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provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes

Derived from VR585-01-05 §2.11, eff. December 1, 1991.

18VAC135-50-180. Discrimination in the terms and conditions for making available loans or other financial assistance.

A. It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. Unlawful conduct under this section includes, but is not limited to:

1. Using different policies, practices or procedures in evaluating or in determining credit worthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes

Derived from VR585-01-05 §2.12, eff. December 1, 1991.

18VAC135-50-190. Unlawful practices in the selling, brokering, or appraising of residential real property.

A. It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. For the purposes of this section the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all

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written comments and other documents submitted as support for the estimate or opinion of value.

C. Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes

Derived from VR585-01-05 §2.13, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-200. General prohibitions against discrimination because of handicap.

A. Definitions. As used in this section unless a different meaning is plainly required by the context: "Accessible," when used with respect to the public and common use areas of a building containing covered multi-family dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with "accessible." A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people is accessible within the meaning of this section.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, or with any other standards adopted as part of regulations promulgated by HUD, is an "accessible route."

"ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

"Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and

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passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 or a comparable standard complies with the requirements of this paragraph.

"Common use areas" shall include, but not be limited to, rooms, spaces, or elements inside or outside of a building which are not part of the dwelling unit and which are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas and passageways among and between buildings.

"Controlled substance" means any drug or other substance as defined in Virginia or federal law.

"Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

The following terms, as used in the definition of "handicap" contained in §36-96.1:1 of the Code of Virginia, shall mean:

"Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Is regarded as having an impairment" means:

1. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

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3. Has none of the impairments defined in "physical or mental impairment" but is treated by another person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Physical or mental impairment" includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

"Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

B. General prohibitions against discrimination because of handicap. It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this subdivision does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

1. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

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2. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;
3. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;
4. Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;
5. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

C. Reasonable modifications of existing premises.

1. It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.
2. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

D. Reasonable accommodations. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

E. Design and construction requirements. Covered multi-family dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

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Historical Notes

Derived from VR585-01-05 §2.14, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-210. Housing for older persons.

Nothing in the Virginia Fair Housing Law regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this section, "housing for older persons" includes:

1. Housing provided under any state or federal program determined by the Secretary of Housing and Urban Development to be specifically designed and operated to assist elderly persons;
2. 62 or over housing. The provisions regarding familial status in these regulations shall not apply to housing intended for, and solely occupied by persons 62 years of age or older. Housing satisfies the requirements of this exemption even though:
 - a. There are persons residing in such housing on September 13, 1988, who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;
 - b. There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or older;
 - c. There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.
3. 55-or-over housing. The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing satisfies the following requirements:
 - a. At least 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this section until 25% of the units in the facility are occupied.
 - (1) For purposes of this section, "occupied unit" means:
 - (a) A dwelling unit that is actually occupied by one or more persons on the date that the exemption for 55-or-older housing is claimed; or
 - (b) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

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- (2) For purposes of this section, occupied by at least one person 55 years of age or older means that on the date the exemption for 55-or-older housing is claimed:
 - (a) At least one occupant of the dwelling is 55 years of age or older; or
 - (b) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date of which the unit was vacated was 55 years of age or older.
- (3) Newly constructed housing for first occupancy after March 12, 1989, need not comply with the requirements of this section until at least 25% of the units are occupied. For purposes of this section, newly constructed housing includes facilities or communities that have been wholly unoccupied for at least 90 days prior to reoccupancy due to renovation or rehabilitation.
- b. Housing satisfies the requirements of the 55 or older exemption even though:
 - (1) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age provided the employees perform substantial duties directly related to the management or maintenance of the housing facility or community.
 - (2) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents and who are under the age of 55.
 - (3) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80% of the units are occupied by at least one person who is 55 years of age or older.
- c. Where application of the 80% rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.
- d. Each housing facility or community may determine the age restriction for units that are not occupied by at least one person 55 years of age or older so long as the housing facility or community complies with the provisions of 18VAC135-50-220.

Historical Notes

Derived from VR585-01-05 §2.15, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-212. Intent to operate as 55 or over housing.

A. In order for a housing facility or community to qualify as 55-or-older housing, it must publish and adhere to policies and procedures that demonstrate its intent to operate as

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housing for persons 55 years of age or older. The following factors are considered relevant in determining whether the housing facility or community has complied with this requirement:

1. The manner in which the housing facility or community is described to prospective residents;
2. Any advertising designed to attract prospective residents;
3. Lease provisions;
4. Written rules, regulations, covenants, deeds or other restrictions;
5. The maintenance and consistent application of relevant procedures;
6. Actual practices of the housing facility or community; and
7. Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

B. Phrases such as "adult living," "adult community," "40-and-over community," or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

C. If there is language in deeds or other community or facility documents that is inconsistent with the intent to provide housing for persons who are 55 years of age or older, the board shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section.

D. A housing facility or community may allow occupancy by families with children as long as it meets the requirements of 18VAC135-50-210 3 a and subsection A of this section.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-215. Verification of occupancy.

A. In order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a housing complaint filed under the Virginia Fair Housing Law, verification of compliance with these regulations through reliable surveys and affidavits.

B. A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

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C. The procedures described in subsection B of this section must provide for regular updates through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years.

D. The following documents are considered reliable documentation of the age of the occupants of the housing facility or community.

1. Driver's license;
2. Birth certificate;
3. Passports;
4. Immigration cards;
5. Military identification;
6. Any other state, local, national or international official documents containing a birth date of comparable reliability; or
7. A certification in a lease, application, affidavit, or other document signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older.

E. If the occupants of a unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit occupied by at least one person 55 years of age or older. Such evidence may include:

1. Government records or documents, such as a census; or
2. Prior forms or applications; or
3. A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under penalty of perjury.

F. Surveys and verification procedures that comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

G. Occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

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18VAC135-50-217. Good faith defense against civil money damages.

A. A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified as 55-or-older housing.

B. A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies as 55-or-older housing.

C. For purposes of this section, an authorized representative, of a housing facility or community means the individual, committee, management company, owner, or other entity having responsibility for adherence to the requirements established by these regulations.

D. A person shall not be entitled to the good faith belief defense if the person has actual knowledge that the housing facility or community does not, or will not qualify as 55-or-older housing. Such a person will be ineligible for the good faith belief defense regardless of whether the person received or viewed the written assurance described in subsection B of this section.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-220. Interference, coercion or intimidation.

A. This section provides the board's interpretation of the conduct that is unlawful under §36-96.5 of the Virginia Fair Housing Law.

B. It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Virginia Fair Housing Law and these regulations.

C. Conduct made unlawful under this section includes, but is not limited to, the following:

1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of such persons, or of visitors or associates of such persons.
3. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to

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1. the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of that person or of any person associated with that person.
4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.
5. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the fair housing law.

Historical Notes

Derived from VR585-01-05 §2.16, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

Article 2
Advertising

18VAC135-50-230 to 18VAC135-50-250. [Repealed]

Historical Notes

Derived from VR585-01-05 §§2.17 to 2.19, eff. December 1, 1991; repealed, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-260. Affirmative advertising efforts.

Nothing in this section shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

Historical Notes

Derived from VR585-01-05 §2.20, eff. December 1, 1991.

18VAC135-50-270. Use of words, phrases, symbols and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the fair housing law, the board will consider the use of these and comparable words, phrases, symbols, and forms to determine a possible violation of the law and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the law is likely to result.

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1. Words descriptive of dwelling, landlord and tenants. White private home, Colored home, Jewish home, Hispanic residence, adult building.
2. Words indicative of race, color, religion, sex, handicap, familial status, elderliness or national origin.
 - a. Race: Negro, Black, Caucasian, Oriental, American Indian.
 - b. Color: White, Black, Colored.
 - c. Religion: Protestant, Christian, Catholic, Jewish.
 - d. National origin: Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.
 - e. Sex: The exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or intending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this section restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.
 - f. Handicap: crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this section restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.
 - g. Familial status: adults, children, singles, mature persons. Nothing in this section restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in 18VAC135-50-210.
 - h. Elderliness: elderly, senior citizens, young, old, active, available to those between 25 and 55.
3. Catch words. Words and phrases used in a discriminatory context should be avoided, e.g., "restricted," "exclusive," "private," "integrated," "traditional," "board approval," "membership approval."
4. Symbols or logotypes. Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, elderliness or national origin.
5. Colloquialisms. Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, elderliness or national origin.
6. Directions to real estate for sale or rent (use of maps or written instructions). Directions can imply a discriminatory preference, limitation, or exclusion. For example, references

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- a. to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference.
7. Area (location) description. Names of facilities which cater to a particular racial, national origin or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

Historical Notes

Derived from VR585-01-05 §2.21, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-280. Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the fair housing law. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

1. Selective geographic advertisements. Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.
2. Selective use of equal opportunity slogan or logo. When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.
3. Selective use of human models when conducting an advertising campaign. Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs, or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

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Historical Notes

Derived from VR585-01-05 §2.22, eff. December 1, 1991.

18VAC135-50-290. Fair housing policy and practices.

In the investigation of complaints, the board will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the fair housing law.

1. Use of equal housing opportunity logotype, statement, or slogan. All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, elderliness, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. See Appendix I to 24 CFR Part 109, Ch. 1 (4/1/00 edition) for suggested use of the logotype, statement, or slogan and size of logotype and copies of the suggested equal housing opportunity logotype, statement and slogan.
2. Use of human models. Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, elderliness, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, elderliness, or national origin, and is not for the exclusive use of one such group. Human models include any depiction of a human being, paid or unpaid, resident or nonresident.

Historical Notes

Derived from VR585-01-05 §2.23, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

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PART III
Investigation and Conciliation of Complaints
Article 1
Complaints

18VAC135-50-300. Submission of information to file a complaint.

A. The administrator or his designee will receive complaint information concerning alleged discriminatory housing practices from any person. Where the information constitutes a complaint within the meaning of the fair housing law and these regulations and is furnished by an aggrieved person, a complaint will be considered filed in accordance with 18VAC135-50-350. Where additional information is required for the purpose of perfecting a complaint under the law, the administrator or his designee will advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.

B. Complaint information may also be made available to any appropriate federal, state or local agency having an interest in the matter. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant where desired by the informant or complainant.

C. The administrator or his designee may counsel with an aggrieved party about the facts and circumstances which constitute the alleged discriminatory housing practices. If the facts and circumstances do not constitute discriminatory housing practices, the administrator or his designee shall so advise the aggrieved party. If the facts and circumstances constitute alleged discriminatory housing practices, the administrator or his designee shall assist the aggrieved party in perfecting a complaint.

Historical Notes

Derived from VR585-01-05 §3.1, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-310. Who may file a complaint.

Any aggrieved person or the administrator on behalf of the board may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

Historical Notes

Derived from VR585-01-05 §3.2, eff. December 1, 1991.

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18VAC135-50-320. Persons against whom complaints may be filed.

A. A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

B. A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, or financing of dwellings, or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope of his authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

Historical Notes

Derived from VR585-01-05 §3.3, eff. December 1, 1991.

18VAC135-50-330. Filing a complaint.

Aggrieved persons may provide information to be contained in a complaint by telephone to fair housing office staff. Staff in the fair housing office will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and affirmed in accordance with 18VAC135-50-340 A.

Historical Notes

Derived from VR585-01-05 §3.4, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-340. Form and content of a complaint.

A. Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint or if the complaint is filed by the administrator on behalf of the board, it must be signed and affirmed by the administrator. The signature and affirmation may be made at any time during the investigation. The affirmation shall state "I declare under penalty of perjury that the foregoing is true and correct."

B. The administrator may require complaints to be made on prescribed forms. The complaint forms will be available through the Department of Professional and Occupational Regulation. Notwithstanding any requirement for use of a prescribed form, the Department of Professional and Occupational Regulation will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the fair housing law (including any such statement filed with a substantially equivalent local agency) as a fair housing law complaint. Personnel in the fair housing office will provide appropriate assistance in filling out forms and filing a complaint.

C. Each complaint must contain substantially the following information:

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1. The name and address of the aggrieved person.
2. The name and address of the respondent.
3. A description and address of the dwelling which is involved, if appropriate.
4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

Historical Notes

Derived from VR585-01-05 §3.5, eff. December 1, 1991.

18VAC135-50-350. Date of filing of a complaint.

A. Except as provided in subsection B of this section, a complaint is filed when it is received by the board or dual filed with the federal government in a form that reasonably meets the standards of 18VAC135-50-340.

B. The administrator may determine that a complaint is filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone and reduced to writing by an employee of the board) identifying the parties and describing generally the alleged discriminatory housing practice.

C. Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely if filed within one year of the last alleged occurrence of that practice.

Historical Notes

Derived from VR585-01-05 §3.6, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-360. Amendment of complaint.

Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to: (i) amendments to cure technical defects or omissions, including failure to sign or affirm a complaint, (ii) to clarify or amplify the allegations in a complaint, or (iii) to join additional or substitute respondents. Except for the purposes of notifying respondents, under 18VAC135-50-380, amended complaints will be considered as having been made as of the original filing date.

Historical Notes

Derived from VR585-01-05 §3.7, eff. December 1, 1991.

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18VAC135-50-370. Service of notice on aggrieved person.

Upon the filing of a complaint, the administrator or his designee will notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice will:

1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing.
2. Include a copy of the complaint.
3. Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under the Virginia Fair Housing Law and these regulations.
4. Advise the aggrieved person of his right to commence a civil action under the fair housing law, in state circuit court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which an action arising from a breach of a conciliation agreement under the law is pending.
5. Advise the aggrieved person that retaliation against any person because he made a complaint or testified, assisted, or participated in an investigation or conciliation under these regulations is a discriminatory housing practice that is prohibited under the law and these regulations.

Historical Notes

Derived from VR585-01-05 §3.8, eff. December 1, 1991.

18VAC135-50-380. Respondent to be notified of complaint.

A. Within 10 days of the filing of a complaint under 18VAC135-50-350 or the filing of an amended complaint under 18VAC135-50-360, the administrator or his designee will serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under Part V of these regulations as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this section within 10 days of the identification.

B.

1. The notice will identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint and copies of any supporting documentation referenced in the complaint which are received with the complaint.
2. The notice will state the date that the complaint was accepted for filing.

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3. The notice will advise the respondent of the time limits applicable to complaint processing under these regulations and of the procedural rights and obligations of the respondent under the law and these regulations, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice. The administrator, upon request, has the discretion to extend this time period for a reasonable time.
4. The notice will advise the respondent of the aggrieved person's right to commence a civil action under the law, in a state circuit court, no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge, or, not later than two years after the occurrence or termination of the alleged discriminatory housing practice, whichever is longer.
5. If the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice will explain the basis for the administrator's belief that the joined person is properly joined as a respondent.
6. The notice will advise the respondent that retaliation against any person because he made a complaint or testified, assisted, or participated in an investigation or conciliation under this part is a discriminatory housing practice that is prohibited under the law and these regulations.
7. The notice may invite the respondent to enter into a conciliation agreement for the purpose of resolving the complaint.
8. The notice may include an initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.

Historical Notes

Derived from VR585-01-05 §3.9, eff. December 1, 1991.

Article 2
Responses

18VAC135-50-390. Respondent may file response.

The respondent may file an answer after receipt of the notice described in 18VAC135-50-380. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be in writing under oath or affirmation by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct."

Historical Notes

Derived from VR585-01-05 §3.10, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

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Article 3
Investigations

18VAC135-50-400. Investigations.

A. Upon the filing of a complaint, the administrator shall investigate the allegations. The purposes of an investigation are:

1. To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.
2. To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.
3. To develop factual data necessary for the administrator on behalf of the board to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

B. Based on the authority delegated to the fair housing administrator by the Board, the administrator may investigate housing practices to determine whether a complaint should be filed. Such an initiation may include using testers and other established practices or procedures.

Historical Notes

Derived from VR585-01-05 §3.11, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-410. Systemic processing.

Where the administrator determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will affect a large number of persons, the administrator may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the law.

Historical Notes

Derived from VR585-01-05 §3.12, eff. December 1, 1991.

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18VAC135-50-420. Conduct of investigation.

A. In conducting investigations under these regulations, the voluntary cooperation of all persons will be sought to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

B. The administrator and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in a court of law. The administrator or his designee, on behalf of the board, shall also have the power to issue subpoenas described under the law, in support of the investigation.

Historical Notes

Derived from VR585-01-05 §3.13, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-430. Cooperation with federal agencies.

The administrator, in processing complaints under the Virginia Fair Housing Law, may seek the cooperation and utilize the services of federal, state and local agencies, including any agency having regulatory or supervisory authority over financial institutions.

Historical Notes

Derived from VR585-01-05 §3.14, eff. December 1, 1991.

18VAC135-50-440. Completion of investigation.

The investigation will remain open until a determination regarding reasonable cause is made or a conciliation agreement is executed and approved.

Historical Notes

Derived from VR585-01-05 §3.15, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-450. Final investigative report.

At the end of each investigation under this article, the administrator or his designee will prepare a final investigative report. The investigative report will contain the names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses who request anonymity. The board, however, may be required to disclose the names of such witnesses in the course of a civil action under the fair housing law.

Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in 18VAC135-50-510, the administrator will make information derived from an

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investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of an investigation, the administrator shall notify the aggrieved person and the respondent that the final investigative report is complete and will be provided upon request.

Historical Notes

Derived from VR585-01-05 §3.16, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

Article 4
Conciliation

18VAC135-50-460. Conciliation process.

In conciliating a complaint, the administrator will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

Historical Notes

Derived from VR585-01-05 §3.17, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-470. Conciliation agreement.

A. The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in 18VAC135-50-480 and the Virginia Fair Housing Law. The provisions that may be sought for the vindication of the public interest are described in 18VAC135-50-490.

B. The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the board.

Historical Notes

Derived from VR585-01-05 §3.18, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-480. Relief sought for aggrieved persons during conciliation.

- A. The following types of relief may be sought for aggrieved persons in conciliation:
1. Monetary relief in the form of compensatory and punitive damages and attorney fees;

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2. Other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or
3. Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

B. The conciliation agreement may provide for binding arbitration or other methods of resolving a dispute arising from the complaint. Arbitration may award appropriate relief as described in subsection A of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration or other methods of dispute resolution.

Historical Notes

Derived from VR585-01-05 §3.19, eff. December 1, 1991.

18VAC135-50-490. Conciliation provisions relating to public interest.

The following are types of provisions that may be sought for the vindication of the public interest:

1. Elimination of discriminatory housing practices.
2. Prevention of future discriminatory housing practices.
3. Remedial affirmative activities to overcome discriminatory housing practices.
4. Reporting requirements.
5. Monitoring and enforcement activities.

Historical Notes

Derived from VR585-01-05 §3.20, eff. December 1, 1991.

18VAC135-50-500. Termination of conciliation process.

A. The administrator may terminate his efforts to conciliate the complaint if the respondent fails or refuses to confer with the administrator or his designee; the aggrieved person or the respondent fails to make a good faith effort to resolve any dispute; or the administrator finds, for any reason, that voluntary agreement is not likely to result.

B. Where the aggrieved person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, the administrator will terminate conciliation unless the court specifically requests assistance from the board.

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Historical Notes

Derived from VR585-01-05 §3.21, eff. December 1, 1991.

18VAC135-50-510. Disclosure of information obtained during conciliation.

A. Except as provided in subsection B of this section and 18VAC135-50-450 C, nothing that is said or done in the course of conciliation under this article may be made public or used as evidence in subsequent civil actions under the Virginia Fair Housing Law or this chapter without the written consent of the persons concerned.

B. Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the board determines that disclosure is not required to further the purposes of the fair housing law. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the board may publish tabulated descriptions of the results of all conciliation efforts.

Historical Notes

Derived from VR585-01-05 §3.22, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-520. Review of compliance with conciliation agreement.

The administrator may, from time to time, review compliance with the terms of any conciliation agreement. Whenever there is reasonable cause to believe that a respondent has breached a conciliation agreement, the board shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under the Virginia Fair Housing Law for the enforcement of the terms of the conciliation agreement.

Historical Notes

Derived from VR585-01-05 §3.23, eff. December 1, 1991.

Article 5
Issuance of a Charge

18VAC135-50-530. Reasonable cause determination.

A. The reasonable cause determination will be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the board shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in the appropriate state court.

B. In all cases not involving the legality of local zoning or land use laws or ordinances:

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1. If the board determines that reasonable cause exists, the board will issue a charge under §36-96.14 of the fair housing law and these regulations on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.
2. If a no reasonable cause determination is made, the board shall: Issue a short and plain written statement of the facts upon which the no reasonable cause determination was based; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) in writing within 30 days of such determination by certified mail or personal service; and make public disclosure of the dismissal.

Historical Notes

Derived from VR585-01-05 §3.24, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-540. Local zoning and land use.

If the board determines that the matter involves the legality of local zoning or land use laws or ordinances, in lieu of making a determination regarding reasonable cause, the investigative materials shall be referred to the Attorney General for appropriate action under the fair housing law, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.

Historical Notes

Derived from VR585-01-05 §3.25, eff. December 1, 1991.

18VAC135-50-550. Pending private civil action.

The board may not issue a charge regarding an alleged discriminatory housing practice if an aggrieved person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the board will so notify the aggrieved person and the respondent by certified mail or personal service.

Historical Notes

Derived from VR585-01-05 §3.26, eff. December 1, 1991.

18VAC135-50-560 to 18VAC135-50-590. [Repealed]

Historical Notes

Derived from VR585-01-05 §3.27 to 3.30, eff. December 1, 1991; repealed, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

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NOTICE

Included in this booklet are relevant excerpts from the *Code of Virginia*. Please note that the Virginia General Assembly is responsible for creating and amending the *Code*, not the Real Estate and Fair Housing Boards. The version contained herein contains all changes, if any, that have been made by the General Assembly through the 2007 session. Any changes made during the 2007 session became effective July 1, 2007, unless otherwise noted. It is your responsibility to stay informed of revisions to the regulation and statutes. Please consult the General Assembly or your local library for annual changes.

§ 36-96.1. Declaration of policy.

A. This chapter shall be known and referred to as the Virginia Fair Housing Law.

B. It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

(1972, c. 591, §§ 36-86, 36-87; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557.)

§ 36-96.1:1. Definitions.

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Complainant" means a person, including the Fair Housing Board, who files a complaint under § 36-96.9.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Discriminatory housing practices" means an act that is unlawful under §§ 36-96.3, 36-96.4, 36-96.5, or § 36-96.6.

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"Dwelling" means any building, structure, or portion thereof, that is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

"Elderliness" means an individual who has attained his fifty-fifth birthday.

"Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes 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. For purposes of this section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

"Family" includes a single individual, whether male or female.

"Handicap" means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of, or addiction to a controlled substance as defined in Virginia or federal law. Neither the term "individual with handicap" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite.

"Lending institution" includes any bank, savings institution, credit union, insurance company or mortgage lender.

"Person" means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations, governmental entities, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

"Respondent" means any person or other entity alleged to have violated the provisions of this chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined pursuant to the provisions of § 36-96.9.

"Restrictive covenant" means any specification in any instrument affecting title to real property that purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color, religion, national origin, sex, elderliness, familial status, or handicap.

"To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to occupy premises not owned by the occupant.

(1972, c. 591, § 36-87; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557; 1992, c. 322; 1996, c. 77; 2003, c. 575.)

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§ 36-96.2. Exemptions.

A. Except as provided in subdivision A 3 of § 36-96.3 and subsections A, B, and C of § 36-96.6, this chapter shall not apply to any single-family house sold or rented by an owner, provided that such private individual does not own more than three single-family houses at any one time. In the case of the sale of any single-family house by a private individual-owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall apply only with respect to one such sale within any 24-month period; provided that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be exempt from the application of this chapter only if the house is sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this chapter. However, nothing herein shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any licensee of the Real Estate Board or regulant of the Fair Housing Board, regardless of whether the licensee is acting in his personal or professional capacity.

B. Except for subdivision A 3 of § 36-96.3, this chapter shall not apply to 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.

C. Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, elderliness, familial status, or handicap. Nor shall anything in this chapter apply to a private membership club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. Nor, where matters of personal privacy are involved, shall anything in this chapter be construed to prohibit any private, state-owned or state-supported educational institution, hospital, nursing home, religious or correctional institution, from requiring that persons of both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

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D. Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law.

E. It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

F. A rental application may require disclosure by the applicant of any criminal convictions and the owner or managing agent may require as a condition of acceptance of the rental application that applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the rental application. The owner or managing agent may collect from the applicant moneys to reimburse the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.

G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing agents of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so long as the standards do not violate local, state or federal restrictions. Nothing in this chapter prohibits the rental application or similar document from requiring information concerning the number, ages, sex and familial relationship of the applicants and the dwelling's intended occupants.

(1972, c. 591, §§ 36-87, 36-92; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557; 1992, c. 322; 2003, c. 575; 2006, c. 693.)

§ 36-96.3. Unlawful discriminatory housing practices.

A. It shall be an unlawful discriminatory housing practice for any person:

1. 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, national origin, sex, elderliness, or familial status;
2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, or familial status;
3. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation or discrimination based on race, color, religion, national origin, sex,

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1. elderliness, familial status, or handicap. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by a general disclaimer. However, reference alone to places of worship including, but not limited to, churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference;
4. To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, or handicap that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;
5. To deny any person access to membership in or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, or handicap;
6. To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, or handicap or for any person to honor or exercise, or attempt to honor or exercise any such discriminatory covenant pertaining to housing;
7. To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, or handicap;
8. To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a handicap of (i) the buyer or renter, (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available, or (iii) any person associated with the buyer or renter;
9. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of a handicap of (i) that person, (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented or made available, or (iii) any person associated with that buyer or renter.

B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the

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design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

1. The public use and common use areas of the dwellings are readily accessible to and usable by handicapped persons;
2. All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
3. All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this subdivision the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

C. Compliance with the appropriate requirements of the American National Standards for Building and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people shall be deemed to satisfy the requirements of subdivision B 3.

D. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation which requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this chapter.

(1972, c. 591, § 36-88; 1973, c. 358; 1978, c. 138; 1984, c. 685; 1985, c. 344; 1989, c. 88; 1991, c. 557; 1992, c. 322; 1996, c. 327.)

§ 36-96.4. Discrimination in residential real estate-related transactions; unlawful practices by lenders, insurers, appraisers, etc.; deposit of state funds in such institutions.

A. It shall be unlawful for any person or other entity, including any lending institution, whose business includes engaging in residential real estate-related transactions, to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, or in the manner of providing such a transaction, because of race, color, religion, national origin, sex, elderliness, familial status, or handicap. It shall not be unlawful, however, for any person or other entity whose business includes engaging in residential real estate transactions to require any applicant to qualify financially for the loan or loans for which such person is making application.

B. As used in this section, the term "residential real estate-related transaction" means any of the following:

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1. The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling or (ii) secured by residential real estate; or
2. The selling, brokering, insuring or appraising of residential real property. However, nothing in this chapter shall prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status, or handicap.

C. It shall be unlawful for any state, county, city, or municipal treasurer or governmental official whose responsibility it is to account for, to invest, or manage public funds to deposit or cause to be deposited any public funds in any lending institution provided for herein which is found to be committing discriminatory practices, where such findings were upheld by any court of competent jurisdiction. Upon such a court's judicial enforcement of any order to restrain a practice of such lending institution or for said institution to cease or desist in a discriminatory practice, the appropriate fiscal officer or treasurer of the Commonwealth or any political subdivision thereof which has funds deposited in any lending institution which is practicing discrimination, as set forth herein, shall take immediate steps to have the said funds withdrawn and redeposited in another lending institution. If for reasons of sound economic management, this action will result in a financial loss to the Commonwealth or any of its political subdivisions, the action may be deferred for a period not longer than one year. If the lending institution in question has corrected its discriminatory practices, any prohibition set forth in this section shall not apply.

(1972, c. 591, § 36-90; 1973, c. 358; 1989, c. 88; 1991, c. 557.)

§ 36-96.5. Interference with enjoyment of rights of others under this chapter.

It shall be an unlawful discriminatory housing practice for any person to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on the account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter.

(1972, c. 591, § 36-93; 1973, c. 358; 1991, c. 557.)

§ 36-96.6. Certain restrictive covenants void; instruments containing such covenants.

A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, or handicap, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of this Commonwealth.

B. Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or reversionary interest has been removed from the document. Refusal to accept

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delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.

C. No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection A. Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or \$500, plus reasonable attorneys' fees and costs incurred.

D. A family care home, foster home, or group home in which physically handicapped, mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single family or to residential use or structure.

(1972, c. 591, § 36-91; 1973, c. 358; 1986, c. 574; 1989, c. 88; 1991, c. 557; 1998, c. 873.)

§ 36-96.7. Familial status protection not applicable to housing for older persons.

A. Nothing in this chapter regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this section, "housing for older persons" means housing: (i) provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or (ii) intended for, and solely occupied by, persons sixty-two years of age or older; or (iii) intended for, and solely occupied by, at least one person fifty-five years of age or older per unit. The following criteria shall be met in determining whether housing qualifies as housing for older persons under clause (iii) of this subsection:

1. At least eighty percent of the occupied units are occupied by at least one person fifty-five years of age or older per unit; and
2. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

B. Housing shall not fail to meet the requirements for housing for older persons by reason of:

1. Persons residing in such housing as of September 13, 1988, who do not meet the age requirements of clauses (ii) and (iii) of subsection A, provided that new occupants of such housing meet the age requirements of those clauses; or
2. Unoccupied units, provided that such units are reserved for occupancy by persons who meet the provisions of clauses (ii) and (iii) of subsection A.

(1991, c. 557; 1992, c. 322; 2000, c. 30.)

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§ 36-96.8. Powers of Real Estate Board and Fair Housing Board.

A. The Real Estate Board and the Fair Housing Board, as provided in this chapter, have the power for the purposes of this chapter to initiate and receive complaints, conduct investigations of any violation of this chapter, attempt resolution of complaints by conference and conciliation, and, upon failure of such efforts, issue a charge and refer it to the Attorney General for action.

B. The Real Estate Board and the Fair Housing Board shall perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend necessary regulations.

(1972, c. 591, § 36-94; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 2003, c. 575.)

§ 36-96.9. Procedures for receipt or initiation of complaint; notice to parties; filing of answer.

A. A complaint under § 36-96.8 shall be filed with the Board in writing within one year after the alleged discriminatory housing practice occurred or terminated.

B. Any person not named in the complaint and who is identified as a respondent in the course of the investigation may be joined as an additional or substitute respondent upon written notice to such person by the Board explaining the basis for the Board's belief that such person is properly joined as a respondent.

C. Any respondent may file an answer to a complaint. Complaints and answers must be made in writing, under oath or affirmation, and in such form as the Board requires. Complaints and answers may be reasonably and fairly amended at any time.

D. Upon the filing of a complaint or initiation of a complaint by the Board or its designee, the Board shall provide written notice to the parties as follows:

1. To the aggrieved person acknowledging the filing and advising such person of the time limits and choice of forums under this chapter; and
2. To the respondent, not later than ten days after such filing or the identification of an additional respondent under subsection B, identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this chapter with a copy of the original complaint and copies of any supporting documentation referenced in the complaint.

(1991, c. 557.)

§ 36-96.10. Procedures for investigation.

A. The Board shall commence proceedings with respect to a complaint within thirty days after receipt of the complaint, and shall complete the investigation within 100 days thereof unless

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it is impracticable to do so. If the Board is unable to complete the investigation within 100 days after the receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons for not doing so.

B. When conducting an investigation of a complaint filed under this chapter, the Board shall have the right to interview any person who may have any information which may further its investigation and to request production of any records or documents for inspection and copying in the possession of any person which may further the investigation. Such persons shall be interviewed under oath. The Board or its designated subordinates shall have the power to issue and serve a subpoena to any such person to appear and testify and to produce any such records or documents for inspection and copying. Said subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served as part of a civil action in the Commonwealth of Virginia. In case of refusal or neglect to obey a subpoena, the Board may petition for its enforcement in the Circuit Court for the City of Richmond. The hearing on such petition shall be given priority on the court docket over all cases which are not otherwise given priority on the court docket by law.

C. At the end of each investigation under this section, the Board shall prepare a final investigative report containing:

1. The names and dates of contacts with witnesses;
2. A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
3. A summary description of other pertinent records;
4. A summary of witness statements; and
5. Answers to interrogatories.

A final report under this subsection may be amended if additional evidence is later discovered.

D. The Board shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Board's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(1975, c. 566, § 36-94.1; 1991, c. 557; 1998, c. 634.)

§ 36-96.11. Reasonable cause determination and effect.

The Board shall, within 100 days after the filing of a complaint, determine, based on the facts and after consultation with the Office of the Attorney General, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is

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impracticable to do so or unless the Board has approved a conciliation agreement with respect to the complaint. If the Board is unable to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur within 100 days after receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons therefor.

(1991, c. 557; 1998, c. 634.)

§ 36-96.12. No reasonable cause determination and effect.

If the Board determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Board shall promptly dismiss the complaint notifying the parties within thirty days of such determination. The Board shall make public disclosure of each dismissal.

(1991, c. 557.)

§ 36-96.13. Conciliation.

During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Board, the Board shall, to the extent feasible, engage in conciliation with respect to such complaint.

A. A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Board.

B. A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

C. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Board determines that disclosure is not required to further the purposes of this chapter.

D. Whenever the Board has reasonable cause to believe that a respondent has breached a conciliation agreement, the Board may refer the matter to the Attorney General with a recommendation that a civil action be filed under § 36-96.17 for the enforcement of such agreement.

(1991, c. 557; 1992, c. 322.)

§ 36-96.14. Issuance of a charge.

Upon failure to resolve a complaint by conciliation and after consultation with the Office of the Attorney General, the Board shall issue a charge on behalf of the aggrieved person or persons and shall immediately refer the charge to the Attorney General, who shall proceed with the charge as directed by

§ 36-96.16. The Board may not issue a charge under this section regarding

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an alleged discriminatory housing practice after the beginning of a trial of a civil action commenced by the aggrieved party under an Act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

1. Such charge:
 - a. Shall consist of a short and plain statement of the facts upon which the Board has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
 - b. Shall be based on the final investigative report; and
 - c. Need not be limited to the acts or grounds alleged in the complaint filed under § 36-96.9.
2. After the Board issues a charge under this section, the Board shall cause a copy thereof to be served on each respondent named in such charge and on each aggrieved person on whose behalf the complaint was filed.

(1991, c. 557.)

§ 36-96.15. Prompt judicial action.

If the Board concludes at any time following the filing of a complaint and after consultation with the Office of the Attorney General, that prompt judicial action is necessary to carry out the purposes of this chapter, the Board may authorize a civil action by the Attorney General for appropriate temporary or preliminary relief. Upon receipt of such authorization, the Attorney General shall promptly commence and maintain such action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Virginia Rules of Civil Procedure. The commencement of a civil action under this section shall not affect the initiation or continuation of administrative proceedings by the Board under § 36-96.8.

(1991, c. 557.)

§ 36-96.16. Civil action by Attorney General upon referral of charge by the Real Estate Board.

A. Not later than thirty days after a charge is referred by the Board to the Attorney General under § 36-96.14, the Attorney General shall commence and maintain a civil action seeking relief on behalf of the complainant in the circuit court for the city, county, or town in which the unlawful discriminatory housing practice has occurred or is about to occur.

B. Any aggrieved person with respect to the issues to be determined in a civil action pursuant to subsection A may intervene as of right.

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C. In a civil action under this section, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may grant, as relief, any relief which a court could grant with respect to such discriminatory housing practice in a civil action under § 36-96.18. Any relief so granted that would accrue to an aggrieved person under § 36-96.18 shall also accrue to the aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court in the course of the action brought under this section.

D. In any court proceeding arising under this section, the court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs.

(1991, c. 557; 1994, c. 814.)

§ 36-96.17. Civil action by Attorney General; matters involving the legality of any local zoning or other land use ordinance; pattern or practice cases; or referral of conciliation agreement for enforcement.

A. If the Board determines, after consultation with the Office of the Attorney General, that an alleged discriminatory housing practice involves the legality of any local zoning or land use ordinance, instead of issuing a charge, the Board shall immediately refer the matter to the Attorney General for civil action in the appropriate circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

B. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this chapter, or that any group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in the appropriate circuit court for appropriate relief.

C. In the event of a breach of a conciliation agreement by a respondent, the Board may authorize a civil action by the Attorney General. The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of ninety days after the referral of such alleged breach.

D. The Attorney General, on behalf of the Board, or other party at whose request a subpoena is issued, under this chapter, may enforce such subpoena in appropriate proceedings in the appropriate circuit court.

E. In a civil action under subsections A, B, and C, the court may:

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1. Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as is necessary to assure the full enjoyment of the rights granted by this chapter.
2. Assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000 for a first violation; and (ii) in an amount not exceeding \$100,000 for any subsequent violation.
3. Award the prevailing party reasonable attorney's fees and costs. The Commonwealth shall be liable for such fees and costs to the extent provided by the Code of Virginia.
1. The court or jury may award such other relief to the aggrieved person, as the court deems appropriate, including compensatory damages, and punitive damages without limitation otherwise imposed by state law.

F. Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection A, B or C which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a party to a conciliation agreement. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under § 36-96.18.

(1991, c. 557; 1994, c. 814.)

§ 36-96.18. Civil action; enforcement by private parties.

A. An aggrieved person may commence a civil action in an appropriate United States district court or state court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

B. An aggrieved person may commence a civil action under § 36-96.18 A no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge, or not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, whichever is later. This subsection shall not apply to actions arising from a breach of a conciliation agreement. An aggrieved person may commence a civil action under this section whether or not a complaint has been filed under § 36-96.9 and without regard to the status of any such complaint. If the Board or a federal agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

C. In a civil action under subsection A, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may award to the plaintiff, as the prevailing party, compensatory and punitive damages, without limitation otherwise imposed

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by state law, and the court may award reasonable attorney's fees and costs, and subject to subsection D, may grant as relief, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or order such affirmative action as may be appropriate.

D. Relief granted under subsection C shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving bona fide purchasers, encumbrancer or tenant, without actual notice of the filing of a complaint with the Board or civil action under this chapter.

E. Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon intervention, the Attorney General may obtain such relief as would be available to the private party under subsection C.

(1972, c. 591, § 36-94; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 1994, c. 814.)

§ 36-96.19. Witness fees.

Witnesses summoned by a subpoena under this chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in the courts of the Commonwealth. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Board.

(1991, c. 557.)

§ 36-96.20. Additional powers of the Real Estate Board; action on real estate licenses.

A. In any case in which the Board has received or initiated a complaint and conducted an investigation of any violation of this chapter and determined that there exists reasonable cause to believe that a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees have engaged in discriminatory housing practices prohibited by the Virginia Fair Housing Law (§ 36-96.1 et seq.) or the Virginia Equal Credit Opportunity Act (§ 59.1-21.19 et seq.), the Board shall immediately attempt to resolve the matter by conference and conciliation, and upon failure to resolve the matter in such manner, may initiate an administrative hearing to determine whether to revoke, suspend or fail to renew the license or licenses in question. Not less than 10 days prior to the initial conference hereunder, the Board shall prepare and deliver to the respondent or respondents a written report setting forth the scope, findings and conclusions of the investigation conducted under this section.

B. If any person operating under a real estate license issued by the Board, pursuant to the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, is found by a court to have violated any provision of this chapter and this fact is so certified to the Board, the Board, after notification to the licensee, shall take appropriate action to consider suspension or revocation of the license of the licensee.

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(1972, c. 591, §§ 36-94, 36-95.2; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 1992, c. 84; 2003, c. 575.)

§ 36-96.21. Powers of counties, cities and towns.

A. Any county, city or town which has any ordinance in effect on January 1, 1991, enacted under the Virginia Fair Housing Law (§ 36-86 et seq.), the Virginia Human Rights Act (§ 2.2-3900 et seq.), or any other applicable state law may continue to enforce such ordinance and may amend the ordinance, provided the amendment is not inconsistent with this chapter. Nothing herein shall be construed to prohibit any county, city or town under this subsection from submitting amended ordinances to the U.S. Department of Housing and Urban Development for substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.

B. The governing body of any county, city or town may enact ordinances in accordance with the provisions of this chapter provided that (i) such ordinances conform to this chapter and are enacted prior to September 30, 1992, and (ii) such amended ordinances are submitted to the U.S. Department of Housing and Urban Development for a determination of substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.

(1972, c. 591, § 36-96; 1975, c. 345; 1982, c. 113; 1991, c. 557; 1996, cc. 173, 369.)

§ 36-96.22. Application of chapter.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

(1991, c. 557.)

§ 36-96.23. Construction of law.

Nothing in this chapter shall abridge the federal Fair Housing Act of 1968 (42 U.S.C. § 3601 et seq.) as amended.

(1991, c. 557.)

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HOME Fair Housing Audit 2007 - 2008 Results Summary

Compliance with Accessibility Requirements

(Seven cities of Hampton Roads, central Virginia)

Site visits to 20 complexes with permits ranging from 2003 – 2008 for the Fair Housing Office, an additional 13 in Tidewater

One site appeared to have no violations. The rest **(97%) had from one to eight potential violations of the accessibility requirements.**

- Some violations were minor (environmental controls ½" too high)
- Some violations are defended by the complex as the result of site impracticability
- Based on the date of the Certificate of Occupancy some complexes may be past the date for enforcement action

Testing for Treatment of Home Seekers

(Seven cities of Hampton Roads)

I. Race: differential treatment between African-Americans and whites

50 matched pair tests

- **66% of African-American testers received less favorable treatment than whites (some localities much higher)**
- 70% of the sites were managed by property management companies or involved a licensed real estate agent (about 50%)

II. Families with children

20 tests

- 15% discouraged
- 85% accepted at the two person per bedroom standards

III. People with disabilities

Will unit allow reasonable modifications (installation of grab bars)?

25 tests

- 20% rejected or discouraged
- 80% would permit

Will unit make reasonable accommodation (service animal where “no pets” or silent on pets)?

- 76% rejected, discouraged or imposed fees
- 24% willing to make accommodation

IV. Housing Choice Voucher holders:

Will housing providers with units that would meet rent reasonableness test for vouchers accept a voucher?

20 tests

- 85% discouraged or rejected
- 15% were willing to accept a voucher

Examples of differences in treatment on the basis of race:

- Testers visited the property on the same afternoon. The black tester was told the rents were between \$1049 and \$1104; the white tester was told to ignore the prices in the brochure as the agent could offer specials reducing the rents to \$969-999.

- The black tester was told that one unit would be available that month; the white tester was told by the same agent on the same day that several one and two bedroom units were currently available. The black tester asked to see the unit but was told it could not be shown; the white tester was given the keys to view the unit after the agent checked her ID.

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- Both testers asked about a one bedroom unit for the end of November. The black tester was told nothing was available until next month; the white tester was told there are two vacant units.
- Both testers talked to the same agent within an hour of each other about a one bedroom apartment. The black tester was told one unit would be available with \$132 application fee and one month's rent (\$929) security deposit; the white tester was told a few one bedrooms would be available that month and the following month with a \$32 application fee and security deposit of \$250.
- Both testers asked the same agent for information on a one bedroom apartment. The black tester was told one unit would be available; the white tester was told two units would be available. Both testers were told the unit was unavailable to show until after cleaning, but the agent offered to show the white tester a two bedroom unit while the black tester was told to come back the following day. The agent offered an application to the white tester but not to the black tester. The white tester received follow up correspondence from the agent while the black tester did not.
- Both testers were told that no one bedroom apartments were currently available. The black tester was told she would have to complete and submit an application with the fee in order to be placed on the waiting list; the same agent took the white tester's contact information and put her on the waiting list.
- Both testers asked about one bedroom apartments for the end of January. The black tester was told one unit would be available for \$679 and a security deposit of \$99; the white tester was told that two different one bedroom units would be available for rent, one for \$649 and one with a den for \$679 and that they were running a special waiving the security deposit.
- Both testers talked with the same agent about a one bedroom unit. The agent told the black tester they had nothing available and to just try back in a couple of months; the same agent told the white tester to call back in January (2 weeks later) to see if they had received any notices.
- The testers saw the same agent on the same day. The black tester was told nothing was available and told the apartment she was shown was already rented. The white tester was shown the same unit and told it was available along with several other units. The black tester asked about a waiting list, and was told they had a waiting list, but that people rarely move.
- Both testers saw the same agent on the same day. The landlord told the white tester that the apartment was immediately available for \$800. Thirty minutes later he told the black tester that the \$800 apartment was gone, but he had one for \$900. He told the black tester "we are very selective about who we let in", asked her about her profession, her income, her credit, told her only the person who signs the lease is allowed to stay in the unit, told her "we are really meticulous" and asked her if she is a clean person, asked whether she can afford the apartment, and told her there is no need for her to take an application until she decides on the place. The white tester was asked no questions about her income, cleanliness, ability to afford the apartment, and was told that he does not check credit and that he does not have applications. He told the white tester he could tell she was "his kind of person", asked if she wanted the unit and got her contact information.
- The testers spoke to the same agent within a half hour of each other. The black tester was told that one 1 bedroom unit would be available; the white tester was told they had plenty of one bedrooms available.
- The testers were given similar information about the availability of a single family house, and both were given applications; however, the white tester was told that if any of the information on the application was "too personal", she should mention it and they would "work something out."

HOUSING OPPORTUNITIES MADE EQUAL
2202 West Broad Street, Suite 200, Richmond, VA 23220

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For Immediate Release – May 7, 2002

21 st CENTURY – EQUAL ACCESS TO HOUSING?

***BLACKS FACE DISCRIMINATION 60% OF THE TIME IN HAMPTON ROADS’
RENTAL MARKET WHILE MANY ILLEGAL BARRIERS CONTINUE FOR THOSE
WITH DISABILITIES***

Housing Opportunities Made Equal, Inc., (HOME) a non-profit fair housing and housing counseling agency headquartered in Richmond, Virginia, today released the results of a study of the rental market in Hampton Roads which evaluated the barriers to housing for African-Americans and people with disabilities. According to HOME, African-Americans seeking apartments in the Hampton Roads area were treated less favorably than Caucasians 60% of the time. People who need accessible apartments also face difficulties: 96% of multi-family apartments opened after March of 1991 do not meet federal and state accessibility requirements.

HOME used matched pair testing, a controlled investigative procedure in which two individuals are sent separately to inquire about a housing unit, to evaluate the treatment that African-Americans are likely to receive. Differences in treatment included the white tester being offered an apartment and asked for a deposit, while the black tester was not offered an apartment; the black tester being offered one apartment for \$575 while the white tester was offered a range of apartments, the most expensive of which was \$515; when black and white testers both asked for 2 bedroom apartments for May 1, the black tester was told none were available and availability would be “no time soon” and was referred to another complex, while the white tester was told 2 bedroom apartments would be available in June and offered a one bedroom apartment immediately; both testers called for an appointment on a Saturday: the black tester was told the office was closed on Saturdays, the white tester was offered an appointment Saturday morning.

According to Constance Chamberlin, President of HOME, these findings are consistent with studies done nationally by the U.S. Department of Housing and Urban Development, which indicate that African-Americans can expect to receive less favorable treatment at least 50% of the time when they look for a place to rent.

“Where we live makes an important difference in the quality of our lives and the opportunities we can give our children,” said Ms. Chamberlin. “It is very disturbing to find that the housing choices of African-Americans are still being limited to such an extent more than 30 years after the Federal Fair Housing Act was passed. These results show that Virginia still has a long way to go before we can truly say that we are a land of equal opportunity.” Black testers received less favorable treatment than white testers in 60% of the tests. Both testers received similar treatment in 23% of the tests, and the white tester received less favorable treatment in 17% of the tests. The rate of differential treatment favoring the white tester in each jurisdiction was Hampton 100% (only one test site), Newport News 54%, Virginia Beach 62%, Norfolk 64%, Portsmouth 80% and Suffolk 100% (only one test site).

The one locality for which these results were not consistent was Chesapeake, in which two of the 5 completed tests (40%) showed similar treatment of the testers and three (60%) showed differential treatment favoring the African-American testers. In matched pair testing, the individuals are matched in every relevant respect except for the characteristic being tested – in this case, race. Equally qualified individuals should receive similar treatment and information, and the information and behavior revealed in the tests can then be compared. Testing has been upheld by the courts (and is supported by Congress) as a way of determining the existence of housing discrimination. It is frequently the only way to uncover unlawful treatment, since individuals who are given misleading or inaccurate information about the availability of rental units have no way of knowing that they have been treated any differently from anyone else.

According to HOME, people who need an accessible apartment also faced barriers: 96% of those apartments required by law to meet certain accessibility guidelines were not in compliance. 46% had

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major deficiencies which would render it difficult if not impossible for someone in a wheelchair to live in the apartment or enjoy the full range of amenities.

“The Fair Housing Amendments Act of 1988 requires that modest accessibility requirements be incorporated into the design of these buildings,” according to Ms. Chamberlin. “It is unconscionable that thirteen years after the law was passed, apartments are still being built that don’t meet the needs of people with disabilities.” Design problems that rendered apartments inaccessible were found both inside the apartment units and in the common areas. Some apartments had fewer than the required number of accessible units. Others had narrow halls and doorways within the apartment unit that would prevent someone in a wheelchair from maneuvering or even entering certain rooms; environmental controls set so high on the wall that they were difficult or impossible to reach from a sitting position; bathrooms without reinforced walls or grab bars; and bathroom doors that opened inward so they could not be closed if someone in a wheelchair was inside. Exterior design flaws included steps or high thresholds preventing access to apartments or amenities such as laundry rooms, steps or curbs without curb cuts barring access to mailboxes or trash dumpsters, and ramps that were too steep to use.

HOME evaluated the apartment complexes against seven requirements set out in the fair housing laws:

- a building entrance wide enough for a wheelchair, accessible by a route without steps;
- accessible public and common use areas;
- doors that allow passage by a person in a wheelchair; ! an accessible route into and through the dwelling unit;
- light switches, thermostats, and other environmental controls in accessible locations;
- reinforcements in bathroom walls for later installation of grab bars; and
- kitchens and bathrooms that allow a wheelchair to maneuver about the space.

HOME is a private, non-profit fair housing organization formed in 1971, whose mission is to ensure equal opportunity in housing for all persons through counseling, education, and advocacy. HOME provides training and technical assistance to housing providers to encourage them to offer their properties on a non-discriminatory basis; provides free information, assistance, and counseling services to consumers on rental, landlord-tenant, homeownership and fair housing issues; and administers a variety of financial assistance programs for first time homebuyers and those in danger of eviction and foreclosure. HOME also assists local governments in evaluating fair housing issues and developing policies and procedures to eliminate barriers to equal opportunities in housing, and investigates allegations of housing-related discrimination. The work resulting in this audit was partially funded by a grant from the U.S. Department of Housing and Urban Development, through its Fair Housing Initiatives Program.

For further information about any of HOME's services, or for a copy of the report, please call 804-354-0641.

HOUSING OPPORTUNITIES MADE EQUAL
2202 West Broad Street, Suite 200, Richmond, VA 23220

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Case # 1

DEPARTMENT OF PROFESSIONAL & OCCUPATIONAL REGULATION
Perimeter Center, 9960 Mayland Drive, Richmond, VA 23233
Telephone: (804) 367-8500 • TDD: (804) 367-9753 • www.dpor.virginia.gov

NEWS RELEASE

For Immediate Release: Wednesday, April 29, 2009

CONTACT: Mary Broz-Vaughan

Director of Communications, Legislation & Consumer Education
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Virginia Celebrates Fair Housing Month

Commonwealth obtains record verdict in sexual harassment case

RICHMOND – In conjunction with national Fair Housing Month – which commemorates the 41st anniversary of the historic Fair Housing Act – the agency responsible for enforcing fair housing law today announced that a Charlottesville landlord was ordered to pay \$200,000 for sexually harassing a female tenant.

In a final judgment entered March 20, 2009, Albemarle County Circuit Court Judge Cheryl N. Higgins ordered Barry Schmidt to pay \$190,000 in damages, plus attorney's fees totaling more than \$10,000. At the September 2008 trial, the jury awarded \$15,000 in compensatory damages and \$175,000 in punitive damages to a female tenant subjected to harassment by Schmidt.

The verdict is the largest ever obtained by the Commonwealth of Virginia in a fair housing case. Assistant Attorney General R. Thomas Payne, II, represented the Commonwealth. Claire E. Curry, a staff attorney with the Legal Aid Justice Center in Charlottesville, assisted the complainant as part of the center's mission to help low-income, underserved individuals.

The Commonwealth filed suit against Schmidt in 2005 for demanding sexual favors from Walker. Federal and state fair housing laws prohibit housing discrimination on the basis of sex as well as protected classes of race, color, religion, national origin, elderliness (defined as age 55 or older), familial status (defined as having children under age 18), and disability.

Fair housing laws protect people from bias when trying to rent an apartment, buy a house, obtain a mortgage, or purchase homeowner's insurance. Fair housing requirements apply to all housing providers – property managers, owners, landlords, real estate agents, banks, savings institutions, credit unions, insurance companies, mortgage lenders, and appraisers.

Individuals who believe they may be victims of housing discrimination should contact the Virginia Fair Housing Office toll-free at 1-888-551-FAIR (3247). The agency also offers free informational seminars to housing consumers and providers who wish to learn more about their rights and responsibilities under the Fair Housing Act.

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Case # 2

DEPARTMENT OF PROFESSIONAL & OCCUPATIONAL REGULATION
3600 West Broad Street, Richmond, VA 23230
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NEWS RELEASE

For Release: Thursday, December 8, 2005

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**FAIR HOUSING BOARD LED SUCCESSFUL
FIGHT IN MATTHEWS HOUSING
DISCRIMINATION CASE**

*State agency investigation and lawsuit resulted in
injunctive relief and damages award*

RICHMOND – Following vigorous enforcement action by the Virginia Fair Housing Board, a Chesterfield County man must pay \$12,000 in damages for violating the Fair Housing Act. Today in Chesterfield County Circuit Court, Rufus T. Matthews was ordered to pay \$4,500 to Nealie Pitts for engaging in housing discrimination when he said he would not sell her his house because of her race. Matthews also must pay \$7,500 to Housing Opportunities Made Equal (H.O.M.E.), a non-profit housing advocacy organization.

In announcing the decision, Judge John F. Daffron, Jr., praised the Fair Housing Board's "decisive steps" to reject discrimination and noted "the Commonwealth abhors such behavior and went to court to stop it."

The Fair Housing Board investigated Pitts' and H.O.M.E.'s complaints, found reasonable cause of racial discrimination, and issued a discrimination charge against Matthews. The Office of Attorney General represented the Board in bringing suit against Matthews earlier this year on behalf of Pitts and H.O.M.E.

Pitts and H.O.M.E. subsequently each obtained counsel and petitioned the court to join the Commonwealth's legal suit as plaintiffs. Last month, the court granted Pitts and H.O.M.E. default judgment against Matthews, making him liable for damages. As a result, no trial was necessary for the Fair Housing Board to demonstrate its claim of discrimination.

Once the court granted Pitts and H.O.M.E. status as plaintiffs, the Fair Housing Board and Office of Attorney General were prevented from seeking damages on their behalf. The Commonwealth's claims against Matthews were limited to injunctive relief and education.

With concurrence from Pitts and H.O.M.E., the Fair Housing Board entered into a settlement agreement with Matthews. The court approved the agreement on day one of the damages trial, Dec. 7, imposing an injunction prohibiting Matthews from violating the Fair

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Housing Act again in the future. The state's settlement agreement also mandate three hours of education provided by the Fair Housing Board to be completed within 60 days.

The injunctive relief means that, if Matthews discriminates in future housing transactions, he not only violates the law but also violates a court order. Failure to comply with all terms of the settlement agreement could lead the court to sanction Matthews with even more significant damages awards or other legal sanctions.

“The outcome of this case is one more victory in the long struggle to make the American Dream more accessible for everyone,” said Mary Broz, spokesperson for the Fair Housing Board. “Victims of discrimination deserve a thorough investigation and fair hearing in their fight for justice.

During the administration of Gov. Mark R. Warner, the Fair Housing Board and Real Estate Board have issued reasonable cause findings in 16 cases alleging housing discrimination, compared with only two cases from 1998-2002. Discrimination charges are forwarded to the Office of Attorney General for settlement or civil action, with compensation for damages ranging from \$250 to \$15,000.

Gov. Warner and the General Assembly established the independent Fair Housing Board in 2003 – a recommendation of the Housing Study Commission – to enforce the Virginia Fair Housing Act, which prohibits discriminatory practices related to renting an apartment, buying a house, obtaining a mortgage, or purchasing homeowners' insurance. Previously, all fair housing issues and cases fell under the jurisdiction of the Real Estate Board. The Real Estate Board continues to handle cases involving real estate licensees or their employees. The law prohibits discrimination on the basis of race, color, religion, national origin, sex, elderliness (defined as age 55 or over), familial status, and handicap.

About DPOR . . .

The Virginia Department of Professional and Occupational Regulation (DPOR) licenses or certifies more than 300,000 individuals and businesses ranging from architects and contractors to cosmetologists and real estate agents . DPOR investigates reports of regulatory violations by licensees; pursues complaints of criminal activity by unlicensed practitioners; responds to business-related consumer inquiries and requests for license checks; administers recovery funds for consumers harmed in contractor or real estate transactions; and conducts mediation services and public awareness campaigns.

For more information, visit DPOR online at www.dpor.virginia.gov.

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Case # 3



COMMONWEALTH of VIRGINIA
Office of the Attorney General

William C. Mims
Attorney General 900 East Main Street, Richmond, VA 23219, 804-786-2071

For Release: August 13, 2009

Contact: David Clementson

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Statement of Attorney General Mims

***~ On Wythe County settling with the Commonwealth regarding
allegations of discrimination against the disabled, equal-housing
violations ~***

RICHMOND – Attorney General Bill Mims released the following statement today regarding Wythe County’s agreement to comply with Virginia’s Fair Housing Law as part of a consent order resolving a civil lawsuit filed by the Attorney General’s Office against Wythe County for violations of that Law:

“I commend the Wythe County Board of Supervisors for reaching a settlement with our client, the Virginia Fair Housing Board, and agreeing to comply with Virginia’s Fair Housing Law.

“This legal action was not taken lightly. The principles involved – ensuring fair housing for all Virginians and providing a continuum of community care for children who have mental disabilities – are fundamental.”

The case involves an application by Camelot of Virginia LLC to establish a group home in Wythe County for up to eight children under the age of 18 who have mental disabilities. A “needs assessment” showed this area is underserved, with children having to travel hours for services provided by such a group home. The County discriminated against this proposed group home by passing an ordinance intended to block group homes in Wythe County. During meetings and public comment sessions, Wythe County Supervisors declared their opposition to the proposed group home and promised citizens that they would do whatever it took to stop “this type of facility.”

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Virginia's Fair Housing Law makes it unlawful for a government entity to discriminate or deny a dwelling to any person because of disability. Further, Virginia law generally provides that restrictive covenants and zoning ordinances must treat group homes intended for eight or fewer mentally disabled residents as a residential occupancy by a single family, and no conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such group homes.

The settlement is in the form of a Consent Order presented for entry by the Wythe County Circuit Court. The Board of Supervisors agrees to remove discriminatory barriers aimed at group homes with eight or fewer disabled residents, issue public apologies, offer and attend training on fair housing policies, and display Fair Housing brochures prominently at its Board of Supervisor meetings.

"Virginia has made positive strides to reform children's mental health law and policies, particularly by emphasizing the importance of services in the community," Attorney General Mims added. "I recognize and respect a locality's ability to direct its own affairs within the bounds of the law. However, that public good must yield to a higher priority -- non-discrimination against children based upon mental disabilities."

CASE # 4

United States v. Robert L. Kreisler, Jr., a/k/a Bob Peterson, et al. (D. Minn.) UPDATED 8/17/06

On August 29, 2006, the Court approved and entered a [Consent Decree](#) in *United States v. Kreisler, Jr., a/k/a Bob Peterson, et al.* (D. Minn.). The United States' pattern or practice [complaint](#), filed on July 9, 2003, alleged, inter alia, that Kreisler violated the Fair Housing Act when he discriminated against black tenants at two apartment complexes which he owns and manages by: evicting blacks while not evicting similarly situated non-blacks, requiring black tenants to vacate their apartments permanently due to "renovation work" while not requiring non-black tenants to do so, and failing to provide necessary and requested maintenance to black tenants while providing such maintenance to non-black tenants.

Under the terms of the Consent Decree, which must still be approved by the court, the Defendants must pay \$525,000 to 19 households, hire an independent management company to operate the rental properties, post and publish a nondiscrimination policy, and correct the rental records of several former tenants against whom Defendants filed unlawful detainer actions. The Defendants will also pay a \$50,000 civil penalty.

CASE # 5

Father and daughter win \$11,000 cash settlement in Phoenix, AZ familial status lawsuit

Anna Chasteen, the owner and operator of Carol Mary Apartments in downtown Phoenix agreed to pay \$11,000 in June to settle a federal fair housing lawsuit. Chasteen will also submit to fair housing monitoring by the Arizona Fair Housing Center. The suit also named Ermil Chasteen and Willetta Investments, the corporate owner of the complex, as defendants.

Owner and agent cited safety concerns when refusing to rent to families with children

William C. Rodriguez and the Arizona Fair Housing Center filed the lawsuit alleging familial status discrimination after Rodriguez attempted to rent an apartment for himself and his daughter in 1999. Rodriguez's daughter was four years old at the time.

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Ermil Chasteen, the former owner of the complex who died during the litigation of the lawsuit, told Rodriguez that children were not accepted at Carol Mary Apartments for "safety reasons." Rodriguez submitted a rental application anyway, and another agent of the complex informed him that children weren't allowed in second floor units and that no ground floor units were available. The agent also cited safety considerations for the discriminatory policy.

Testing proved familial status discrimination

Rodriguez contacted the Arizona Fair Housing Center and told them about what he had encountered at the Carol Mary complex. The Center conducted two paired tests on the complex as part of a thorough investigation. In both tests, testers who asserted that they had children were told that no units were available, while testers who asserted that they had no children were told about available units and encouraged to apply.

Arizona attorneys Albert M. Flores and Philip Austin represented Rodriguez and the Center during the litigation.

Rodriguez v. Chasteen

Case No. CIV 2001-1372 PHX SRB (D. Az.)

The Honorable Susan R. Bolton, U.S. District Judge

Complaint filed: July 24, 2001

Consent Order approved: June 11, 2003

CASE # 6

Discriminatory statements and actions against Latinos costs CA mobile home park owners \$70,000

The owners of Golden Gate Trailer Park in Greenbrae, California have paid a \$70,000 settlement in a case involving discrimination against Latinos. In addition, the Defendants in the case will attend fair housing training, post all vacancies at a community organization serving Latinos, provide translation services for prospective Spanish-speaking tenants, and distribute a nondiscrimination policy to all employees.

In December 1999, a white former tenant of the park, filed a fair housing complaint with the U.S. Department of Housing and Urban Development and the California Department of Fair Employment and Housing (DFEH) with the assistance of Fair Housing of Marin (FHOM), a nonprofit fair housing agency serving northern California. Smith and FHOM later filed a federal lawsuit in the U.S. District Court of Northern California.

Defendants retaliated against white tenant who complained of discrimination against Latinos

The former tenant and FHOM asserted in their complaints that the owners and manager of Golden Gate discriminated against Latinos and prevented the man from renting his space in the park to Latinos. When he complained of the discrimination, the defendants retaliated against him by making threats, denying approval to prospective tenants who wanted to rent his park space, leveling complaints of rules infractions, and eventually evicting him from the park.

In the federal complaint, the plaintiffs asserted that Wallace and Dora Holmes made discriminatory statements about Latinos and instructed Greg McGovern, the resident manager, to steer Latinos away from the park and to make it hard for Latinos to apply for housing or lots within the park. Allegedly, Dora Holmes instructed McGovern to steer all Latinos applicants to an adjacent trailer park, telling him, "Once you let one of them in, you have a whole bunch move in after. Next thing you know, you have shitty diapers all over the driveway, and who needs that?" The Defendants also allegedly placed Latino applicants on a waiting list for vacancies but never called Latinos on the list when spaces became available.

Different terms and conditions for Latinos

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The Defendants allegedly required prospective Latino tenants to own their own mobile home towing vehicles if they wished to place a mobile home within the park. Latinos were also required to pay credit check fees and fill out applications while in the rental office. The same was not required of non-Latino tenants. McGovern allegedly ejected Latino visitors to the park and was purposefully rude to Latinos to discourage them from applying to live in the park. McGovern allegedly told tenants at the park that “Mexicans cause trouble” and that he tried hard to keep “Mexicans out of the park.” He also allegedly said that it was difficult to do so because of fair housing laws in place.

FHOM heard from at least four former, current, or prospective residents of Golden Gate who expressed concerns about national origin discrimination in the park. DFEH’s investigation revealed that no Latinos lived in Golden Gate Trailer Park at the time the plaintiffs filed complaints and that the only minorities present in the park were one African American man and one Asian woman, both of whom lived with white tenants at the park. During the DFEH investigation, McGovern admitted to investigators that Wallace and Dora Holmes had given him explicit instructions to discriminate against Latinos.

The plaintiffs withdrew their complaints from DFEH and filed a federal lawsuit against the Defendants with the assistance of California civil rights attorney Scott Chang.

The Consent Decree in the case requires the Defendants to pay \$20,000 to FHOM, \$15,000 to the former tenant, \$20,000 in legal fees, and to forgive a \$15,000 unlawful detainer judgment the park had obtained against him.

Fair Housing of Marin v. Golden Gate Trailer Park

Case No. 3:02-cv-01604 (N.D. Cal.)

The Honorable Thelton E. Henderson, U.S. District Judge

Scott Chang, attorney for Plaintiffs

Federal complaint filed: April 3, 2002

Consent Order: April 16, 2003

CASE # 7

NC Consumers Collect \$20.2 million in Associates Settlement

(Tarboro, NC) – Two years after filing a lawsuit alleging unfair housing practices, Tarboro residents and the Town of Tarboro have reached a settlement with the Town of Tarboro.

The settlement opens the door for the development of affordable multi-family housing in areas that had been restricted by the Town’s changes to its Unified Development Ordinance (UDO) following the Hurricane Floyd floods.

“We wanted to see our clients have a reasonable chance to return to affordable housing in Tarboro, their home town,” declared Hazel Mack-Hilliard, senior managing attorney for Legal Aid of NC-Wilson Office, who led the team of attorneys who challenged the restrictions. “We believe that the removal of the May 2000 amendments to Tarboro’s zoning ordinance will bring developers back to Tarboro and renew interest in building affordable housing.”

In the settlement, the Town of Tarboro agreed to restore all land that its zoning changes had removed from multi-family apartment construction and to reduce some costly requirements for setbacks, fencing, traffic studies and on-site management. The Town also agreed to pay the named plaintiffs a total of \$95,500 for damages, including \$21,000 to the NC Fair Housing Center, a statewide nonprofit organization dedicated to equal housing opportunity.

“We alleged in the lawsuit that our clients had been harmed by the Town’s moratorium and zoning changes,” noted Mack-Hilliard. “In our view, it appeared that both the moratorium and the zoning ordinance were discriminatory and needed either to be modified or to be set aside, which the Town of Tarboro ultimately agreed to do as part of the settlement.”

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In September 1999, East Tarboro, primarily a low-income, African-American community, was flooded and devastated by Hurricane Floyd. With no alternative rental housing available, the Federal Emergency Management Agency (FEMA) set up a temporary trailer park, the Keehlin FEMA Temporary Housing Site, in Tarboro to help house those who had lost their residences in the flood.

Two developers approached the Town of Tarboro in late 1999 and early 2000 to seek permission to build affordable multi-family apartments, with funding coming through the NC Housing Finance Agency.

However, at an emergency meeting of the Tarboro Town Council in March 2000, the Town adopted a moratorium on all multi-family construction. Then in May 2000, the UDO was amended to remove certain tracts of land from apartment construction and to impose substantial restrictions and costly requirements to the remaining parcels of land where apartments could be built. One developer dropped its plan to build altogether; the other developer, Pendergrant, Inc., saw its plans for Hawthorne Court Apartments delayed for many months.

In April 2001, after having been contacted by the East Tarboro residents, attorneys from Legal Aid of NC (LANC) began to examine the zoning changes and the availability of land after the new UDO.

"We found that Tarboro's May 2000 ordinances had dramatically reduced the amount of land available in Tarboro upon to build multi-family apartments in Tarboro where decent and affordable multi-family housing was already in short supply," stated Mack-Hilliard, "Simply put, those people who had lost their housing during the floods were now locked out of Tarboro by the Town's ordinances. We could not allow apparently discriminatory and unfair ordinances to, in effect, kick minority residents out of town."

During the summer of 2001, a litigation team from multiple nonprofit, legal services organizations was assembled to meet with some of the residents who had previously lived in East Tarboro rental housing and to consider possible courses of action. The team included attorneys from LANC, the North Carolina Justice & Community Development Center, the Land Loss Prevention Project, local private counsel and the NC Fair Housing Center (NCFHC).

"The Center contacted many public and private multi-family developers who felt that the zoning ordinance passed by the Town of Tarboro would add tens of thousands of dollars to development costs and would make the future projects unprofitable," said Stella Adams, NCFHC's executive director. "While we were pleased to see that Hawthorne Court was being constructed through our efforts, the Center joined with the individual residents to ensure that multi-family housing would be a viable option for Tarboro families in the future."

Fourteen Tarboro residents became named plaintiffs in the lawsuit filed in September 2001. The residents sued the Town of Tarboro. In their complaint, the residents alleged that the Town discriminated against them on the basis of race and familial status in violation of the Fair Housing Act when it adopted the March 2000 moratorium on multi-family housing and amended its UDO in May 2000.

Following a year of discovery that included dozens of depositions, the residents and the Town agreed to mediation in January 2003. During mediation, the Town agreed to the changes to the UDO and monetary damages for the plaintiffs. The residents in turn modified their damages claims against the Town.

"The NC Fair Housing Center is extremely pleased with this result," stated Adams, "and our congratulations to the Tarboro residents and to the legal aid community for its commitment to ensure equal justice. We also hope that this will serve as a cautionary tale to other communities that would use their governmental powers to deny housing opportunities to people of color or families with children."

Mack-Hilliard agreed. "We think that the Tarboro situation resulted in a win-win agreement," remarked Mack-Hilliard. "Everybody deserves the opportunity to have a decent place to live. And in this case, citizens spoke up to ensure that such fair housing opportunity is available in Tarboro."

Legal Aid of North Carolina is a 501(c)3, nonprofit organization that provides free, legal representation in civil matters to eligible clients in North Carolina through 25 offices and four project units across the state.

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CASE # 8

Family Could Receive as Much as an Additional \$21,500

(LOUISVILLE, Ky., March 11, 2003) -- A single mother with five children has settled a federal fair housing discrimination lawsuit against the owner of a mobile home park in Louisville. Russell Brown, the owner of Brown's Mobile Home Park, allegedly discriminated against Sarah Webb and her children by denying them a lease, charging them higher rent, and attempting to evict them because of the size of her family.

The Kentucky Fair Housing Council assisted Webb in filing a housing discrimination complaint with the US Department of Housing and Urban Development (HUD), and a federal lawsuit against Brown and the other owners and managers of Brown's Mobile Home Park in April and May 2002. Both the HUD complaint and the federal lawsuit alleged that Brown refused to deal with Webb due to her five minor children and attempted to evict Ms. Webb based on her familial status.

The written Park Rules at Brown's Mobile Home Park included discriminatory and illegal provisions like "families may have no more than two children," "there is a \$5.00 additional (rent) charge for each child," "children must be kept on individual lot," "children are not allowed to play or ride in front of the office or the park," "children should be off the street by sunset," and "all youth, 16 years of age and older must be off the street by 10:00 p.m., all youth under 16 years of age must be off the street by dark." These restrictions against families with children violate the fair housing laws of Louisville, the State of Kentucky, and the United States.

Webb purchased a mobile home located in Brown's Mobile Home Park in January 2002. When Webb spoke with another resident at the park about renting the lot upon which her mobile home was set, she was told that the owner tended to "overlook" rental applications from families with more than two children. Webb later had a conversation with Brown, the co-owner of the park, in which he inquired as to the names and ages of her children, and discouraged her from moving into the mobile home. Brown told her that he would put a rental application in her mailbox but never did.

Needing a place to stay, Webb and her children moved into the mobile home as planned. Webb then faced numerous attempts by Brown to force her family out of the park. Webb continued to live in the park, and attempted to pay rent, although Brown continually refused her payment. In late March, Brown began eviction proceedings against the Webb family, claiming that she had violated the lease agreement because she had bought a mobile home from another owner and refused to move it after he gave her notice. However, Webb had never been given the opportunity to sign a lease agreement.

The Fair Housing Council with the assistance of the Legal Aid Society of Louisville eventually won an injunction in federal court to prevent Brown from attempting to evict Webb until her complaints of familial status discrimination were resolved.

Webb's housing discrimination complaint at HUD was referred to the Louisville & Jefferson County Human Relations Commission for investigation. Charles Ighagbon, the Commission's housing compliance supervisor, successfully conciliated the complaint. The March 7, 2003 settlement agreement between Webb and the Defendants resolves the HUD complaint and the federal lawsuit. Webb received a lump sum payment of \$5,000.00, and she will be allowed to live in Brown's Mobile Home Park rent-free for the next ten years. If Brown sells the park within the next ten years, he agrees to pay Ms. Webb \$2,150.00 for each remaining year in the ten-year span.

Galen Martin, the Fair Housing Council's executive director, called the settlement a great resolution to the complaint. "Families with children have the same rights to housing as everyone else. Landlords and other housing providers cannot place restrictions on families due to their size, and they cannot place unreasonable restrictions on children. This settlement sends a strong message to housing providers who think they can treat families with children differently than their other tenants."

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Alex Rose, the Fair Housing Council's former staff attorney, said that just because housing providers rent to families with children, it doesn't mean they can impose unfair rules against them. "To limit the number of children in a home – but not the number of adults – is ridiculous and illegal. The same is true when it comes to charging families additional rent for each child they have and telling parents when and where their children can play."

Tony Baize, the Fair Housing Council's assistant director, said that discrimination against families with children continues to be rampant in Kentucky and southern Indiana. "Unlike racial discrimination, which has – for the most part – become a covert activity, discrimination against families with children continues to occur out in the open. Congress passed fair housing protections for families with children nearly 15 years ago, and housing providers are still bold enough to have anti-children rules and policies. The fact that the Defendants put their anti-children rules in writing in this case shows the brazenness of this type of overt discrimination."

Gretchen C. Avery and Robert Smith of the Legal Aid Society of Louisville also worked on this case. Avery handled represented Webb in the unlawful eviction actions by Brown and contacted the Fair Housing Council to investigate the acts of discrimination she felt might have occurred.

"This settlement is another example of the great work that the Fair Housing Council does," Smith said. Photos of Webb, complaint documents, court rulings, and copies of the now-rescinded Brown's Mobile Home Park rules are available from the Fair Housing Council. Requests for interviews for Ms. Webb should be directed to the Fair Housing Council. A Webb family photo will be available soon.

The Kentucky Fair Housing Council is a private nonprofit agency dedicated to eradicating housing discrimination in Kentucky and southern Indiana. The Council offers legal services to victims of housing discrimination and assists them in filing complaints with HUD, the Kentucky Commission on Human Rights, the Indiana Civil Rights Commission, and the Louisville Metro Human Relations Commission. The Council also files lawsuits in state and federal court.

Persons who believe they have been denied housing because of their race, color, national origin, sex, religion, family status, disability, or sexual orientation should contact the Fair Housing Council at 502-583-3247. Outside Louisville, complainants can call 800-558-3247.

CASE # 9

Shelton, Conn. Landlord Pays \$9,000 in Section 8 Complaint

(Shelton, Conn., April 17, 2003) -- Gafur Imetovski, owner of a 3-family house in Shelton, Ct, has learned a costly lesson, and the cost to him is exactly \$9,000 which he had to pay to settle a housing discrimination complaint filed by a Section 8 tenant.

In December, 2001, Ebony Perez, a single mother with two young daughters, claims she responded to an ad placed by Imetovski for a first floor rental when she was told by him that he was not accepting Section 8. According to Perez, he informed her the reason he wasn't taking Section 8 because, "They want me to fix too much!" She claims Imetovski would only rent to her if she did so without her Section 8 rental subsidy. "I don't want to get involved with those people -- I want someone with no problem," Perez quotes him as saying.

Perez reported the incident to the Ansonia Section 8 Office and she was in turn referred to the Fair Housing Association of Connecticut in Bridgeport. After conducting a test to gather the necessary evidence, they assisted her in filing her complaint with the Connecticut Commission On Human Rights & Opportunities.

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Connecticut law prohibits landlords from discriminating against tenants on rental assistance programs, which falls under the category of discrimination against one's "source of income." (Only a handful of states offer such protection.)

In February this year, the Connecticut Commission made a cause finding, which means they believe after the completion of a full investigation that Imetovski discriminated against Perez. Following the cause finding, the parties negotiated a settlement which required Imetovski to pay \$9,000 as compensation.

The settlement agreement included a statement that Imetovski is not admitting liability or violation of the Conn. Fair Housing law. The settlement also requires Imetovski to participate in a comprehensive fair housing training seminar to be conducted by the Connecticut Fair Housing Center in Hartford. Perez's attorney, Alan Rosner of Bridgeport, said he was satisfied with the settlement he was able to negotiate for his client but was sorry the case took so long to resolve. Perez admitted that the delay was frustrating but looking at the bright side commented, "Good things come sometimes to those who are willing to wait!"

CASE # 10

The Law & You **Innocent by design** **BY OLIVER FRASCONA**

True story: James Normal had three years of real estate experience. He had attended fair housing training and prided himself on treating all clients and customers equally.

When his listing at 123 Spring St. sold, he prepared a "Just Sold" postcard—as he always did—and mailed it to everyone within five blocks of the house.

A few days later, Jim got the call: Harry and Beth Seller had received the postcard and wanted Jim to "tell us what our house is worth."

Jim prepared a CMA and a listing contract, with the address, commission, and other information already filled in, as he always did.

He arrived at 6 p.m., and by 8 p.m. he had the listing. The neighborhood didn't have a lot of sold comps, but the CMA indicated \$129,950 as the top of the market. Harry knew the market was hot and insisted on listing for \$139,950. Jim put in the listing contract that even if the house sold for that price, there might be an appraisal problem.

On his way back to the office, Jim considered going home instead and putting the listing in the MLS the next morning, but he knew that as the seller's agent, it was his duty to expose the property to as many people as possible as soon as possible. So he entered it in the MLS and then went home to bed.

By 9 a.m., three showings were scheduled. By 10:30 a.m., the first offer came in at \$142,500. Jim immediately called Harry to present the offer. Jim said, "I have good news and bad news: The price is \$142,500."

Jim explained that the house was unlikely to be appraised that high and that the buyer wanted a 90 percent loan, leaving little room for variance.

The second offer was for \$145,750, a 90 percent loan, and \$1,000 in earnest money. Jim called Harry, who said, "Since you're my agent, call back the salesperson for the first buyer and tell him the amount of the second offer." Jim wasn't sure whether he should do that, so he called the company attorney, who confirmed that it was legal in his state and that as the seller's agent, he should make the call.

The salesperson who'd made the first offer was upset and implied that calling to reveal the price of the second offer was unethical. Jim felt uneasy but didn't let the broker distract him from carrying out his

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client's wishes.

A third salesperson called and asked Jim to pick up an offer at his office. The offer was \$151,500. Even with the 80 percent loan, the appraisal would be problematic. Jim called Harry again, and again verified things with the attorney. This time he asked the attorney for a confirming letter and then called the salespeople who'd brought in the first and second offers.

The fourth offer came in at \$153,750. Again Jim did as he was told and called the salespeople with the previous offers, though the salespeople were getting more angry with each call. The fifth offer came in at \$156,750, a 50 percent loan, \$5,000 in earnest money, and a clause stating that "buyer realizes that although the lender might provide the amount indicated, the property might be worth less than the sales price."

Jim again talked to Harry and called the earlier salespeople as requested. That evening as Jim approached Harry's house to present the offers, the fifth salesperson, who was parked outside, got out of her car to tell Jim, "If there's a counteroffer, we're ready." Jim then presented the offers to Harry and Beth in the order they were received. He also brought the CMA and notes on the strengths and weaknesses of each offer, as he always did.

Harry and Beth, who'd never sold a house, decided to counter the fifth buyers at \$159,950. They also wanted the contract to be contingent on their finding suitable replacement housing.

Jim gave the salesperson for the fifth buyers the counteroffer, which was accepted. Jim called the other salespeople with the news, being careful not to indicate the sales price. By that point, he anticipated unhappy salespeople and maybe even threats of ethics complaints, but he hadn't anticipated the reaction of the fourth salesperson, who said, "I'm calling HUD. My buyers are black, and we know we were discriminated against."

The HUD investigator requested files from Jim's other transactions and asked many questions, but the one asked most often was, "Is this the way you always do it?" The estimated cost of trial was \$25,000. The plaintiffs' attorney indicated they'd settle for \$20,000. Since Jim had done nothing wrong, he decided not to settle.

In the end, Harry and Beth never found a replacement house, and the deal never closed. The listing has long since expired.

What will be the key or keys to Jim's defense?

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Innocent By Design Case Study Outcome

The morals of the story:

- § Know your state law on contract presentation and price disclosure.
- § If you're a seller's agent, be a seller's agent and follow the seller's instructions.
- § Consistency is the only defense that always works.
- § When in doubt, ask an attorney. At least it shows that you tried to do things right.
- § Provide equal and professional service to everyone.

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FAIR HOUSING IN PROPERTY MANAGEMENT

Drafting Tenant and Community Rules

A good rule to follow when drafting rules or regulations is to draft them so they don't single out children or members of a protected class. Rather than having a sign that says, "Children are prohibited from running in the common areas," say "No running in the common areas." Instead of saying, "children keep off the grass," have the sign read, "Keep off the grass." Rules and regulations that apply to "all residents" are less suspect than rules that single out children.

If you need to single out children consider doing so on the basis of health and safety considerations. For example, if you have a workout room with exercise equipment ask the manufacturer to inform you what the age is for using the equipment without supervision. Then post a sign such as "According to the manufacturer this equipment may not be used by anyone under 14 years old, unless accompanied by an adult."

Screening Applicants

If you're a housing provider one way to reduce the probability of having a complaint filed against you is to treat everyone the same. Having written guidelines that you follow with each applicant may help you treat everyone the same. Therefore whether you're managing hundreds of units for a large company or an individual who owns and rents a few units you should establish written guidelines for everything: from how you expect the rent to be paid, to your eviction process to how you expect tenant's to behave while living in your dwelling.

Part of your screening guidelines should include an applicant's ability to timely pay the rent. Therefore, you may ask the applicant to provide employment, income and credit verification information. How much income and how long of an employment history you require depends on your housing market. You should set standards that allow you to compete for applicants. But setting standards too high may be viewed as trying to keep certain groups of people out of your rentals.

In addition to asking an applicant to verify their income and credit history you may also ask an applicant to provide character references. Character references may indicate what type of personal history your applicant has. If the applicant has a certain criminal history you may choose not to rent to them. These may include applicants who are convicted rapists or burglars. In fact you may choose to exclude any applicant who has a conviction that could present a safety issue for other residents in your complex.

Conduct Criminal Background Checks

If you're concerned about renting to certain convicted criminals you may establish a criminal background check as part of your application criteria. In establishing a criminal background check keep the following in mind: put your policy in writing; get the applicant's permission to conduct the background check; enforce the policy consistently and if you reject the applicant tell them why.

Consistently applying a criminal background check policy means that you apply the policy to everyone. You apply it to the young and old and to everyone in between.

Even if you don't establish a criminal background check you're not going to accept every applicant.

Rejecting applicants for legitimate credit or income or character reasons should not invite a complaint if you follow certain procedures. As noted you should establish written rental criteria that helps an applicant understand how his application will be screened. Then apply your criteria consistently. If you reject an applicant send them a letter explaining why you rejected them and finally keep excellent records.

Dealing with Problem Tenants

OK so you've approved an application and the tenant moves in. Shortly after the tenant moves in however, you start getting complaints. The newest tenant is apparently harassing other tenants. And you're also getting complaints that they're playing their stereo too loud. What should you do?

When tenants break the rules you should apply the consequences fairly, consistently and according to established procedures. What consequences you apply depends on your procedures and on the records you've kept. Some of the records that you should keep include complaints that tenants file against other tenants; complaints that involve the police; letters that you sent to and received from the tenant about lease violations as well as other relevant letters and information. Keeping detailed and accurate records will be important if you have to defend why you evicted the tenant.

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If you don't keep good records or if you keep poor records proving that you evicted a tenant for a non-discriminatory reason may be more difficult.

Handling Maintenance Requests

How are maintenance and repair requests handled in your complex? Does your staff process repair requests from some tenants more quickly than from others? If so it could lead to a fair housing complaint. Generally, repairs should be done in the order that they are received with emergency repairs taking precedence over routine repairs.

Your tenants should understand how you process repair requests and they should understand how long it will take before you get to their request. If an emergency repair takes you or your staff away from a scheduled routine repair call the affected tenant and explain what happened. Among the things that you can do to reduce the probability of having a housing complaint filed against you is to be professional, be consistent, communicate with your tenants and keep excellent records.

Tenants on the other hand need to understand that routine and non-emergency repairs may take a few days and even longer to repair.

Evaluating Requests for Reasonable Accommodations and Modifications from Disabled Tenants

While reasonable modifications have to do with allowing a disabled tenant to make a physical change to his unit or to a common area, a reasonable accommodation requires the landlord to change or modify some rule, practice, policy or service when doing so may be necessary to afford the tenant equal opportunity to use and his or her unit. For more information on reasonable accommodations, follow the link below.

Housing and Disabilities: Reasonable Accommodations and Modifications

Establishing Occupancy Standards

Occupancy standards have to do with how many people may live in a unit. In December of 1998 the Department of Housing and Urban Development (HUD) published a statement of the standards that it would review when evaluating a housing provider's occupancy standards to determine whether actions under the provider's policies may constitute discriminatory conduct under the Fair Housing Act on the basis of familial status, which means on the basis of having children in the family.

Since this office follows the occupancy statement that HUD issued in December of 1998, we have reproduced a few paragraphs of HUD's statement.

...the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. ... However, the reasonableness of any occupancy policy is rebuttable... Thus in reviewing occupancy cases HUD will consider the size and number of the bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or special circumstances would make an occupancy policy unreasonable.

Size of bedrooms and unit

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a "two people per bedroom" policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two-bedroom" home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home to, two people.

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Age of children

The following hypothetical involving two housing providers who refused to permit three people to share a bedroom illustrates this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment are large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not in the second.

Configuration of unit

The following imaginary situations illustrate special circumstances involving unit configurations. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a "two-people per bedroom policy" occupancy policy. The first association manages a building in which the family of the five sought to purchase a unit consisting of two bedrooms plus a den or study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, a charge might be warranted in the first situation, but not in the second.

Other physical limitations of housing

In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of septic, sewer or other building systems.

State and local law

If a dwelling is governed by state or local government occupancy requirements, and the housing provider's occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider's occupancy policies are reasonable.

Other relevant factors

Other relevant factors supporting a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has 1) made discriminatory statements; 2) adopted discriminatory rules governing the use of common facilities; 3) taken other steps to discourage families with children from living in its housing; or 4) enforced its occupancy policies only against families with children.

The Building Officials and Code Administrators handbook states that for health and safety reasons you need 70 square feet of bedroom space for one occupant. If you have more than one occupant you need 50 square feet per person. If you have a unit with one-bedroom that measures 10 x 8 or 80 square feet it would be too small for two people. But if you have a unit with one-bedroom that measures 10 x 16 it may be big enough for three people.

Housing providers should strive to balance the requirement to implement a reasonable occupancy standard against their right to protect their property from overcrowding. Housing providers should also strive to balance the requirement to implement a reasonable occupancy standard against their right to protect their investment. Under some circumstances a large unit with three bedrooms may reasonably accommodate seven or eight people without creating an overcrowded situation and without jeopardizing the housing provider's investment. Under other circumstances a unit with three bedrooms may only reasonably accommodate five people. Each situation and complex has to be evaluated based on its own merit.

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AMERICANS WITH DISABILITIES ACT

Public Law 101-336 prohibits discrimination on the basis of disability by private entities in places of public accommodation and commercial facilities must be designed and constructed so as to be readily accessible to, and usable by persons with disabilities, and requires that examinations or courses related to licensing or certification for professional and trade purposes be accessible to persons with disabilities.

Disabilities are broadly defined as a physical or mental impairment; that substantially limits one or more of the major life activities of such individual; has a record of such impairment; is regarded as having such an impairment.

Regarded as having such an impairment is broadly defined as (a) having a physical or mental impairment that does not substantially limit major life activities, but is treated by a recipient as constituting such a limitation, (b) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (c) has none of the impairments defined in the law, but is treated by a recipient as having such an impairment.

For instance—persons with severe burns often encounter discrimination in community activities, resulting in substantial limitation of major life activities. These persons are covered under © above based on the attitudes of others towards the impairment, even if they do not view themselves as impaired.

Examples of physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, hearing impairments, epilepsy, cerebral palsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Homosexuality and bisexuality are not physical or mental impairments under the ADA. Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs. “Major Life Activities” include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working.

In order to provide a course or tenant in an accessible place or manner, a private entity may need to: modify the course format or requirements; provide auxiliary aids; administer the course in a facility that is accessible for providing alternative comparable arrangements. Additional information may be obtained from Disability rights hot line at 1-800-552-3962.