

FAIR HOUSING – ZONING AND REASONABLE ACCOMMODATIONS

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AGENDA

- Federal and State Fair Housing Act Overview
- Fair Housing and Zoning
- Handicap (Disability) Discrimination (Physical and Mental Disabilities)
 - Definition of Disability
 - Major Life Activities
 - Disability discrimination and zoning
 - Reasonable Accommodations Under the Fair Housing Act
 - Reasonable Accommodations – Requirements for the Resident
 - Reasonable Accommodations Requirements for the Housing Provider
 - Examples of Reasonable Accommodations
 - Questions

FEDERAL AND STATE LAWS PROHIBITING HOUSING DISCRIMINATION



FEDERAL LAW PROHIBITING HOUSING DISCRIMINATION

UNITED STATES FAIR HOUSING ACT (TITLE VIII)

- Shortly after the April 4, 1968 assassination of Dr. Martin Luther King, Jr., the Federal Fair Housing Act was passed on April 11, 1968.
- Prohibits discrimination in a real estate transaction based on race, color, sex, religion, national origin, familial status (families with children) or handicap (disability).





STATE LAW
PROHIBITING
HOUSING
DISCRIMINATION

NORTH CAROLINA FAIR HOUSING ACT - CHAPTER 41A

Prohibits discrimination in a real estate transaction based on race, color, sex, religion, national origin, familial status (families with children) or handicap (disability).

STATE LAW PROHIBITING HOUSING DISCRIMINATION

NORTH CAROLINA FAIR HOUSING ACT- LAND USE

- Land use planners, such as zoning boards, cannot discriminate based on the seven protected classes, or, with some exceptions, because a development or plan, may contain affordable housing.
- This provision is included in the N. C. Fair Housing Act, N.C. General Statute § 41A-4(g)



ADDITIONAL REGULATION OF FAIR HOUSING IN NORTH CAROLINA

REAL ESTATE LICENSING LAW

- N.C. General Statutes, Chapter 17
- The North Carolina Real Estate Commission prohibits licensees from engaging in discriminatory practices in their personal transactions
- The following provision must be included in all written agency contracts, highlighted, as in boldfaced type:
 - **THE AGENT (FIRM) SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT**



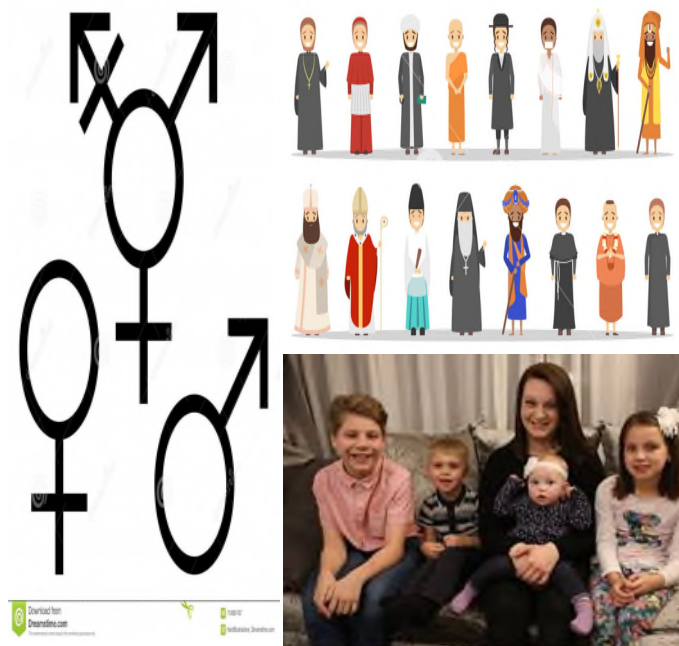
WHAT THE FEDERAL AND STATE FAIR HOUSING ACTS COVER



FAIR HOUSING PROTECTED CLASSES

The act of treating someone differently in a residential real estate (housing) transaction on account of

- *Race,*
- *Color,*
- *Sex,*
- *Religion,*
- *National origin,*
- *Families with children (familial status),*
- *Handicap (disability)*





PROTECTED CLASSES THAT ARE NOT COVERED UNDER THE NORTH CAROLINA STATE OR FEDERAL FAIR HOUSING ACTS

There are four (4) classes that are not covered under the state Fair Housing Act. They are:

- *Marital status*
- *Students,*
- *Income*
- *Age*



WHO CAN FILE A FAIR HOUSING DISCRIMINATION COMPLAINT WITH THE N.C. HUMAN RELATIONS COMMISSION OR HUD?



Any person or group who is harmed or about to be harmed by an act of fair housing discrimination!!!



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TYPES OF RESIDENTIAL REAL ESTATE HOUSING COVERED BY THE NORTH CAROLINA STATE AND FEDERAL FAIR HOUSING ACTS

- **House for sale or rent**
- **Apartments for sale or rent**
- **Mobile homes for sale or rent**
- **Beach Rentals**
- **Time Shares**
- **Vacant lots (for residential use only)**
- **Campgrounds (for residential use only)**
- **Airbnbs**

Who is Liable under the N.C. State and Federal FHAs

- With a few exceptions, anyone who has control over residential property and real estate financing must obey the law.
- This includes rental managers, property owners, real estate agents, landlords, local governments, banks, developers, builders and individual homeowners who are selling or renting their property.

EXEMPTIONS TO THE N. C. FAIR HOUSING ACT

An owner of an apartment building containing not more than four apartments is exempt in the rental of the apartments, provided the OWNER occupies one of the apartments as a personal residence.

Renter of a room(s) in a private house (not a boarding house) if the person renting the house or member of his/her family resides in the house.

Religious institutions, charitable or educational organizations which gives preference to members of the same religion, as long as members in such religions are not restricted by race, color, sex, national origin, handicap status or familial status.

Private clubs who operate properties for members:

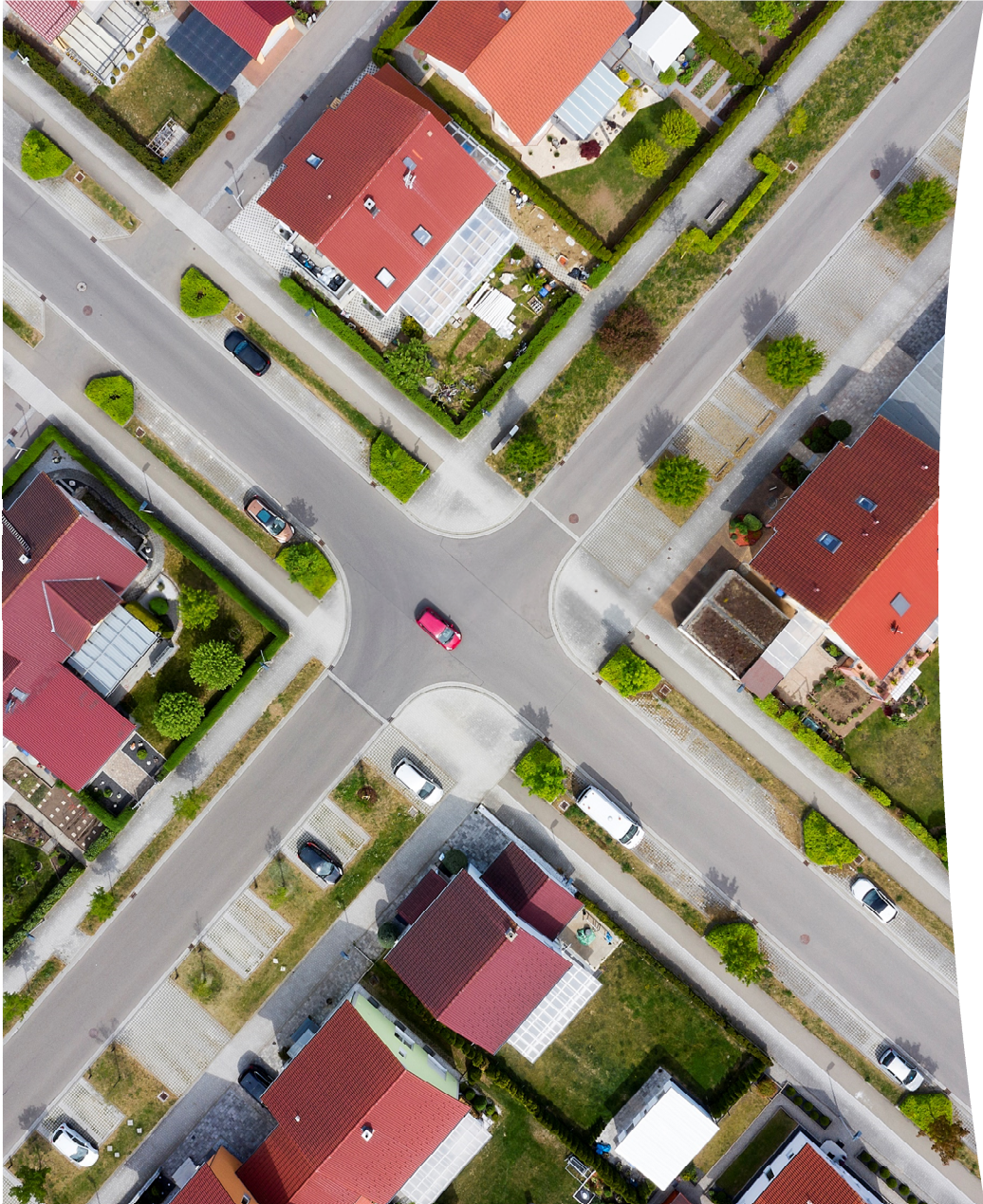
Single sex dormitories

Commercial real estate properties.

ADDITIONAL EXEMPTIONS TO THE FEDERAL FAIR HOUSING ACT

In addition to the exceptions listed for the N.C. State Fair Housing Act, the Federal Fair Housing Act includes the following exception(s):

Single family house sold or rented by an owner without the use of a broker if owner does not own more than three single-family houses.



FAIR HOUSING AND ZONING

FAIR HOUSING APPLIES TO ZONING

- “Otherwise make unavailable”
 - Includes restrictive zoning
- As a result, zoning boards, municipalities, and other government entities that take actions in violation of the FHA may be liable

Legislative intent of FHA

“The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.”

- H. Rep. No. 100-711, at 24 (1988)

Policies underlying FHA and zoning

Affirmatively Furthering Fair
Housing (AFFH)

Increase housing choice and
opportunities

Integration

Individuality

What type of discrimination is illegal?

- Intentional discrimination/disparate treatment
 - “Enacting or implementing land-use rules, ordinances, procedures, building codes, permitting rules, policies, or requirements that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of a protected class.” 24 C.F.R. § 100.70(d)(5)
- Policies that have discriminatory effect/disparate impact
 - 24 U.S.C. § 100.500
- Denial of reasonable accommodation for person with a disability
 - Includes denials by government officials
- Statements indicating preference/limitation

FAIR HOUSING AND DISABILITY DISCRIMINATION

**PERSONS WITH
MENTAL AND
PHYSICAL
DISABILITIES**

DEFINITION OF DISABILITY

With respect to a person,

- (1) a physical or mental impairment which substantially limits one or more major life activities;**
- (2) a record of such an impairment; or**
- (3) a person being regarded as having such an impairment***

****Federal Register, Vol. 54, No. 13, Monday,
January 23, 1989, Rules and Regulations.***

PHYSICAL AND MENTAL IMPAIRMENTS

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.**

- 24 C.F.R. § 100.201

SOME MAJOR LIFE ACTIVITIES



- Self-care
- Manual tasks
- Walking
- Breathing
- Seeing
- Hearing
- Speaking
- Learning
- Working

DISABILITY REQUIREMENTS UNDER FHA



- **Make reasonable accommodations in rules, policies, practices or services.**
- **Allow for reasonable modifications.**
- **Do not ask unlawful questions regarding a disability.**

Examples of possible intentional discrimination



Denial of building, renovation, special use permit or re-zoning based on objections to residents of the development or home



Moratorium on new adult care facilities without justification

Examples of possible intentional discrimination

Limitation on geographical proximity, where imposed in response to community fears and concerns about property values

Treating a group home for people with disabilities different than a “family” home, even when the group home meets the “family” home legal definition.

**Examples of
possible
intentional
discrimination**

Application of fire code to group home for persons with mental illness who had no problems evacuating

Conditioning group home permit or 24-hour supervision and establishment of “community advisory committee”

Examples of possible intentional discrimination

- Requiring certificate of occupancy for group home for people with disabilities only (not for other group homes)
- Requiring notice to neighbors of a group home's existence where not required for other residential units

**Examples of
possible
disparate
impact
(discriminatory
effect)**

- Requiring group homes include only persons who are mobile and capable of exiting a building and following instructions
- Dispersion requirement for group homes
- Limitation on the number of unrelated persons allowed to live together

**Examples of
interference,
coercion, or
intimidation**

Denial of special use permit,
where reason for denial proven to
be pretext

Weekly citations for noise,
parking, zoning, etc., where town
had been lax, plus evidence of
discriminatory statements



Reasonable Accommodations

WHAT IS A REASONABLE ACCOMMODATION UNDER THE N.C. STATE AND FEDERAL FAIR HOUSING ACTS?



- A change in rules, policies, practices or services.
- Should involve minimal or no expense.
- Reasonable requests that are necessary to a disabled person's full enjoyment of housing **MUST** be granted.



VS



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REASONABLE ACCOMMODATIONS FOR PERSON WITH A DISABILITY

- **REQUIREMENTS FOR THE RESIDENT**
- **Must make the request (but does not have to be in writing.)**
- **If disability is not obvious, must provide minimal medical documentation showing that the resident is disabled. Must be from a licensed medical provider who has a therapeutic relationship with the patient.**
- **Must demonstrate that the requested accommodation is related to treatment or amelioration of disability (“nexus.”)**
- **Can’t pose danger to persons/property.**



REASONABLE ACCOMMODATIONS FOR PERSON WITH A DISABILITY



REQUIREMENTS FOR THE HOUSING PROVIDER

- **Must grant the accommodation if reasonable and shows nexus.**
- **“*Reasonable*” if request does not impose undue financial or administrative burden.**
- **Accommodations may not force a change in the nature of the provider’s business.**
- **Providers may not charge a fee or deposit for the accommodation/modification.**
- **Homeowners’ associations (“*HOAs*”) are subject to the FHA and the accommodation provisions.**

EXAMPLES OF REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES



EXAMPLES OF REASONABLE ACCOMMODATIONS

- **Assisting a mentally impaired person in filling out paperwork.**
- **Allowing a homeowner/resident to have a breed restricted dog as a service animal for their physical disability or a support animal for their mental disability.**
- **Communicating with a deaf person in writing or in sign language.**
- **Allowing a blind person to have a service dog despite a “no pets” policy.**

REASONABLE ACCOMMODATIONS AND ZONING

FHA mandates that zoning officials

“change, waive, or make exceptions in their zoning rules to afford people with disabilities the same opportunity to housing as those who are without disabilities.”

Hovsons Inc. v. Township of Brick, 89 F.3d 1096, 1104 (3d Cir. 1996)

Reasonable Accommodation Examples

- ▶ Allow nursing home to operate in mixed residential zone
- ▶ Waive minimum side yard requirement
- ▶ Variance to allow facility for people with disabilities in commercial/industrial district
- ▶ Allow 8-person home (vs. 6-person)
- ▶ Exception to dispersion requirement



Exceptions

- Direct threat. The FHA does not require a tenancy that would be a “direct threat” to the health or safety of other individuals, or result in substantial damage to the property of others, unless a reasonable accommodation could eliminate the threat.
- Drug use. The current use of illegal drugs is excluded from the definition of disability.

FAIR HOUSING VIOLATIONS CAN BE COSTLY

- *Gilead Community Services, Inc. v. Town of Cromwell* – city shut down group home. \$5.2M in damages and costs.
- *U.S. v. Town of Wolcott* – In face of community hostility to people with disabilities, city amended municipal code to prevent group home in residential area. \$360K in damages
- *Monroe RE v. City of Fairfield* – city issued permits for 2 group homes, but refused to issue certificate of occupancy after received pressure from neighborhood group. \$1.5M in damages and costs.
- *U.S. v. St. Bernard's Parish* – city revised/passed ordinances to block 2 group homes for children, denied reasonable accommodation. \$1.3M in damages and costs

STATUTE OF LIMITATIONS

- Federal Act:
 - 1 year from date of last act to file a HUD complaint
 - 2 years from date of last act to file a lawsuit
 - Filing a complaint with HUD or NCHRC, etc tolls the running of the time to file a lawsuit under the federal and state Fair Housing Act

CONTACT

**NC Human
Relations Commission**

(919) 807-4420

1-866-324-7474 (toll free)

**[www.oah.nc.gov/civil-rights-
division/housing-discrimination](http://www.oah.nc.gov/civil-rights-division/housing-discrimination)**

Fair Housing Project

Legal Aid of NC

1-855-797-FAIR

www.fairhousingnc.org

*This seminar provides general information. For
legal advice, please consult an attorney.*



**ANY
QUESTIONS?**