

Questions and Answers on: FAIRHOUSING

The purpose of the fair housing laws is to protect a person's right to own, sell, purchase, or rent housing of his or her choice without fear of unlawful discrimination. The fair housing laws are intended to allow everyone equal access to housing. State and Federal fair housing laws prohibit discrimination in the housing market on the basis **of race, color, sex, religion, national origin, handicap, or familial status**. To discriminate against a person on the basis of his or her membership in one of these protected categories is against the law.

This pamphlet will focus primarily on the fair housing laws as they are applied in the State of North Carolina.

Q: Do the fair housing laws apply to all housing transactions?

A: Yes, except for the following limited exemptions:

- The rental of a unit in a multi-family dwelling with not more than four units where the owner (or a member of the owner's family) lives in one of the units
- The rental of a room or rooms in a private house where the owner (or a member of the owner's family) lives in the house
- Lodging owned or operated by private clubs which give preference to their members
- Religious, charitable, or educational institutions or organizations which are operated, supervised, or controlled by religious institutions or organizations that give preference in real estate transactions to their members, provided the organization does not exclude members of a protected category
- Single-sex dormitories

Discriminatory Practices

Q: What are some common unlawful acts of discrimination?

A: Refusing to sell, rent or negotiate — It is against the law to take any of the following actions because a person is a member of one of the protected categories:

- To refuse to engage in a real estate transaction
- To refuse to rent or sell housing
- To discriminate in terms, conditions, or privileges for the sale or rental of housing
- To refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction
- To indicate that housing is not available when it actually is available
- To discriminate by providing different facilities or services
- To refuse to negotiate for housing

Steering — Discouraging a person from seeking housing in a particular community, neighborhood, or development because the person is or is not a member of a protected category. For example, a real estate agent shows a black person housing in predominately black neighborhoods and a white person housing in predominately white neighborhoods.

Interference, coercion, or intimidation — Trying to limit the benefits of renting or buying housing in an area because the person is a member of one of the protected categories. This includes trying to coerce, threaten, intimidate, retaliate against, or interfere in any way with the use and enjoyment of housing.

Discriminatory advertising — Advertising or making any statement which indicates directly or indirectly an intent to make a limitation, specification, or to discriminate with respect to members of one of the protected categories.

Blockbusting (also referred to as *panic peddling*)

— Trying, in a direct or subtle way, to scare a person into moving out of a neighborhood by representing that a person from one of the protected categories is considering or is in fact moving into the neighborhood. For example, stating that the neighborhood would decline or that the crime rate would increase if members of a protected category moved into the neighborhood would be unlawful.

Redlining — Being denied or subjected to stricter conditions in applying for a loan on property in a particular area because of the racial composition of the area, including loans to purchase, construct, improve, repair, or maintain housing.

Q: Can a person other than the seller or landlord be guilty of violating the fair housing laws?

A: Yes. Anyone involved in the real estate transaction who discriminates based on a protected category has violated the fair housing laws. For example, a local banker informs a real estate agent that if the agent allows anyone else with kids to move into the neighborhood, the bank will not do business with the agent or the agent's customers.

Q: Does an owner have to rent or sell to a person just because he or she is in a protected category?

A: No. Owners may rent or sell to whomever they choose as long as their decisions are not based on the fact that a would-be tenant or buyer is a member of a protected category. If someone from a protected category becomes a tenant, the owner may hold that tenant to the same standard of performance and behavior as everyone else.

Q: Can landlords protect themselves from complaints of discrimination when they reject someone from a protected category?

A: Yes. A landlord should have detailed standards for deciding who is acceptable as a tenant and who is not. However, these standards may not be based upon a prospective tenant's membership in a protected category. Such standards are particularly important in decisions to reject a tenant applicant because of poor credit, and to place would-be tenants on a "waiting list." The landlord should then apply these standards equally to every tenant applicant. If a waiting list is used, the landlord must make sure that every applicant who is told that his or her name will be placed on the list is indeed put there and that, as an applicant's name comes up, the applicant is notified of this fact.

Handicap

Q: What conditions are considered handicaps under the fair housing laws?

A: A handicapping condition exists if someone has a physical or mental impairment which substantially limits one or more major life activities. Some examples are: physical disability, mental illness or retardation, cerebral palsy, muscular dystrophy, cancer, heart disease, Human Immunodeficiency Virus (HIV) infection or AIDS, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. However, a landlord does not have to rent to anyone, including a handicapped person, who would constitute a genuine, direct threat to the health or safety of other tenants or whose tenancy would result in substantial physical damage to the property of others.

Q: Does a landlord have to allow a handicapped person to make modifications to a rental unit?

A: Yes. If a landlord rents his or her property to a handicapped person, the landlord *must allow* the handicapped person to make *reasonable modifications* to the existing premises as necessary for the full enjoyment of the premises, such as widening doorways, installing handrails, and installing wheelchair ramps. However, the handicapped person is responsible for the cost of the modifications. A landlord may condition permission to make modifications on the tenant's agreeing to restore the *interior* of the premises to the original condition if the modifications made by the handicapped tenant would interfere with the next tenant's reasonable use and enjoyment of the property. The landlord may also withhold permission until seeing a description of the proposed modifications which provides reasonable assurance that the modifications will be done in a workmanlike manner. [Note: All multifamily dwellings covered by the fair housing laws and ready for first occupancy after March 13, 1991, have to be designed and constructed so that few, if any, modifications will be necessary.]

Q: Can a landlord charge a higher security deposit to a handicapped person who makes modifications to a rental unit?

A: No. However, if the nature of the modifications is such as would interfere with the next tenant's use and enjoyment of the property, and correction of the modifications would be especially costly, the landlord may, as part of a restoration agreement between the landlord and tenant, require the tenant to pay into an interest-bearing escrow account a reasonable amount to cover restoration costs. The tenant would be entitled to any interest which accrues on the escrow account.

Q: Does a landlord have to make other accommodations for a handicapped tenant?

A: Yes. A landlord must make reasonable accommodations in rules, policies, practices, or services as necessary to afford a handicapped person equal opportunity to use and enjoy a housing unit, including public and common use areas. Two examples include allowing a visually-impaired tenant to have a service animal in a community where no pets are allowed, and not charge a pet fee, or allowing a tenant with a serious heart condition to have a reserved parking space close to the tenant's apartment.

Q: If a landlord has available units which are equipped for the handicapped, does a handicapped person have to take one of those units?

A: No. A landlord can advise a handicapped person of the availability of specially equipped units, but the handicapped person must be allowed to choose from any of the units which are available.

Familial Status

Q: Can persons with children be denied housing on that basis?

A: No. The fair housing laws protect a person who (1) has a child under the age of 18, (2) has legal custody of a child, (3) is designated by the parent to care for a child (provided that the designee has written permission from the parent), (4) is pregnant, or (5) is in the process of obtaining legal custody of a child. However, the fair housing laws do not protect persons denied housing because they are single, married, or living with someone.

Q: Are "adults only" communities allowed?

A: No, unless they qualify for one of the two exemptions which allow for adults-only housing for elderly persons. *[Note: There are numerous requirements which must be met to qualify for these exemptions. Contact the **North Carolina Human Relations***

Commission *for further details.*] If a housing complex qualifies for the elderly person exemption, then it may discriminate based on familial status only. It may not discriminate on the basis of any of the other protected categories.

Q: Can an owner or agent segregate families with children from other tenants?

A: No. A member of a protected category may not be assigned to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of being a member of a particular category.

Q: Can a landlord or agent limit the number of children allowed in a bedroom, or prohibit the sharing of bedrooms by children of the opposite sex?

A: No. Although a landlord may set “occupancy standards” for the *number of people* that will be allowed to live in a unit, the standards should not be based on the age or sex of the individuals. [Note: The fair housing laws do not limit the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of persons permitted to occupy a housing unit.]

Real Estate Agents and Fair Housing

Q: May a real estate agent discriminate at the direction of the owner?

A: No. Even if a real estate agent has no discriminatory intent, the agent is in violation of the fair housing laws when discriminating against persons from one of the protected categories at the direction of the owner or lessor. Likewise, an agent is in violation if he or she knows that members of protected categories may be unlawfully rejected by the owner or lessor.

Q: What should a real estate agent do if he or she finds out that the seller or landlord intends to discriminate against a member of a protected category?

A: The agent should immediately terminate the agency relationship with the seller or landlord. The agent should then send a letter to the seller or landlord stating that the relationship has been terminated and explaining why. Next, the agent should inform any other agents or other parties to the transaction that he or she no longer represents the seller or landlord.

Q: Can a real estate agent decline to show property in a particular area because members of a protected category reside in that area?

A: No. This is *steering*, even if the buyer requests it. The real estate agent should inform the buyer that he or she can show property based on any of the buyer’s other criteria, but not the presence or absence in the area of members of a protected category.

Q: Is a real estate brokerage firm in violation of the fair housing laws if one of its employees or agents unlawfully discriminates?

A: Yes.

Q: Can a real estate agent answer questions about the characteristics of a neighborhood if the questions concern one of the protected categories?

A: No.

Q: Is it a violation of the fair housing laws to deny an agent who is a member of a protected category access to real estate related services?

A: Yes. It is a violation of the fair housing laws to deny a qualified real estate agent access to or membership in any membership listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting housing, because he or she is a member of one of the protected categories.

Q: Can a violation of the fair housing law affect a real estate agent's license?

A: Yes. A violation of the fair housing laws is a violation of the North Carolina Real Estate License Law; therefore, it could result in suspension or revocation of the agent's license by the North Carolina Real Estate Commission. Additionally, a real estate broker is barred from conducting any brokerage activities or otherwise promoting their status as a broker in any manner that discriminates on the basis of race, color, religion, national origin, sex, familial status or disability.

Enforcement of the Fair Housing Laws

Q: What should I do if I suspect that I or someone else has experienced unlawful discrimination in a housing transaction?

A: You may file a complaint or notify the **North Carolina Human Relations Commission** (NCHRC), 1711 New Hope Church Road, Raleigh NC 27609 (Phone: 919/431-3036). However, the complaint must be filed within one year after the alleged violation occurred. The North Carolina Human Relations Commission will be glad to answer any questions you may have. **If a real estate broker was involved in the transaction, you are encouraged to file a complaint with the N.C. Real Estate Commission.**

Q: What happens after I file a complaint?

A: The NCHRC will investigate to determine whether unlawful discrimination has occurred.

If it has, the NCHRC will attempt to eliminate or correct the discriminatory practice by informal conference, persuasion, or conciliation. If it is unable to resolve the matter: (1) you may request a right-to-sue letter so that you may file a civil lawsuit; (2) the NCHRC may file a lawsuit for you; or (3) if neither of the two previous options is taken, an administrative hearing may take place where a final decision on the matter will be made. If the NCHRC fails to find that discrimination has taken place, it will dismiss the complaint and issue a right-to-sue letter. The NCREC will investigate complaints involving real estate brokers and discipline brokers through their licenses when sufficient, admissible evidence of a violation is found.

Of course, you have the right to file a civil suit, at your expense, within one year based on a violation of the state fair housing laws and within two years based on a violation of the federal housing laws without filing a complaint with the NCHRC.

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