



# OLR RESEARCH REPORT

December 12, 2013

2013-R-0430  
(revised)

## SUMMARY OF FEDERAL AND STATE FAIR HOUSING LAWS

By: Julia Singer Bansal, Legislative Analyst II

You asked for a summary of the federal Fair Housing Act (FHA) (42 USC § 3601 et seq.). You also asked for a brief description of (1) how the FHA affects municipal land use regulation and (2) the state's Discriminatory Housing Practices Act (DHPA) ([CGS § 46a-64c](#), see also §§ [8-37ee](#) and [46a-81e](#)).

### SUMMARY

Title VIII of the Civil Rights Act of 1968 is commonly known as the FHA. According to the U.S. Department of Housing and Urban Development's (HUD) website, Congress passed it as a follow-up to the Civil Rights Act of 1964 in the wake of Rev. Dr. Martin Luther King, Jr.'s assassination. Congress significantly amended the law in 1988 (to strengthen enforcement and prohibit discrimination based on disability or familial status) and again in 1995 (to exempt certain senior communities from its provisions).

The FHA prohibits a broad range of practices that discriminate against individuals on the basis of color, disability, familial status, national origin, race, religion, or sex (collectively, "status") to ensure equal access to housing opportunities. Under the FHA, it is unlawful for direct providers of housing, such as landlords and real estate companies, as well as other entities, such as municipalities, banks, and homeowners' insurance companies, to discriminate in the sale or rental of, or otherwise make unavailable or deny, a public or privately-owned

dwelling because of the status of the renter or buyer. Among other things, this means that local governments cannot exercise their land use and zoning powers in a discriminatory way.

The FHA applies to most types of housing. In certain circumstances, it exempts (1) owner-occupied multifamily housing with four or fewer units, (2) certain single-family house rentals or sales conducted by the owner, and (3) religious organizations or private clubs that limit the occupancy of housing they own or operate to their members. In addition, the prohibition on discrimination based on familial status does not apply to senior housing.

HUD and the U.S. Department of Justice (DOJ) enforce the FHA. A person who thinks they have been discriminated against in violation of the FHA can file (1) a complaint with HUD or a local agency certified by HUD or (2) a private civil suit.

The FHA also requires certain HUD grant recipients (e.g., public housing authorities) to affirmatively further fair housing (i.e., counteract the lasting effects of segregation and discrimination). Recipients must analyze barriers to fair housing and identify and undertake steps to overcome them.

State law is substantially similar to the FHA. However, it additionally prohibits housing-related discrimination based on age, gender identity or expression, lawful source of income, marital status, or sexual orientation.

## **PROHIBITED DISCRIMINATION**

The FHA (1) prohibits housing-related discrimination based on a person's protected status and (2) applies to public or privately-owned dwellings. A "dwelling" is "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof."

The FHA prohibits both intentional and disparate impact discrimination. Intentional discrimination occurs when a person is treated differently because of his or her protected status. Disparate impact discrimination (also known as discriminatory effect discrimination) occurs when a neutral rule unnecessarily and disproportionately impacts a protected class. A neutral rule is one that does not appear to target a particular class, but when applied, adversely

impacts one class more than the general public. Whether a rule's disparate impact results in illegal discrimination depends on whether (1) the rule-maker can show a substantial, legitimate, nondiscriminatory interest in using the rule and (2) a less discriminatory alternative to the rule exists. A person need not intend to discriminate to be held liable pursuant to a disparate impact analysis.

### ***Sale or Rental of a Dwelling***

Under the FHA, it is illegal, based on a person's protected status, to:

1. refuse to (a) rent or sell a dwelling, (b) negotiate for rental or sale of a dwelling, or (c) otherwise make unavailable or deny a dwelling;
2. set different terms, conditions, or privileges for the rental or sale a dwelling, or provide different services or facilities in connection with its rental or sale (e.g., different rental or sale prices, delaying repairs);
3. make, print, or publish a notice, statement, or advertisement concerning the rental or sale of a dwelling that indicates a preference or limitation;
4. falsely state that a dwelling is unavailable for inspection, rental, or sale;
5. persuade owners to rent or sell a dwelling for profit (known as blockbusting); or
6. deny access to or membership in, or set different terms for, a facility or service related to the rental or sale a dwelling (e.g., a multiple listing service, brokers' association).

### ***Related Transactions***

The FHA also prohibits discrimination in residential real estate-related transactions. These include (1) making loans or providing financial assistance (a) to purchase, construct, improve, repair, or maintain a dwelling or (b) secured by residential real estate or (2) selling, brokering, or appraising residential real estate. It is illegal, based on a person's protected status, to:

1. refuse to make a mortgage loan;
2. refuse to provide information regarding loans;
3. impose different terms or conditions on a loan (e.g., different interest rates);
4. discriminate in appraising property; or
5. set different terms or conditions for purchasing a security, loan, or debt secured by residential real estate.

### ***People with Disabilities***

The FHA provides additional guidance as to what constitutes discrimination based on disability. It makes it illegal to discriminate in the rental or sale of a dwelling because a person with disabilities:

1. is the buyer or renter,
2. is associated with the buyer or renter, or
3. will live in the dwelling.

Under the FHA, discrimination against people with disabilities includes:

1. refusing to permit, at the expense of the person with disabilities, reasonable modifications to the premises;
2. refusing to make reasonable accommodations in rules, policies, or practices, when necessary to afford a person an equal opportunity to use and enjoy a dwelling; or
3. failing to comply with accessibility design and construction standards when constructing new multifamily housing.

The federal Americans with Disabilities Act and the Rehabilitation Act also prohibit discrimination against people with disabilities in the housing context (for more information, see OLR Report [2009-R-0361](#)).

### **EXEMPTIONS**

The FHA exempts from its prohibition on discrimination (1) owner-occupied multifamily housing with four or fewer units and (2) certain single-family house rentals or sales conducted by the owner. It allows

religious organizations and societies to limit occupancy to members when renting, selling, or allowing the use of dwellings for non-commercial purposes. It similarly authorizes private clubs to limit occupancy to, or give preference to, members when providing accommodations for non-commercial purposes.

Additionally, the FHA contains the federal Housing for Older Persons Act of 1995 (HOPA) (42 USC § 3607, as amended by Public Law 104-76). HOPA exempts housing developments occupied primarily by seniors from the prohibition on familial status discrimination. Senior housing includes (1) certain state and federal senior housing projects, (2) housing designed for and occupied solely by people who are age 62 or older, and (3) buildings in which at least one person who is age 55 or older occupies at least 80% of the units.

## **ENFORCEMENT**

HUD administers the FHA. People who think they have been discriminated against in violation of the FHA can file a complaint with HUD. Alternatively, an aggrieved person can (1) file a private civil suit or (2) work directly with a state or local agency that HUD identifies through its substantial equivalence certification. A certified agency enforces a law with rights, procedures, remedies, and judicial review provisions that are substantially equivalent to the FHA. The state's Commission on Human Rights and Opportunities (CHRO) is a certified agency.

HUD must refer complaints to certified agencies whenever possible. If HUD does not refer the case, it investigates the complaint and attempts to conciliate the matter with both parties. If it terminates conciliation efforts and determines reasonable cause to believe a FHA violation exists, it conducts an administrative proceeding to resolve the complaint, unless a party elects to have the complaint decided in a civil action. If a party requests a civil action, the U.S. Attorney General will file the suit on the aggrieved person's behalf. The attorney general also brings (1) suits to enforce HUD subpoenas and conciliation agreements and (2) "pattern or practice" suits (i.e., suits alleging discrimination is a regular practice). Additionally, the attorney general has primary responsibility for enforcing the FHA as it relates to municipal zoning and land use decisions and ordinances.

## **MUNICIPAL LAND USE REGULATION**

The FHA's anti-discrimination mandate prohibits local governments from exercising their land use and zoning powers in a discriminatory way. This means that they cannot make zoning or land use decisions or

implement land use policies that exclude or otherwise discriminate against protected persons. For example, according to DOJ, if a municipality denies a permit or zoning change for a housing development, or restricts it to a largely minority neighborhood, because the prospective residents are expected to be predominantly African Americans, it would violate the FHA. Similarly, implementing land use policies that treat groups of people with disabilities less favorably than groups of people without disabilities violates the FHA.

## **AFFIRMATIVELY FURTHERING FAIR HOUSING**

To prevent future discrimination and remove the effects of segregation and past discrimination, the FHA requires HUD to administer its programs and activities in a manner affirmatively furthering fair housing. HUD's interpretation of this requirement is that its state and municipal grantees and sub-grantees (including the Community Development Block Grant, Home Investment Partnership, Emergency Shelter Grant, and Housing Opportunities for Persons with AIDS) must study and report back to it on impediments to fair housing in their jurisdiction. A municipality studying impediments might, for example, find that lack of employee training on fair housing issues and large lot size requirements hinder fair housing choice. Following an analysis of impediments, grantees must implement plans to eliminate these impediments. For example, a municipality might implement a training program and change its ordinances. (Note: HUD recently proposed a rule change for the affirmatively furthering fair housing requirement. Among other things, the new rule makes HUD, as opposed to grantees, responsible for providing much of the data necessary for an analysis of impediments. A link to the proposed rule is included below.)

## **RELATED STATE LAW**

The DHPA is substantially similar to the FHA. It prohibits housing-related discrimination based on age, ancestry, disability, familial status, gender identity or expression, lawful source of income (e.g., housing assistance, child support), marital status, national origin, race, religion, or sex ([CGS §§ 46a-64c](#)). (Another law prohibits discrimination based on sexual orientation ([CGS § 46a-81e](#).) The FHA does not prohibit housing discrimination based on age, gender identity or expression, lawful source of income, marital status, or sexual orientation (although the FHA does not list "ancestry" as a protected status, "national origin" has been interpreted to include discrimination based on ancestry). CHRO is responsible for administering the DHPA. Additionally, HUD refers FHA complaints to CHRO, as discussed above.

Like the FHA's mandate to affirmatively further fair housing, CGS § 8-37ee requires entities participating in Department of Housing (DOH), Connecticut Housing Finance Authority (CHFA), or Connecticut Housing Authority programs to affirmatively promote fair housing. Additionally, any entity applying for financial assistance under a program administered by an agency created under Title 8 (e.g., DOH, CHFA) must submit to the agency and implement, an affirmative fair housing marketing plan. Plans must include provisions for recruiting an applicant pool containing residents of municipalities with relatively high concentrations of minority populations. The recipient agency must periodically review plans to confirm creation of such applicant pools. It may require revisions to plans.

### ***Exemptions***

The state's prohibition against discriminatory housing practices does not apply to:

1. the rental of a room or rooms in a single-family dwelling if the owner lives there or
2. a unit in a dwelling containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner maintains and occupies the other unit as his or her residence (in the case of sexual orientation or familial status discrimination, no more than four units).

Additional exemptions apply to the classes protected by state law, but not the FHA. Specifically, the age discrimination provision does not apply to minors, programs designed to assist people age 60 and older, or senior housing. The marital status discrimination provision does not apply to discrimination toward an unmarried, unrelated, man and woman living together. The sex discrimination provision does not apply to single-sex, rented sleeping accommodations with shared bathrooms if discrimination is necessary for privacy or modesty. The lawful source of income discrimination provision does not prohibit denial of accommodations based solely on insufficient income. Finally, the familial status provision does not apply to senior housing (as defined by the FHA).

## **ADDITIONAL INFORMATION**

- Fair Housing Act (42 USC § 3601 et seq.)  
<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/pdf/USCODE-2011-title42-chap45.pdf>
- Implementing regulations (24 CFR 100 et seq.)  
<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=24:1.2.1.1.1&idno=24>
- DOJ website  
[http://www.justice.gov/crt/about/hce/housing\\_coverage.php](http://www.justice.gov/crt/about/hce/housing_coverage.php)
- HUD websites  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/FHLaws/yourrights](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights) and  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/enforcement](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/enforcement)
- Connecticut Fair Housing Center's guide on affirmatively furthering fair housing <http://www.ctfairhousing.org/wp-content/uploads/CFHC-AffirmFurthGuideGrantees.pdf>
- Recently proposed HUD rule concerning affirmatively furthering fair housing <http://www.gpo.gov/fdsys/pkg/FR-2013-07-19/pdf/2013-16751.pdf>

JB:ts