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SUMMARY OF FEDERAL AND STATE FAIR HOUSING LAWS

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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 relates to municipal land use regulation and (2) the state's Discriminatory Housing Practices Act (DHPA) (CGS § 46a-64c).

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 (HUD), 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 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 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 public and private housing. HUD and the Department of Justice (DOJ) enforce the FHA.

Connecticut's DHPA is substantially similar to the FHA. However, it additionally prohibits housing-related discrimination based on age, lawful source of income, marital status, or sexual orientation.

PROHIBITED DISCRIMINATION

The FHA prohibits housing-related discrimination based on a person's protected status. The act applies to discrimination involving a "dwelling," which 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 anti-discrimination provisions apply to public and private dwellings.

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 (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 construing 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 anti-discrimination mandate (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 discriminate on the basis of religion in renting, selling, or allowing the use of dwellings for non-commercial purposes. It also authorizes a private club to limit occupancy to, or give preference to, its members when providing accommodations for non-commercial purposes.

Additionally, the FHA contains the Housing for Older Persons Act of 1995 (HOPA) (42 USC § 3607, as amended by Public Law 104-76). HOPA permits discrimination based on familial status in housing developments occupied primarily by seniors. 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 the Department of Justice, 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.

RELATED STATE LAW

The DHPA is substantially similar to the FHA. It prohibits housing-related discrimination based on age, ancestry, disability, familial status, lawful source of income (e.g., housing assistance, child support), marital status, national origin, race, religion, sex, or sexual orientation (CGS § 46a-64c). The FHA does not prohibit housing discrimination based on age, 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.

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.

Additional exemptions apply to the classes protected by the DHPA, 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. And the familial status provision does not apply to:

1. a unit in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner maintains and occupies one unit as his or her residence and
2. 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
- HUD websites
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

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