

## Appendix F

### SUMMARY OF FAIR HOUSING AND OTHER NON-DISCRIMINATION LAWS

#### INTRODUCTION

Numerous Federal laws protect persons against discrimination in housing and related transactions. The most widely known is the Fair Housing Act, the Federal non-discrimination law that applies to many types of housing and to residential real estate transactions. There is also a State housing law, the Wisconsin Open Housing law, and several Federal fair lending laws. These and other laws relating to fair housing are summarized in this Appendix. Additional information relating to fair housing laws that are more specific to providing housing for persons with disabilities is provided in Chapter IX, *Accessible Housing*.

Federal laws that require Federal agencies, State and local governments, and other entities to “affirmatively further fair housing” and engage in “affirmative fair housing marketing” are described in Chapter VI, *Housing Discrimination and Fair Housing Practices*.

#### FEDERAL FAIR HOUSING ACT

Title VIII of the Civil Rights Act, known as the Fair Housing Act, was passed as part of the Civil Rights Act of 1968 to prohibit discrimination in housing. Significant amendments have occurred to the Act since 1968. The Fair Housing Act currently applies to many dwellings,<sup>1</sup> as well as to any vacant land which is offered for sale or lease for the construction or location of a dwelling. Owner-occupied buildings with no more than four units,<sup>2</sup> single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members may be exempt from some provisions of the Act.

To establish discrimination under the Fair Housing Act, it is not necessary to show that an individual was prejudiced or intended to discriminate or had a hostile attitude about a protected class. While intentional discrimination certainly can violate the law, actions that have a statistically discriminatory effect or that perpetuate segregation of a relatively homogeneous community in a more diverse region can also be Fair Housing Act violations.

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<sup>1</sup> A “dwelling” is defined by regulations implementing the Fair Housing Act as “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” (24 CFR 100.20).

<sup>2</sup> This provision exempts duplexes where one unit is occupied by the owner from Fair Housing Act requirements. Duplexes comprise a significant part of the housing stock in many communities in the Region. Based on estimates from the Wisconsin Department of Administration, in 2010 duplexes accounted for 11.6 percent of housing units in the Region, and over 20 percent of housing units in the City of Milwaukee and the Villages of Shorewood and West Milwaukee.

## **Discriminatory Acts**

The Federal Fair Housing Act makes the following actions illegal:

- Refusing to rent or sell a dwelling because of protected status
- Refusing to negotiate for the sale or rental of a dwelling because of protected status
- Discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities, because of protected status
- Representing that any dwelling is not available for inspection, sale, or rental when it is available
- For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular protected status (block busting)
- Making unavailable, or discriminating in the terms or conditions of, a residential real estate transaction, which includes:
  - Loans or other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling
  - Selling, brokering, or appraising of residential real property
- Denying any person access to or membership or participation in, or discriminating in the terms or conditions, any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings because of protected status
- Willfully injuring, interfering with, or intimidating persons seeking to exercise their rights under the law
- To "otherwise make unavailable or deny" housing, which includes using zoning or other land use laws in a manner that has a discriminatory effect or tends to perpetuate segregation, because of membership in a protected class
- To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination based on protected status (for example, advertising for "Christian renter" or "childless couple"). This provision that applies to single family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

### ***Discrimination Against Persons with Disabilities***<sup>3</sup>

Under the Fair Housing Act, additional protections apply to persons with disabilities who are seeking to buy or rent housing, to reside in housing after it is bought or rented, or associated with that buyer or renter.<sup>4</sup> With respect to such persons, discrimination under the Fair Housing Act also includes:

- A refusal to permit, at the expense of a person with disabilities, reasonable modifications of existing premises if necessary to afford full enjoyment of the premises<sup>5</sup>

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<sup>3</sup> See Chapter IX for additional information regarding fair housing laws relating to persons with disabilities.

<sup>4</sup> A person with a disability is someone with a physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment, or being regarded as having such an impairment.

<sup>5</sup> In the case of a rental, the landlord may, where it is reasonable, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

- A refusal to make reasonable accommodations in rules,<sup>6</sup> policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling
- For covered multifamily dwellings<sup>7</sup> for first occupancy after March 13, 1991, a failure to design and construct those dwellings to include:
  - Public and common areas that are accessible to person with disabilities
  - Doors and hallways that are wide enough for wheelchairs
  - Dwelling units with:
    - An accessible route into and through the unit
    - Accessible light switches, electrical outlets, thermostats and other environmental controls
    - Reinforced bathroom walls to allow later installation of grab bars
    - Kitchens and bathrooms that can be used by people in wheelchairs.

Protections for persons with disabilities do not apply to a person who is a “direct threat” to the health or safety of others, or to current users of illegal drugs.

***Discrimination on the Basis of Familial Status***

Familial status, for purposes of the Fair Housing Act, means a person under age 18 living with a parent, with another person having legal custody, or with the designee (with written permission) of the parent or other person having custody. It also includes persons who are pregnant or otherwise seeking legal custody of a minor.

The prohibition on familial status discrimination does not apply to housing for older persons, which is limited to housing provided under Federal or State programs that HUD determines is specifically designed and operated to assist elderly persons; housing intended for, and solely occupied by, persons 62 years of age or older; or housing intended and operated for occupancy by persons 55 years of age or older with at least 80 percent of the occupied units occupied by at least one person who is 55 years of age or older.

**Enforcement**

There are various methods by which persons aggrieved by Fair Housing Act violations can seek to protect their rights. Any person aggrieved or harmed by discrimination, not just a member of a protected class, is permitted to file a complaint or a lawsuit. Thus, for example, white persons seeking to live in integrated communities; fair housing testers; and developers seeking to build affordable integrated housing all have been allowed to file complaints or lawsuits to enforce the Act.

***HUD Administrative Complaint Process***

Although there is no requirement to do so, an aggrieved person may choose to file an administrative complaint with HUD’s Office of Fair Housing and Equal Opportunity (FHEO) within one year of an alleged discriminatory act. Information regarding such complaints is provided in Part 3. The Secretary of HUD may also file a complaint on his or her own initiative. When HUD receives a complaint, it will

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<sup>6</sup> *These rules can include zoning and other land use laws, such as laws that prohibit a group home from locating within 2,500 feet of another group home.*

<sup>7</sup> *“Covered multi-family dwellings” include buildings with four or more dwellings and elevators, or ground floor dwellings in buildings of four or more units that do not have elevators. The Fair Housing Act provides an exemption to buildings of four or fewer units if the owner resides in one of the units; however, it is a violation of the Act to design or construct housing that fails to meet accessibility requirements. The exemption would not apply if someone other than the owner designs and/or constructs the building.*

typically notify the individual of receipt of the complaint; and notify the alleged violator to allow the violator to submit a response. HUD shall investigate the complaint, generally within 100 days, and shall notify the complainant if an investigation cannot be completed within 100 days of receipt of the complaint.<sup>8</sup> If HUD determines that prompt action is needed to carry out the purposes of the Fair Housing Act, it may request that the Attorney General file a civil action in court to obtain temporary relief (such as an injunction) while the complaint process continues.

Prior to taking administrative or legal action, HUD will try to have the parties reach an agreement, a process known as conciliation. A conciliation agreement must protect the individual and the public interest, and must be approved by HUD. If an agreement is violated, HUD may refer the matter to the U.S. Attorney General with a recommendation that a case be filed in court to enforce the agreement.

If no conciliation agreement is reached, HUD will determine whether there is reasonable cause to believe that a discriminatory practice has occurred or about to occur. HUD has the authority to issue subpoenas and use other forms of discovery to conduct its investigations, and there are criminal penalties for failure to comply with HUD's requests.

If HUD finds there is no discrimination, it dismisses the complaint. If it finds discrimination, it will issue a "charge" of discrimination.<sup>9</sup> Once the charge is issued, a complainant, a respondent, or an aggrieved person can choose, generally within 20 days of having been served the charge, to proceed with the case in court. If no party elects to have the case heard in court, HUD will hold an administrative hearing before an administrative law judge (ALJ), generally within 120 days. At the hearing, parties can present evidence, examine and cross-examine witnesses, and obtain issuance of subpoenas. After the hearing, the ALJ has 60 days to issue a decision, although that period may be extended.

If the ALJ finds that a person has engaged or is about to engage in a discriminatory process, the ALJ may order relief including:

- Compensation for actual damages, including humiliation, pain, and suffering
- Injunctive or other equitable relief such as making the housing available
- A civil penalty, paid to the Federal government, to vindicate the public interest
- Payment of the complainant's reasonable attorney fees and costs
- For a business regulated by a governmental agency (for example, a licensed real estate agent), HUD may send its order to that agency and recommend disciplinary action against the violator.

A party may seek review of the ALJ's order, which is reviewable in the Federal Court of Appeals. HUD also may ask the Court of Appeals to enforce its order.

### ***Enforcement by the Department of Justice***

The U.S. Department of Justice, headed by the Attorney General, also has Fair Housing Act enforcement powers. DOJ may file a lawsuit in court to enforce the Fair Housing Act:

- If there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any fair housing rights, or that any group of

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<sup>8</sup> HUD may also refer a complaint to a State or local agency if it determines the agency has the same fair housing powers as HUD. HUD will take the complaint back if the agency does not begin work on it within 30 days.

<sup>9</sup>If the matter involves the legality of any State or local zoning or land use law or ordinance, HUD refers the matter to the Attorney General, instead of issuing a charge.

persons has been denied fair housing rights and the denial raises an issue of general public importance

- If a matter is referred by HUD while an administrative complaint is being investigated
- If a case involves the legality of a State or local zoning or land use law
- To enforce a subpoena issued by HUD
- To enforce a conciliation agreement that has been breached.

If the Department of Justice prevails, it may obtain relief from the court, including:

- Injunctive or other equitable relief such as making the housing available
- Monetary damages to the aggrieved person
- A civil penalty up to \$50,000 for a first violation and \$100,000 for subsequent violations
- Any other relief the court finds is appropriate.

### ***Private Enforcement***

Under the Fair Housing Act, an aggrieved person is permitted to file a lawsuit in State court or in Federal district court to enforce the Fair Housing Act within two years of the discriminatory act. An aggrieved party is not required to file a complaint with HUD before going to court. The case proceeds as regular court litigation, except that the Attorney General of the United States may also intervene in the case and will then also be able to get the remedies available to the Department of Justice.

If the aggrieved person wins the case, the court may award actual and punitive damages; any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in a discriminatory practice or ordering such affirmative action as may be appropriate); and award the plaintiff's attorney fees and costs.

## **WISCONSIN OPEN HOUSING LAW**

The Wisconsin Open Housing law, which is set forth in Section 106.50 of the *Wisconsin Statutes* and Chapter DWD 220 of the *Wisconsin Administrative Code*, contains additional fair housing protections. In addition to the Federally protected classes, State law also protects against discrimination on the basis of marital status, ancestry, lawful source of income, sexual orientation, age, or status as a victim of domestic abuse, sexual assault, or stalking.<sup>10</sup>

The Open Housing law has been expanded since its initial adoption in 1965, and now applies to almost all housing, including the sale and rental of single-family homes.<sup>11</sup> The State law also applies to owner-occupied buildings with four or fewer units, which are exempt from the Federal Fair Housing Act. The types of discrimination prohibited under State law are similar to those prohibited under the Federal Fair Housing Act. With respect to housing for persons with disabilities, if State or local laws are more strict than what Federal law requires, the stricter requirements must be followed.<sup>12</sup>

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<sup>10</sup> *Additional protected classes in the City of Milwaukee include gender identity or expression and military service.*

<sup>11</sup> *The primary exceptions are persons looking for roommates and certain housing intended for older persons.*

<sup>12</sup> *State and Federal requirements for accessible housing are summarized in Chapter IX.*

## **Enforcement**

Under the Wisconsin Open Housing law, a complainant can be an aggrieved person, an interested person, Wisconsin Department of Workforce Development (DWD) itself, or, in cases involving the design and construction of multi-family housing, the Wisconsin Department of Commerce.

### ***Administrative Complaints***

A housing discrimination complaint may be filed with the Equal Rights Division (ERD) of DWD. The complaint must be filed within one year of the alleged discrimination. Information regarding complaints filed with the ERD is provided in Part 3. The ERD is to begin an investigation within 30 days and complete it generally within 100 days. The ERD typically tries to facilitate a settlement between the complainant and alleged violator prior to the start of an investigation of the complaint.

The ERD will proceed to investigate if the complaint cannot be resolved by settlement, and it may subpoena persons or documents to aid in its investigation. The Department may also ask the State Attorney General to bring a case in State court while the investigation is pending to prevent the respondent from taking an action that would make any ultimate relief ineffectual. After the investigation, ERD will determine whether there is probable cause that discrimination has occurred or is about to occur. If probable cause exists, ERD also refers the case to the state Attorney General, who may represent the aggrieved person. For a business regulated by a governmental agency, ERD shall send its finding of reasonable cause to the licensing agency and request that the agency revoke or suspend the violator's license.

If ERD finds no probable cause, an individual is entitled to an administrative hearing on that issue. If there is probable cause, a party can decide whether to proceed through an administrative hearing or in State court. If no court case is filed, the matter will be heard by an ERD ALJ at an administrative hearing.

If the ALJ finds that a person has engaged or is about to engage in a discriminatory process, the ALJ may order relief including:

- Injunctive or other equitable relief such as making the housing available
- Economic and non-economic damages
- Forfeitures up to a maximum of \$50,000
- The complainant's attorney fees and costs.

A party may seek judicial review in State circuit court within 30 days of an administrative decision.

### ***Private Enforcement***

An aggrieved person is permitted to file a lawsuit in state court without going through the ERD complaint process. The case must be filed within one year of the discrimination. The case then proceeds as regular court litigation. If the aggrieved person wins the case, the court may award the same kinds of relief as would be ordered in an administrative hearing, except that the court also may order punitive damages.

## **FAIR LENDING LAWS**

### **Equal Credit Opportunity Act**

As previously described, both the Fair Housing Act and Wisconsin Open Housing law make mortgage lending discrimination against a person in a protected class illegal. The Equal Credit Opportunity Act (ECOA) also prohibits lending discrimination. The ECOA prohibits discrimination in personal and commercial credit transactions, and applies to all creditor activities before, during, and after the extension

of credit. The ECOA is much broader in scope than the Fair Housing Act; however, housing lenders are subject to both statutes.

The ECOA makes it unlawful for any creditor to discriminate:

- On the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant has the capacity to contract
- Because all or part of the applicant's income derives from any public assistance program
- Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

The Federal Reserve Board is responsible for drafting and interpreting the implementation of the ECOA under Regulation B. Regulation B prohibits a creditor from making any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing a credit application. Regulation B also sets forth rules regarding taking applications; evaluating applications; extensions of credit; special-purpose credit programs; notifications; designation of accounts; record retention; rules for providing appraisal reports; criteria for self-testing and self-correction; requirements for electronic communication; and enforcement, penalties, and liabilities.

### **Community Reinvestment Act**

The Community Reinvestment Act (CRA) was enacted in 1977 to help ensure that depository institutions meet the credit needs of all segments of the communities that they serve, particularly low-income and moderate-income populations. Areas with high concentrations of low-income populations and communities of color tend to overlap in the Region's central cities, particularly in the City of Milwaukee.

The CRA requires that a depository institution's record in helping meet the credit needs of its entire service area be evaluated periodically. This record is considered when an institution applies for deposit facilities. The CRA does not specify criteria for rating an institution's performance. It does indicate that the evaluation process should accommodate the individual circumstances of the institution. The law does not encourage high risk loans and specifies that an institution's CRA activities should be undertaken in a safe and sound manner.

CRA examinations are conducted by the Federal agencies that are responsible for oversight of various types of depository institutions, including the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of Currency (OCC), and the Office of Thrift Supervision (OTS). An institution can receive a rating of outstanding, satisfactory, needs to improve, or substantial non-compliance. In connection with its examination of the institution, the appropriate Federal agency assesses the institution's record of meeting the credit needs of the entire community it serves, including low- and moderate-income neighborhoods, and takes the record into account during the application for new facilities. Citizens and community organizations may intervene in the review process, which may result in a depository institution changing its practices in underserved areas.

Additional information about the CRA is provided in the section on foreclosures in Part 3 of Chapter IV.

## **TITLE VI OF THE CIVIL RIGHTS ACT**

Title VI of the Federal Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin by Federally assisted programs. This includes entities that receive funding from HUD. Federal assistance that triggers these protections includes grants, loans, and most contracts, and the rules apply to State and local governments, educational institutions, and private businesses and corporations

(non-profit and for-profit) that receive such assistance. If any part of a government department or agency, an educational institution, or many businesses or corporations, receive Federal funding, then all the operations of that entity are usually subject to Title VI.

Regulations issued under Title VI prohibit not only intentional discrimination, but actions that have a discriminatory effect on the basis of race, color, or national origin. For example, recipients of Federal funding may not, directly or through contractual or other arrangements engage in discrimination such as:

- Utilizing criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin
- Utilizing criteria or methods of administration which have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity
- Determining the site or location of housing, accommodations, or facilities with a discriminatory purpose or effect
- Denying the opportunity to participate as a member of a planning or advisory body which is an integral part of the program on the ground of race, color, or national origin
- Denying housing, accommodations, facilities, services, financial aid, or other benefits on the ground of race, color, or national origin.

Many other forms of discrimination, more similar to the kinds of discrimination discussed in the Fair Housing Act section, are also prohibited under Title VI. These obligations are in addition to, not in lieu of, the AFFH obligations described in Chapter VI, *Housing Discrimination and Fair Housing Practices*.

Claims for intentional violations of Title VI may be filed in court or through an administrative complaint process. Claims for violations based on actions that have a discriminatory effect must be filed with the Federal agency that provided the funding within 180 days of the violation, generally through the agency's Office for Civil Rights or, in HUD's case, the FHEO office. The Federal agency may also initiate compliance reviews of grant recipients.

## **SECTION 504 OF THE REHABILITATION ACT**

Section 504 of the Federal Rehabilitation Act of 1973 prohibits discrimination on the basis of disability by entities that receive Federal funding. As in the case of Title VI, a wide range of Federal assistance, such as receipt of grants, loans, and contracts, triggers coverage of the entire entity, and Section 504 includes similar complaint and compliance review procedures. The definition of a person with a disability under Section 504 is similar to the Fair Housing Act definition. Similar to Title VI, Rehabilitation Act regulations prohibit actions that have a discriminatory effect on the basis of disability. A number of these regulations also focus on providing persons with disabilities "an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others," and allow separate services "necessary to provide . . . housing, aid, benefits, or services that are as effective as those provided to others." In addition, some specialized programs for persons with disabilities are permissible, and some criteria or methods of administration that may have some discriminatory effect can be used, but only if the recipient can prove that these procedures are "manifestly related to the accomplishment of an objective of a program or activity."

The Rehabilitation Act also contains program accessibility and building/housing accessibility requirements. These regulations include, among other requirements, that:

- No qualified individual with disabilities shall, because a recipient's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination

- HUD-assisted programs be made readily accessible, even if each individual location is not accessible (for example, by reassigning certain services to accessible buildings)
- New construction and substantial alteration of existing facilities follow accessibility requirements, including a requirement that new and substantially altered multi-family housing be designed and constructed to be readily accessible to and usable by persons with disabilities
- Accessible units should be, to the maximum extent feasible, available in a sufficient range of sizes and amenities to be comparable to those available to persons that are not disabled
- The administrator of a housing voucher program should seek to ensure participation by landlords with accessible units as well as persons with disabilities, and provide exceptions to certain program rules as needed to permit participation by persons with disabilities
- Entities may not use policies, such as prohibiting assistive devices, auxiliary alarms, or guides in housing facilities that have the effect of limiting the participation of tenants with disabilities.<sup>13</sup>

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<sup>13</sup> *However, “housing policies that the recipient can demonstrate are essential to the housing program or activity will not be regarded as discriminatory . . . if modifications to them would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.”*