



FAIR HOUSING  
RHODE ISLAND



RhodeIslandHousing  
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## FEDERAL AND RHODE ISLAND STATE FAIR HOUSING LAWS

## Fair Housing Law<sup>1</sup>

State and Federal laws provide “fair housing” protections for certain populations to prevent discrimination in access to housing. Under federal law, individuals seeking housing may not be discriminated against based on their race, color, religion, sex, ancestral origin, familial status or disability.<sup>2</sup> Rhode Island’s fair housing laws are more comprehensive than their federal counterparts. In addition to prohibiting discrimination based on the previously listed criteria, state law also prohibits housing discrimination based on marital status, sexual orientation, age (18+), gender identity or expression and being a victim of domestic abuse. It is also illegal to discriminate against someone because of his/her association with members of a protected class.

## Additional Protections for Persons with Disabilities

Residents and applicants with a physical or mental disability (including, but not limited to, hearing, mobility and visual impairments, cancer, chronic mental illness, AIDS, AIDS Related Complex, or mental retardation) that substantially limits one or more major life activities, have additional fair housing protections.

### ■ Landlords may not:

- Refuse to let a tenant with a disability make reasonable modifications to their dwelling or common use areas, at the tenant’s own expense, if necessary to use the housing fully. (Where reasonable, the landlord may permit changes only if the tenant agrees to restore the property to its original condition when they move.)
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the person with a disability to use the housing on an equal basis with non-disabled persons.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

## What Housing is Covered?

The state and federal fair housing laws cover most private and publicly funded housing. However, certain housing is exempt from the provisions of the federal laws, including:

- A single-family house sold or rented by the owner.<sup>3</sup>
- Owner-occupied structures of four units or less.<sup>4</sup>
- Dwellings developed for sale by or rentals managed by religious organizations to give preference and limit the housing to persons of their religion must be operated for non-commercial purposes. Membership in the religion cannot be restricted on the basis of race, color or national origin.<sup>5</sup>

1. The information contained herein is a summary of state and federal fair housing laws. For the full text of the federal Fair Housing Act, 42 U.S.C. Section 3601-56 visit [www.hud.gov](http://www.hud.gov). For a full text of the Rhode Island Fair Housing Practices Act, Title 34, chapter 37 of the General Laws of RI, visit [www.sec.state.ri.us](http://www.sec.state.ri.us).

2. Familial status means that people with children cannot be treated differently than people without children. Disability means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

3. There is no such exemption under state law.

4. There is no such exemption under state law. However, it is legal under state law to discriminate on the basis of sexual orientation or gender identity/expression when the structure is owner-occupied and has 3 units or less, one of which is occupied by the owner.

5. Rhode Island state law further stipulates that, to qualify for this exemption, religious organizations cannot restrict membership on the basis of sex, sexual orientation, disability and gender identity/expression.

- Housing for older persons is exempt from the prohibition against familial status discrimination if any of the following are true:
  - HUD has determined that it is specifically designed for and occupied by elderly persons under a federal, state or local government program.
  - It is intended for and occupied solely by persons who are 62 or older.
  - It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older. Under state law, the housing accommodation must have significant facilities/services designed to meet the needs of older persons in order to qualify for the state exemption.

### **What Actions are Prohibited?**

#### **Discrimination in the sale or rental of a dwelling. This includes:**

- Refusing to negotiate for the sale or rental of a unit.
- Failing to accept or consider an offer.
- Refusing to sell or rent a unit.
- Failing to process an offer for sale/rental of a unit.
- Imposing different sales or rental prices.
- Using different qualification procedures or criteria.
- Denying or delaying processing of an application.
- Evicting or using different eviction criteria.

#### **Discrimination in the terms and use of the housing. This includes:**

- Using different lease provisions or terms of agreement of sale, such as security deposits, down payment requirements, or closing requirements.
- Failing or delaying maintenance or repairs.
- Refusing to provide municipal services or insurance.
- Representing that there are covenants, deeds, trusts or lease provisions that restrict the sale or rental of a unit to members of a protected class, or enforcing such restrictions if they do exist.
- Limiting use of privileges, services or facilities.
- Denying or limiting services in connection with sale or rental of a unit because a person failed to provide sexual favors.

### **Discriminatory conduct in the marketing of housing. This includes:**

- Providing inaccurate or untrue information about the availability of dwellings for sale or rent to any person, including testers, regardless of whether that person is actually seeking a unit or not.
- Indicating through words or conduct that an available unit is not available for inspection, sale or rent.
- Limiting information about available units for sale or rent.
- Restricting or attempting to restrict choice in order to perpetuate segregated housing patterns (steering) within a housing development or a neighborhood. This might involve withholding information, exaggerating information, or communicating assumptions about where an applicant might be “comfortable.”
- Making unavailable or denying a dwelling through practices, including taking adverse action against an employee who refuses to participate in discriminatory treatment.
- Employing codes and other devices to accept or reject applicants and limit options.

### **Discriminatory advertisements, statements and notices.**

Owners must market all available units in a nondiscriminatory manner. It is unlawful to use advertisement that indicates a preference, limitation or discrimination. This includes applications, flyers, brochures, deeds, signs, banners, posters or billboards, as well as oral statements. It is important to note that, by law, these marketing restrictions apply to all housing, including those types that are exempt from laws on discrimination as they relate to the sale or rental of housing.

### **Examples of actions prohibited by this requirement include:**

- Using words, phrases, photographs, illustrations, symbols or forms that suggest that dwellings are available, or not available, to members of certain protected classes.
- Expressing to agents, brokers, employees, prospective sellers or renters, or any other person(s) a preference for or limitation on any purchaser or renter based on protected class status.
- Refusing to advertise for the sale or rental of units or requiring different charges or terms for such advertising based on protected class status.

### **Engaging in blockbusting practices.**

Blockbusting is defined as, discriminating or coercing a party to sell a home to someone of a protected class, then using scare tactics to cause others in the neighborhood to sell at depressed prices.

It is unlawful to attempt to induce a person to sell or rent a dwelling by representing the neighborhood as becoming populated by a protected class or classes, when motivated by profit (whether or not this profit is realized), including:

- Engaging in activity that conveys that a neighborhood is “changing.”
- Encouraging a person(s) to sell or rent a dwelling through assertions that the entry of persons from a protected class into the neighborhood will result in undesirable consequences to the neighborhood, such as the lowering of property values, increase in crime or decline in quality of the schools.

*Example: A sales agent arranges a sale in which a minority family enters a previously all-white neighborhood. The agent then engages in blockbusting by contacting other owners in the neighborhood and informing them that their property values will fall if they do not sell right away at a depressed-offered price.*

**Discrimination in the provision of brokerage services.** It is unlawful to deny access to, or membership or participation in, any real estate-related service, such as the Multiple Listing Service (MLS). This includes:

- Setting different fees for access.
- Denying or limiting benefits to members.
- Imposing different standards or criteria for membership in a real estate sales or rental organization.
- Establishing geographic boundaries or office location or residence requirements for access to, or membership or participation in, MLS or other broker organization or service.

**Discrimination in residential real estate-related transactions.**

In addition to the prohibitions against discrimination in the direct provision of housing, state and federal laws specifically prohibit discrimination in the provision of any housing-related service, including:

- The making or purchasing of loans and providing of financial assistance for the acquisition, rehabilitation, construction, maintenance or repair of a dwelling based on an applicant's protected class status.
- Discriminating in terms or conditions of the provision of loans secured by residential real estate.
- The selling, brokering, or appraising of residential real property in a discriminatory way.
- The purchase, rental, construction or improvement of a dwelling, imposing different policies, practices, procedures or qualification criteria on applicants for loans or other financial assistance based on protected class status.

**Retaliation and association.**

In addition to the forms of discriminatory behavior that are specified under the law, the law also deems the following as unlawful:

- It is illegal for anyone to threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- It is illegal to discriminate against someone because they associate with someone who is a member of a protected class, whether or not that person is a member of a protected class him or herself.

**Overt discrimination versus indirect discrimination.**

Civil-rights laws specifically forbid deliberate acts of discrimination. Most federal appeals courts also hold that racially neutral policies with discriminatory effects violate fair housing laws. The term commonly used to describe these sorts of unlawful activities is "disparate impact." For example, a selection preference for local residents that does not state a racial preference may still be illegal if it effectively precludes participation by qualified racial minorities. It is important to be aware of not only specifically prohibited acts but also acts that might unintentionally result in discrimination.

### How are Fair Housing Laws Enforced?

Any person may seek remedy for unlawful housing discrimination by filing a complaint of discrimination with HUD, in federal district court, or with a state or local agency. In Rhode Island, complaints may be filed with the Rhode Island Commission for Human Rights. Please see the “Fair Housing RI Resources” section at the end of this document for a list of some organizations dedicated to the support of fair housing practices. A person can also commence a private civil action in a U.S. district court or state court to obtain appropriate relief.

### Fair Housing and Low- and Moderate-income Housing

In 2004, the Rhode Island General Assembly passed a bill that dealt with the obligations municipalities have to promote the development of low- and moderate-income housing. Under this bill, most municipalities in the state are now required to include an Affordable Housing Plan as part of the housing element of its comprehensive plan. The Affordable Housing Plan must identify the affordable-housing needs in the community and identify goals and policies that will be adopted by the municipality to meet the identified needs.

The legislation gave municipalities authority to create local programs designed to encourage the development of low- and moderate-income housing, by using tools such as inclusionary zoning, increased density and other techniques that help lower the costs to the developer of affordable housing. (In addition to municipal subsidies, varieties of state and federal resources are also available to subsidize the development of low- and moderate-income homes. Please see the resources pages of this packet or visit the Rhode Island Housing web page at [www.rhodeislandhousing.org](http://www.rhodeislandhousing.org) to find out more about these programs.)

In response to the legislation, a number of municipalities have undertaken, or are considering undertaking, local efforts to support the development of low- and moderate-income housing. The process of creating a local subsidy is fairly straightforward and generally requires the involvement of outside partners.

First, the municipality itself must adopt an ordinance establishing its housing program. This ordinance should provide details about the subsidy provided, the income limits for homes created through the program, the required period of affordability required and how those restrictions will be enforced.

Second, the municipality needs to seek the involvement of a housing developer. The developer builds the homes and markets them to eligible buyers or renters, consistent with the requirements of the municipal subsidy program.

Finally, the developer must contract with an Approved Monitoring Agent to ensure that long-term affordability restrictions contained within the municipality’s program will be enforced and that only income-eligible buyers and renters are selected. In Rhode Island, all Approved Monitoring Agents are familiar with state and federal fair housing laws and can be valuable partners in helping to ensure that fair housing laws are followed. Rhode Island Housing maintains a list of Approved Monitoring Agents on its webpage at [www.rhodeislandhousing.org](http://www.rhodeislandhousing.org).

While all of these parties involved in implementing the municipal program are responsible for ensuring that state and federal fair housing laws are followed, the municipality is likely to be held to a higher standard since it is the entity that created the program. To best protect itself from liability, a municipality should do more than merely avoid adopting policies that discriminate against protected groups; instead, it should take affirmative steps to ensure that those groups are given an opportunity to take advantage of its program, particularly in the marketing and sale or rental of affordable homes created under the program.

*This information is designed to serve as a guideline. Following the recommendations and utilizing the templates found herein does not preclude nor guarantee immunity to legal actions. Municipalities and developers should consult their own legal counsel when undertaking affordable-housing marketing and selection planning. The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development’s Fair Housing Initiative Program. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the federal government.*