

# FAIR HOUSING IN WASHINGTON STATE

## *A guide for Sellers, Landlords, Buyers, Tenants, and Real Estate Licensees*

Fair Housing is rapidly becoming a flash point in the U.S. While much progress has been made in the past 20 years, recent studies indicate nearly 40 percent of Americans believe a landlord should be able to deny housing on the basis of race.

However, sound business practice unites with Federal and Washington law to provide fair housing opportunities to all residents of the state. Regardless of whether consumers are attempting to rent or own, they are protected.

### **Governing Law**

Fair housing protections date back to the Civil Rights Act of 1866, but are primarily governed by the 1968 Fair Housing Act and its amendments. Washington's specific provisions are included in the Law Against Discrimination (RCW 49.60) and various court decisions. In addition, local communities may have fair housing ordinances which are more restrictive than Federal and State law. Real estate salespersons and brokers must be certain they fully understand the fair housing laws which govern their practice of real estate.

### **Protected Classes**

Federal law protects people from housing discrimination in six categories: Race or color; National origin; Religion; Sex; Handicap; Familial status;

Washington's Law Against Discrimination is slightly different, The language of Washington's Law Against Discrimination is slightly different, but the result is basically the same. "Creed" in the Washington statute is equivalent to the Federal "religion." The state law also specifies sensory/mental/physical disability rather than the vague "handicap". Temporary disabilities are covered in Washington. The state specifically prohibits discrimination based on marital status and families with children.

Variations exist in fair housing ordinances in individual communities throughout the state. Real estate licensees should contact the city or county government for each community in which they work to ensure they are aware of special requirements in their market.

### **Exemptions**

While the Fair Housing Act covers most housing, there are a few important exemptions:

- Single-family home sold without a real estate licensee (provided the owner does not have an interest in more than three single-family homes at one time). This exemption can only be used once in any 24-month period.

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- Owner-occupied dwellings with four or fewer units.
- Religious organization or nonprofit group where dwelling can only be sold or rented to a member of the group, where the dwellings are not operated for commercial purpose and the group does not discriminate in membership.
- Private clubs which provide incidental lodging to members.
- Person who has been convicted of the illegal manufacture or distribution of a controlled substance.
- “Handicapped” person if that person’s occupancy constitutes a threat to the health and safety of others.
- Provisions regarding “familial status” do not apply to duly qualified “housing for older persons”, where that designation provides special services for those over 55, not merely the absence of children.

Washington law allows fewer exemptions. While the Federal exemption for religious organizations and private clubs still apply, owners of four or fewer apartments and those selling/renting without the services of a real estate broker are subject to state law.

### **Prohibited Actions**

Just as the concept of discrimination is negative, the law identifies what cannot be done rather than what must be done. Illegal actions include:

- refusing to engage in a real estate transaction
- discriminating in terms or conditions of a transaction
- discriminating in providing services or facilities in connection with a real estate transaction
- refusing to receive or failing to transmit a bona fide offer
- refusing to negotiate
- representing that a property is not available for inspection, sale, rental or lease when it is in fact available
- failing to advise a prospect about a property listing or refusing to allow him/her to inspect the property
- publishing any advertisement, notice or sign which indicates directly or indirectly an intent to discriminate
- using any application form or making any record or inquiry which indicates, directly or indirectly, an intent to discriminate
- offering, soliciting, accepting or retaining a listing with the understanding that a person may be discriminated against
- expelling a person from occupancy
- discriminating in negotiating, executing or financing a real estate transaction
- discriminating in negotiating or executing any service or item in connecting with a real estate transaction (such as title or mortgage insurance)
- inducing or attempting to induce, for profit, anyone to sell or rent by making representations regarding entry into the neighborhood of a person of specified classes (blockbusting)
- inserting in a written instrument relating to real property or honoring or attempting to honor any condition, restriction or prohibition based on specified classes

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(any such deed discriminating in any credit transaction (whether or not real estate related) in denying credit, increasing fees, requiring collateral, or in any other terms or conditions.

### **Less Favorable Treatment**

Some charges of discrimination are based on the belief that some groups are treated differently from others. A real estate licensee must be prepared to demonstrate that households of apparently equal means are shown an equivalent selection of properties, in similar neighborhoods.

Consistency is the key to equal treatment. A licensee who shows a broad selection of properties and maintains good records should be fine.

### **Reasonable Accommodation**

In addition to the requirements of the Fair Housing Act and the Law Against Discrimination, landlords are also subject to the requirements of the Americans with Disabilities Act (ADA) when it comes to renting housing to individuals with physical disabilities. Most apartments built since 1991 must meet ADA requirements.

Structures built before 1991 require the landlord to make “reasonable accommodation”. This does not mean the landlord must pay to modify the unit to meet all the tenant’s desires. Rather, the landlord must allow the tenant (at tenant’s expense) to make modifications to the unit to meet his/her needs. At the conclusion of the rental period, the tenant must return the unit to its original condition, at the landlord’s discretion. Similarly, a landlord must allow a seeing eye dog in the unit of a visually impaired tenant, even though the lease contains a “no pets” clause.

In the case of a single rental unit in an owner’s residence, the Washington law permits refusal to make physical changes to the unit.

### **Avoiding Problems**

A real estate licensee’s actions must be non-discriminatory in both intent and effect. A licensee must exercise caution throughout the process and be aware of how his/her actions are being perceived by others.

Referring to the racial composition of a neighborhood, especially if it is changing, could be perceived as evidence of blockbusting. Casual comments, even those made in jest, could be cited as discriminatory behavior.

Even the refusal to accept a listing might be perceived as evidence of discrimination. Here the issue gets complicated. A licensee has a right to turn away business which is overpriced or outside their business area. Excluding an area based on racial or ethnic composition, however, may be judged evidence of discrimination.

Licensees should keep adequate records of properties shown to all prospective buyers or tenants to illustrate that homes in a variety of neighborhoods were marketed. Limiting the homes shown to a household of color to integrated or primarily minority neighborhoods may be construed as steering.

Advertising has become an especially difficult topic. Describing a property as great for “empty nesters” is being viewed as discrimination against house-holds with children. Some contend that describing a view discriminates against the vision impaired while “short walk to bus” discriminates against those who are unable to walk. The best advice to real estate professionals is to ensure your advertising describes the property, not potential residents.

### **Testers**

Some forms of housing discrimination are subtle, making it difficult for individuals in protected classes to know whether they are receiving equal treatment. Accordingly, government agencies have adopted limited testing of fair housing compliance. These testing methods have been challenged in court, and upheld as valid.

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In a testing scenario matched pairs of testers, where one pair which is in a protected class, are provided with virtually identical information, which they use to qualify for housing. They will visit several locations seeking to rent or buy, and will record the process they go through, including the qualifying questions which are asked, the number, variety and location of units shown, etc. If a pattern of restricted choice or unequal treatment is encountered, charges will probably follow.

### **Complaints**

If you feel you have been discriminated against in your search for housing, contact the local human rights office, or a state or federal enforcement group listed on the back of the brochure. Real estate licensees are also encouraged to contact these groups for guidance in treating all potential clients equitably.

### **Fair Housing in Washington State**

It is illegal to discriminate in housing against members of these protected classes.

F = Federal Fair Housing Act

W = Washington Law Against Discrimination

Race/Color (F/W)

Religion/Creed (F/W)

Sex (F/W)

Racialization (W)

National Origin (F/W)

Familial Status (F/W)

Marital Status (W)

Disability (sensory, mental and/or physical) (W)

Handicap (F)

To reach the Office of Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development, call: 1-800-669-9777

To file a complaint with the Washington State Human Rights Commission, or to obtain information on education programs designed to help service providers operate in compliance with fair housing laws, or for answers to specific technical questions about the Washington Law Against Discrimination, call: 1-800-729-4960

### **Local Ordinances**

Additional groups may be protected by local ordinances. Check with local Human Rights Department or Housing Authority for details.