

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 36-96.1 through 36-96.3 of the Code of Virginia, relating to the Virginia Fair Housing Law; unlawful discriminatory housing practices.

[H 6]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-96.1 through 36-96.3 of the Code of Virginia are amended and reenacted as follows:

§ 36-96.1. Declaration of policy.

A. This chapter shall be known and referred to as the Virginia Fair Housing Law.

B. It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, source of funds, or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons; in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured ensured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

§ 36-96.1:1. Definitions.

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

"Complainant" means a person, including the Fair Housing Board, who files a complaint under § 36-96.9.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Discriminatory housing practices" means an act that is unlawful under § 36-96.3, 36-96.4, 36-96.5, or 36-96.6.

"Dwelling" means any building, structure, or portion thereof, that is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

"Elderliness" means an individual who has attained his fifty-fifth birthday.

"Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

"Family" includes a single individual, whether male or female.

"Handicap" means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance as defined in Virginia or federal law. For the purposes of this

57 chapter, the terms "handicap" and "disability" shall be interchangeable.

58 "Lending institution" includes any bank, savings institution, credit union, insurance company or
59 mortgage lender.

60 "Major life activities" means, but shall not be limited to, any the following functions: caring for
61 oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

62 "Person" means one or more individuals, whether male or female, corporations, partnerships,
63 associations, labor organizations, fair housing organizations, civil rights organizations, organizations,
64 governmental entities, legal representatives, mutual companies, joint stock companies, trusts,
65 unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

66 "Physical or mental impairment" means, but shall not be limited to, any of the following: (i) any
67 physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of
68 the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including
69 speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or
70 endocrine or (ii) any mental or psychological disorder, such as an intellectual or developmental
71 disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical
72 or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing
73 impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart
74 disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities;
75 emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled
76 substance; and alcoholism.

77 "Respondent" means any person or other entity alleged to have violated the provisions of this
78 chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined
79 pursuant to the provisions of § 36-96.9.

80 "Restrictive covenant" means any specification in any instrument affecting title to real property that
81 purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color,
82 religion, national origin, sex, elderliness, familial status, or handicap.

83 "*Source of funds*" means any source that lawfully provides funds to or on behalf of a renter or buyer
84 of housing, including any assistance, benefit, or subsidy program, whether such program is administered
85 by a governmental or nongovernmental entity.

86 "To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to
87 occupy premises not owned by the occupant.

88 **§ 36-96.2. Exemptions.**

89 A. Except as provided in subdivision A 3 of § 36-96.3 and subsections A, B, and C of § 36-96.6,
90 this chapter shall not apply to any single-family house sold or rented by an owner, provided that such
91 private individual does not own more than three single-family houses at any one time. In the case of the
92 sale of any single-family house by a private individual-owner not residing in the house at the time of
93 the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall
94 apply only with respect to one such sale within any 24-month period; provided that such bona fide
95 private individual owner does not own any interest in, nor is there owned or reserved on his behalf,
96 under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from
97 the sale or rental of, more than three such single-family houses at any one time. The sale or rental of
98 any such single-family house shall be exempt from the application of this chapter only if the house is
99 sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental
100 services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in
101 the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any
102 broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of
103 any advertisement or written notice in violation of this chapter. However, nothing herein shall prohibit
104 the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as
105 necessary to perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any
106 licensee of the Real Estate Board or regulant of the Fair Housing Board, regardless of whether the
107 licensee is acting in his personal or professional capacity.

108 B. Except for subdivision A 3 of § 36-96.3, this chapter shall not apply to rooms or units in
109 dwellings containing living quarters occupied or intended to be occupied by no more than four families
110 living independently of each other, if the owner actually maintains and occupies one of such living
111 quarters as his residence.

112 C. Nothing in this chapter shall prohibit a religious organization, association or society, or any
113 nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a
114 religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings
115 that it owns or operates for other than a commercial purpose to persons of the same religion, or from
116 giving preferences to such persons, unless membership in such religion is restricted on account of race,
117 color, national origin, sex, elderliness, familial status, or handicap. Nor shall anything in this chapter

118 apply to a private membership club not in fact open to the public, which as an incident to its primary
 119 purpose or purposes provides lodging which it owns or operates for other than a commercial purpose,
 120 from limiting the rental or occupancy of such lodgings to its members or from giving preference to its
 121 members. Nor, where matters of personal privacy are involved, shall anything in this chapter be
 122 construed to prohibit any private, state-owned or state-supported educational institution, hospital, nursing
 123 home, religious or correctional institution, from requiring that persons of both sexes not occupy any
 124 single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or
 125 unit in dwellings or other buildings, which it owns or operates.

126 D. Nothing in this chapter prohibits conduct against a person because such person has been convicted
 127 by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled
 128 substance as defined in federal law.

129 E. It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to
 130 persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

131 F. A rental application may require disclosure by the applicant of any criminal convictions and the
 132 owner or managing agent may require as a condition of acceptance of the rental application that
 133 applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the
 134 rental application. The owner or managing agent may collect from the applicant moneys to reimburse
 135 the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record
 136 checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an
 137 individual who, based on a prior record of criminal convictions involving harm to persons or property,
 138 would constitute a clear and present threat to the health or safety of other individuals.

139 G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction
 140 regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing
 141 agents of dwellings may develop and implement reasonable occupancy and safety standards based on
 142 factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so
 143 long as the standards do not violate local, state or federal restrictions. Nothing in this chapter prohibits
 144 the rental application or similar document from requiring information concerning the number, ages, sex
 145 and familial relationship of the applicants and the dwelling's intended occupants.

146 *H. Nothing in this chapter shall prohibit an owner or an owner's managing agent from denying or*
 147 *limiting the rental or occupancy of a rental dwelling unit to a person because of such person's source of*
 148 *funds, provided that such owner does not own more than four rental dwelling units in the*
 149 *Commonwealth at the time of the alleged discriminatory housing practice. However, if an owner,*
 150 *whether individually or through a business entity, owns more than a 10 percent interest in more than*
 151 *four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing*
 152 *practice, the exemption provided in this subsection shall not apply.*

153 *I. It shall not be unlawful under this chapter for an owner or an owner's managing agent to deny or*
 154 *limit a person's rental or occupancy of a rental dwelling unit based on the person's source of funds for*
 155 *that unit if such source is not approved within 15 days of the person's submission of the request for*
 156 *tenancy approval.*

157 **§ 36-96.3. Unlawful discriminatory housing practices.**

158 A. It shall be an unlawful discriminatory housing practice for any person to:

159 1. ~~To refuse~~ *Refuse* to sell or rent after the making of a bona fide offer or ~~to refuse~~ to negotiate for
 160 the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race,
 161 color, religion, national origin, sex, elderliness, *source of funds*, or familial status;

162 2. ~~To discriminate~~ *Discriminate* against any person in the terms, conditions, or privileges of sale or
 163 rental of a dwelling, or in the provision of services or facilities in the connection therewith to any
 164 person because of race, color, religion, national origin, sex, elderliness, *source of funds*, or familial
 165 status;

166 3. ~~To make~~ *Make*, print, or publish, or cause to be made, printed, or published any notice, statement,
 167 or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation,
 168 or discrimination or an intention to make any such preference, limitation, or discrimination based on
 169 race, color, religion, national origin, sex, elderliness, familial status, *source of funds*, or handicap. The
 170 use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima
 171 facie evidence of an illegal preference under this chapter ~~which that~~ shall not be overcome by a general
 172 disclaimer. However, reference alone to places of worship, including; ~~but not limited to~~, churches,
 173 synagogues, temples, or mosques, in any such notice, statement, or advertisement shall not be prima
 174 facie evidence of an illegal preference;

175 4. ~~To represent~~ *Represent* to any person because of race, color, religion, national origin, sex,
 176 elderliness, familial status, *source of funds*, or handicap that any dwelling is not available for inspection,
 177 sale, or rental when such dwelling is in fact so available;

178 5. ~~To deny~~ *Deny* any person access to membership in or participation in any multiple listing service,

179 real estate brokers' organization, or other service, organization, or facility relating to the business of
 180 selling or renting dwellings; or to discriminate against such person in the terms or conditions of such
 181 access, membership, or participation because of race, color, religion, national origin, sex, elderliness,
 182 familial status, *source of funds*, or handicap;

183 6. To ~~include~~ *Include* in any transfer, sale, rental, or lease of housing, any restrictive covenant that
 184 discriminates because of race, color, religion, national origin, sex, elderliness, familial status, *source of*
 185 *funds*, or handicap or for any person to honor or exercise, or attempt to honor or exercise, any such
 186 discriminatory covenant pertaining to housing;

187 7. To ~~induce~~ *Induce* or attempt to induce to sell or rent any dwelling by representations regarding the
 188 entry or prospective entry into the neighborhood of a person or persons of a particular race, color,
 189 religion, national origin, sex, elderliness, familial status, *source of funds*, or handicap;

190 8. To ~~refuse~~ *Refuse* to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise
 191 discriminate or make unavailable or deny a dwelling because of a handicap of (i) the buyer or renter;
 192 (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made
 193 available; or (iii) any person associated with the buyer or renter; *or*

194 9. To ~~discriminate~~ *Discriminate* against any person in the terms, conditions, or privileges of sale or
 195 rental of a dwelling, or in the provision of services or facilities in connection therewith, because of a
 196 handicap of (i) that person; (ii) a person residing in or intending to reside in that dwelling after it was
 197 so sold, rented, or made available; or (iii) any person associated with that buyer or renter.

198 B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of
 199 the handicapped person, reasonable modifications of existing premises occupied or to be occupied by
 200 any person if such modifications may be necessary to afford such person full enjoyment of the premises;
 201 except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition
 202 permission for a modification on the renter's agreeing to restore the interior of the premises to the
 203 condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make
 204 reasonable accommodations in rules, practices, policies, or services when such accommodations may be
 205 necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection
 206 with the design and construction of covered multi-family dwellings for first occupancy after March 13,
 207 1991, a failure to design and construct dwellings in such a manner that:

208 1. The public use and common use areas of the dwellings are readily accessible to and usable by
 209 handicapped persons;

210 2. All the doors designed to allow passage into and within all premises are sufficiently wide to allow
 211 passage by handicapped persons in wheelchairs; and

212 3. All premises within covered multi-family dwelling units contain an accessible route into and
 213 through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are
 214 in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab
 215 bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver
 216 about the space. As used in this subdivision, the term "covered multi-family dwellings" means buildings
 217 consisting of four or more units if such buildings have one or more elevators and ground floor units in
 218 other buildings consisting of four or more units.

219 C. Compliance with the appropriate requirements of the American National Standards for Building
 220 and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of
 221 regulations promulgated by HUD providing accessibility and usability for physically handicapped people
 222 shall be deemed to satisfy the requirements of subdivision B 3.

223 D. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation
 224 ~~which~~ *that* requires dwellings to be designed and constructed in a manner that affords handicapped
 225 persons greater access than is required by this chapter.