

# PRRAC

## *Poverty & Race Research Action Council*

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### ***Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program (2005)***

#### **APPENDIX B: State, Local, and Federal Laws Barring Source-of-Income Discrimination *Updated August 2008***

Set out below is a compilation of state, local, and federal statutes prohibiting discrimination in the housing market based on source of income. Please use the hyperlinks on this page to navigate through the document. This compilation updates research compiled by PRRAC in 2006 and also draws on work originally prepared by the National Housing Law Project and the Center for Policy Alternatives. Many thanks to both organizations for sharing their work. Thanks also to Julie Becker, Legal Aid D.C.; Marty Blaustein, Utah Legal Services; Ken Shiotani, NDRN; Michael Miller, Legal Aid Oklahoma; Jay Wilkinson, Legal Aid of Minnesota, and staff at the Tenant Resource Center, WI. If you discover any errors in this document or have material to add, please contact Jason Small ([jbsmall@prrac.org](mailto:jbsmall@prrac.org)).

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## STATE LAWS

### California

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California passed its source of income discrimination law in 2005. Additional language was added to the Fair Employment and Housing Act. The law is supplemented by ordinances in several California cities, including Los Angeles, San Francisco, East Palo Alto, Corte Madera, and Woodland. The protections of the Act were recently clarified in *Sisemore v. Master Financial*, 151 Cal.App.4<sup>th</sup> 1386 (2007), where the court ruled that the law covers lenders as well as landlords.

#### Relevant Case Law

*Sisemore v. Master Financial, Inc.*, 60 Cal. Rptr. 3d 719, 724 (Cal. Ct. App. 2007) (finding that despite the language of subsection (p)(1), protection against discrimination on basis of source of income is not limited to landlords and tenants and may be applied to borrowers and lenders).

#### Enforcement Process

The Fair Employment and Housing Act may be enforced by filing a complaint with the California Department of Fair Employment and Housing (DFEH). The DFEH can be contacted for intakes at 1-800-233-3212 and (510) 622-2945. [http://www.dfeh.ca.gov/complaints/Default.aspx?process=housing#main\\_content\\_1](http://www.dfeh.ca.gov/complaints/Default.aspx?process=housing#main_content_1)

Prospective plaintiffs may also choose to file civil complaints in court without contacting DFEH.

#### **Cal. Gov't Code §12955 (West 2005), effective January 1, 2005 (Section of the Fair Employment and Housing Act)**

It shall be unlawful:

- (a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability of that person....
- (c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability or an intention to make any such preference, limitation, or discrimination.
- (d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, source of income, or on any other basis prohibited by that section.
- (e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.
- (f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has

opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

(h) For any person, for profit, 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 race, color, religion, sex, sexual orientation, marital status, ancestry, disability, source of income, familial status, or national origin.

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, source of income, familial status, or disability.

(p)(1) For the purposes of this section, “source of income” means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this section, a landlord is not considered a representative of a tenant.

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

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## Connecticut

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Connecticut’s source of income discrimination statute, Connecticut General Statutes, §46a-64c, was passed in 1989. The law prohibits discrimination against all lawful forms of income, including state and federal housing vouchers, federal welfare or disability assistance, etc. The statute has been challenged twice in court; in both cases, the Connecticut Supreme Court upheld the law. *See Commission on Human Rights & Opportunities v. Sullivan Associates*, 739 A.2d 238 (Conn. 1999); *Commission on Human Rights & Opportunities v. Sullivan*, 939 A.2d 541 (Conn. 2008).

### **Relevant Case Law**

*Commission on Human Rights & Opportunities v. Sullivan Associates*, 739 A.2d 238 (Conn. 1999) (*Sullivan I*) (upholding statute and finding that landlords may only consider the section 8 recipient’s personal rent obligation and other reasonable obligations associated with the rental when assessing sufficiency of income).

*Commission on Human Rights & Opportunities v. Sullivan*, 939 A.2d 541 (Conn. 2008) (upholding statute and affirming *Sullivan I*).

### **Enforcement Process**

The Connecticut law can be enforced either through the state Commission on Human Rights and Opportunities or in state court. Complaints may be filed with the Commission’s Fair Housing Unit at (860) 541-3403 or (800) 477-5737 ext. 3403. <http://www.ct.gov/chro/cwp/view.asp?a=2524&Q=316274>

For more information, contact the Connecticut Fair Housing Center at (888) 247-4401.

**Definition of Source of Income: Conn. Gen. Stat. §46a-63(3) (2004).**

(3) "Lawful source of income" means income derived from Social Security, supplemental security income, housing assistance, child support, alimony or public or state-administered general assistance.

**Conn. Gen. Stat. §46a-64c (2004).**

(a) It shall be a discriminatory practice in violation of this section:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income or familial status.

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**District of Columbia**

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The D.C. source of income discrimination statute at Title 2, section 2-1402.21 was passed in 2006. The law prohibits discrimination on the basis of income or its derivation, defining those terms specifically within the section.

**Relevant Case Law**

*Borger Management, Inc. v. Sindram*, 886 A.2d 52 (D.C. 2005) (stating that determination of source-of-income discrimination requires a showing that defendants' stated reasons for refusing to renew a section 8 contract were pretextual).

*Blodgett v. University Club*, 930 A.2d 210 (D.C. 2007) (finding that a claim that a place of public accommodation has violated the DC Human Rights Act can be based on source-of-income discrimination alone).

*Feemster v. BSA Limited Partnership*, 471 F. Supp.2d 87 (D.D.C. 2007) (mem.) (Stating that DC Human Rights Act requires a showing that a landlord's refusal to accept vouchers is based on discrimination rather than the desire to ready the property for sale).

**Enforcement Process**

The DC Human Rights Act may be enforced by either filing an administrative complaint with the DC Office of Human Rights (DCOHR) or by filing a civil complaint directly in court. The DCOHR may be contacted at (202) 727-4559. <http://ohr.dc.gov/ohr/cwp/view,a,3,Q,637906,PM,1.asp#housing>

**Definition of Source of Income: D.C. Code Ann. § 2-1401.02 (West 2008). (Formerly D.C. Code Ann. 1981 § 1-2502)**

(29) "Source of income" means the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period of time; including, but not limited to, money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist.

**D.C. Code Ann. § 2-1402.21 (West 2008) (Section of the District of Columbia Human Rights Act)**

(a) *General.* -- It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based on the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business of any individual:

(1) To interrupt or terminate, or refuse or fail to initiate or conduct any transaction in real property; or to require different terms for such transaction; or to represent falsely that an interest in real property is not available for transaction;

(2) To include in the terms or conditions of a transaction in real property, any clause, condition or restriction;

(3) To appraise a property, refuse to lend money, guarantee a loan, purchase a loan, accept residential real property as security for a loan, accept a deed of trust or mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property;

(4) To refuse or restrict facilities, services, repairs or improvements for a tenant or lessee;

(5) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to a transaction, or proposed transaction, in real property, or financing relating thereto, which notice, statement, or advertisement unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business, of any individual;

(6) To discriminate in any financial transaction involving real property, on account of the location of residence or business (i.e. to "red-line"); or

(7) To limit access to, or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting residential real estate, or to discriminate against any person in terms or conditions of access, membership or participation in any organization, service or facility.

(b) *Subterfuge.* -- It shall further be an unlawful discriminatory practice to do any of the above said acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason based on the actual or perceived: race, color, religion, national origin, sex, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as victim of an intrafamily offense, or place of residence or business of any individual.

**D.C. Code § 2-1402.21(e)** ("The monetary assistance provided to an owner of a housing accommodation under Section 8 of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 662; 42 U.S.C. § 1437f), either directly or through a tenant, shall be considered a source of income under this section.").

**D.C. Code § 42-2851.06(c)** ("the owner of a housing accommodation shall not refuse to rent a dwelling unit to a person because the person will provide his or her rental payment, in whole or in part, through a Section 8 voucher.").

Any additional questions concerning D.C. source of income protections should contact Julie Becker at [jbecker@legalaiddc.org](mailto:jbecker@legalaiddc.org).

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## Maine

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The Maine Human Rights Act was passed in 1973. It protects recipients of both state and federal public assistance (including housing assistance) from discrimination on the basis of their status as a recipient.

### **Enforcement Process**

The Human Rights Act may be enforced by filing a charge with the Maine Human Rights Commission. Charges should be filed in person or by mail by completing the Commission's form, after completion of the intake process. To initiate an intake, call, write, or visit the Commission at 51 State House Station, Augusta, Maine 04333-0051, 207-624-6050. The intake questionnaire is available at [http://www.state.me.us/mhrc/file\\_a\\_charge/housing\\_intake\\_form.html](http://www.state.me.us/mhrc/file_a_charge/housing_intake_form.html).

The Commission must issue a right-to-sue letter before a civil complaint may be filed in state court.

### **Me. Rev. Stat. Ann. tit. 5, § 4582 (West 2008). (Section of the Human Rights Act)**

It shall be unlawful housing discrimination “[f]or any person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as recipient.”

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## Massachusetts

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Massachusetts' source of income discrimination law was originally passed in 1995 and amended in 2000.

**Relevant Case Law:** *DiLiddo v Oxford Street Realty, INC., and another*, 450 Mass.876, 876 N.E.2d 421 (2007) (holding that the terms of the voucher program lease are requirements that cannot be rejected by landlords or their agents, and that agents can be held liable for discrimination ).

### **Enforcement**

To enforce this provision, a plaintiff can file a complaint with the local human rights commission or the Massachusetts Commission Against Discrimination. If the Commission finds probable cause, then it can commence a suit against the offender. If the offender so chooses, this suit may be resolved in the Superior Court. Additionally, the injured party can substitute herself in this suit to so as to seek damages against the landlord.

### **Mass. G.L. Ch151B §4(10)**

“It shall be an unlawful practice: For any person furnishing credit, services or rental accommodations to discriminate against any individual who is a recipient of federal, state, or local public assistance, including medical assistance, or who is a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements,

because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program.”

## Minnesota

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Minnesota Human Rights Act §363A.09 of the Minnesota Human Rights Act was passed in 1999.

### **Relevant Case Law:**

*Babcock v. BBY Chestnut Limited Partnership, Court of Appeals of Minnesota, No. CX-03-90 (2003)*

Babcock and BBY Chestnut Limited Partnership entered into a one-year lease for an apartment in June 2000, Babcock asked the property manager to fill out the form required to make her apartment eligible for a rent subsidy under the Section 8 program. The property manager informed Babcock it would not participate in the Section 8 program and refused. Babcock vacated her apartment at the end of the lease and sued the property manager **pro se** and BBY for violation of the state human rights act and for 12 other claims. In two separate orders, two judges granted judgment for BBY and the property manager. Participation in the Section 8 program was voluntary, so a landlord’s refusal to participate could not be a per se violation of the law. The law required a showing both of a refusal to rent and a failure to do so because of the tenant’s status with respect to public assistance. Instead, the landlord could choose not to participate in the Section 8 program for non-discriminatory reasons, such as an unwillingness to pay for the administrative requirements of the program.

This case has gutted the protections of the statute, and practitioners are waiting for an ironclad case with which to challenge the ruling.

### **Enforcement:**

**Filing claim; filing options.** A claim of an unfair discriminatory practice must be brought as a civil action pursuant to [section 363A.33, subdivision 1](#), filed in a charge with a local commission pursuant to [section 363A.07, subdivision 3](#).

**Minnesota Human Rights Act §363A.09: Subdivision 1. Real property interest; action by owner, lessee, and others.** It is an unfair discriminatory practice for an owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease any real property, or any agent of any of these:

(a) to refuse to sell, rent, or lease or otherwise deny to or withhold from any person or group of persons any real property because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status; or

(b) to discriminate against any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status in the terms, conditions or privileges of the sale, rental or lease of any real property or in the furnishing of facilities or services in connection therewith, except that nothing in this clause shall be construed to prohibit the adoption of reasonable rules intended to protect the safety of minors in their use of the real property or any facilities or services furnished in connection therewith; or

**Subd. 2. Real property interest; action by brokers, agents, and others.** It is an unfair discriminatory practice for a real estate broker, real estate salesperson, or employee, or agent thereof:

(a) to refuse to sell, rent, or lease or to offer for sale, rental, or lease any real property to any person or group of persons or to negotiate for the sale, rental, or lease of any real property to any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status or represent that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or otherwise deny or withhold any real property or any facilities of real property to or from any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status; or

(b) to discriminate against any person because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status in the terms, conditions or privileges of the sale, rental or lease of real property or in the furnishing of facilities or services in connection therewith; or

(c) to print, circulate, or post or cause to be printed, circulated, or posted any advertisement or sign, or use any form of application for the purchase, rental, or lease of any real property or make any record or inquiry in connection with the prospective purchase, rental or lease of any real property, which expresses directly or indirectly, any limitation, specification or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status or any intent to make any such limitation, specification, or discrimination except that nothing in this clause shall be construed to prohibit the advertisement of a dwelling unit as available to adults-only if the person placing the advertisement reasonably believes that the provisions of this section prohibiting discrimination because of familial status do not apply to the dwelling unit.

**Subd. 3. Real property interest; action by financial institution.** It is an unfair discriminatory practice for a person, bank, banking organization, mortgage company, insurance company, or other financial institution or lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair or maintenance of any real property or any agent or employee thereof:

(a) to discriminate against any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status of the person or group of persons or of the prospective occupants or tenants of the real property in the granting, withholding, extending, modifying or renewing, or in the rates, terms, conditions, or privileges of the financial assistance or in the extension of services in connection therewith; or

(b) to use any form of application for the financial assistance or make any record or inquiry in connection with applications for the financial assistance which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status or any intent to make any such limitation, specification, or discrimination; or

(c) to discriminate against any person or group of persons who desire to purchase, lease, acquire, construct, rehabilitate, repair, or maintain real property in a specific urban or rural area or any part thereof solely because of the social, economic, or environmental conditions of the area in the granting, withholding, extending, modifying, or renewing, or in the rates, terms, conditions, or privileges of the financial assistance or in the extension of services in connection therewith.

**Subd. 4. Real property transaction.** It is an unfair discriminatory practice for any real estate broker or real estate salesperson, for the purpose of inducing a real property transaction from which the person, the person's firm, or any of its members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, sex, marital status, status with regard to public assistance, sexual

orientation, or disability of the owners or occupants in the block, neighborhood, or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood, or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other public facilities....

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## New Jersey

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N.J.S.A. 10: 5-12 originally passed in 1991, and was amended in 2002.

### **Relevant Case Law**

*Franklin Tower One v. N.M.*, 157 N.J. 602 (1999) (upheld the statute stating that Section 8 vouchers are covered by source of income protection because the statute prohibits discrimination not only against source of income but also against the source of a lawful rent payment).

*T.K. v. Landmark West*, 802 A.2d 527, (N.J.Super.App.,2002)

In tenant's action alleging landlord discriminated against her by rejecting application because of her dependence upon government assistance, trial court did not violate statute and substitute its standards for landlord's business judgment in determining tenant's creditworthiness when it found that tenant's disputed credit problems were used by landlord as a pretext; though statute did not limit landlords from refusing to rent based on creditworthiness, it was up to trial court to make assessment of credibility. [N.J.S.A. 2A:42-100](#).

### **Title 10, §10:5-4 (2002)**

“All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.”

### **Title 10, §10:5-12**

It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:...

g. For any person, including but not limited to, any owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any real property or part or portion thereof, or any agent or employee of any of these:

(1) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, familial status, disability, nationality, or source of lawful income used for rental or mortgage payments;

(2) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, familial status, disability, nationality or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment or sublease of any real property or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, domestic partnership status, sex, affectional or sexual orientation, familial status, disability, nationality, or source of lawful income used for rental or mortgage payments, or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied by individuals of one sex to any individual of the exclusively opposite sex on the basis of sex;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c. 169 (C.10:5-5).

h. For any person, including but not limited to, any real estate broker, real estate salesperson, or employee or agent thereof:

(1) To refuse to sell, rent, assign, lease or sublease, or offer for sale, rental, lease, assignment, or sublease any real property or part or portion thereof to any person or group of persons or to refuse to negotiate for the sale, rental, lease, assignment, or sublease of any real property or part or portion thereof to any person or group of persons because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments, or to represent that any real property or portion thereof is not available for inspection, sale, rental, lease, assignment, or sublease when in fact it is so available, or otherwise to deny or withhold any real property or any part or portion of facilities thereof to or from any person or group of persons because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability or nationality;

(2) To discriminate against any person because of race, creed, color, national origin, ancestry, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental, lease, assignment or sublease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof or to make any record or

inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, domestic partnership status, familial status, sex, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection h., shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied exclusively by individuals of one sex to any individual of the opposite sex on the basis of sex;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c. 169 (C.10:5-5)....

## **North Dakota**

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This law was passed in 1993.

### **Title 14, §14-02.4-01: State Policy Against Discrimination**

“It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate.”

### **Title § 14-02.5-07. Residential real estate-related transaction**

A person whose business includes engaging in residential real estate-related transactions may not discriminate against an individual in making a real estate-related transaction available or in the terms or conditions of a real estate-related transaction because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance. A residential real estate-related transaction is the selling, brokering, or appraising of residential real property or the making or purchasing of loans or the provision of other financial assistance to purchase, construct, improve, repair, maintain a dwelling, or to secure residential real estate. Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

## Oklahoma

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The Oklahoma Source of Income Provision was passed in 1991.

There are no cases citing this provision. Persons with interest in the state's application of these laws should contact Mike Miller, Legal Aid of Oklahoma, at (405) 488 6861 or [mike.miller@laok.org](mailto:mike.miller@laok.org).

### **Title 25, §1452 (A) 8: Discriminatory Housing Practices**

“A. It shall be an unlawful discriminatory housing practice for any person, or any agent or employee of such person:

... 8. To refuse to consider as a valid source of income any public assistance, alimony, or child support, awarded by a court, when that source can be verified as to its amount, length of time received, regularity, or receipt because of race, color, religion, gender, national origin, age, familial status, or handicap....”

## Oregon

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The Oregon Source of Income discrimination legislation was passed August 6, 2007. **It excepts section 8 vouchers from being considered income for the purposes of the statute. This law was amended in the first session of 2008, March 11, 2008, as follows:**

**SECTION 6.** ORS 659A.421, as amended by section 8, chapter 100, Oregon Laws 2007, and section 4a, chapter 903, Oregon Laws 2007, is amended to read:

659A.421. **(1) As used in this section:**

**(d) "Source of income" does not include federal rent subsidy payments under 42 U.S.C. 1437f, income derived from a specific occupation or income derived in an illegal manner.**

**(2) A person may not, because of the race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income of any person:**

(a) Refuse to sell, lease or rent any real property to a purchaser.

(b) Expel a purchaser from any real property.

(c) Make any distinction, discrimination or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection therewith.

(d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

(e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this section.

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of **the person having exercised or enjoyed or having** aided or encouraged any other person in the exercise **or enjoyment** of, any right granted or protected by this section.

(h) Deny access to, or membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation.

(i) Represent to a person that a dwelling is not available for inspection, sale or rental when the dwelling in fact is

available for inspection, sale or rental.

(j) Otherwise make unavailable or deny a dwelling to a person.

~~(2)~~**(3)(a)** A person whose business includes engaging in residential real estate related transactions may not discriminate against any person in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(9) Any violation of this section is an unlawful practice.

**The enforcement provisions of the act have been changed as follows:**

Any person claiming to be aggrieved by an alleged unlawful practice may file with the Commissioner of the Bureau of Labor and Industries a verified written complaint that states the name and address of the person alleged to have committed the unlawful practice. The complaint may be signed by the complainant or the attorney for the complainant. The complaint must set forth the acts or omissions alleged to be an unlawful practice. The complainant may be required to set forth in the complaint such other information as the commissioner may require. Except as provided in ORS 654.062, a complaint under this section must be filed no later than one year after the alleged unlawful practice.

~~(2)~~ **(3)(a)** Except as provided in paragraph (b) of this subsection, a complaint may not be filed under this section if a civil action has been commenced in state or federal court alleging the same matters.

**(b) The prohibition described in paragraph (a) of this subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law.**

**OR ST 659A.825 (c)(1) If the Attorney General or the commissioner has reason to believe that an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law has occurred or is about to occur, the Attorney General or the commissioner may file a complaint in the same manner as a person filing a complaint under ORS 659A.820.**

(2) If the commissioner files a complaint under this section alleging an unlawful practice other than an unlawful employment practice, **or if a person files a complaint under ORS 659A.820 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law**, the commissioner may also issue a temporary cease and desist order requiring any respondent named in the complaint to refrain from the unlawful practice alleged. A temporary cease and desist order under this section may contain any provision that could be included in a cease and desist order issued after a hearing under ORS 659A.850.

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## Utah

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The provisions against housing discrimination were passed by the Utah legislature in 1999. There are no cases pending. According to practitioners, the eviction laws favor landlords so extremely, that they are reluctant to take on section 8 recipients for fear of being subjected to additional federal requirements. If you are interested in additional information regarding Utah, please contact Marty Blaustein at [mblaustein@utahlegalservices.org](mailto:mblaustein@utahlegalservices.org), (801) 328-8891 x 3328.

**Enforcement: Section 57-21-(8-10):**

Any aggrieved person may file a written verified complaint with the division within 180 days after an alleged discriminatory housing practice occurs. The division shall commence proceedings to investigate and conciliate a complaint alleging a discriminatory housing practice within 30 days after the filing of the complaint. After the

commencement of an investigation, any party may request that the commission review the proceedings to insure compliance with the requirements of this chapter.

If, as a result of the division's investigation of a complaint, the director determines that there is reasonable cause to support the allegations in the complaint, all of the following apply:

(a) The division shall informally endeavor to eliminate or correct the discriminatory housing practice through a conciliation conference between the parties, presided over by the division. Nothing said or done in the course of the conciliation conference may be made public or admitted as evidence in a subsequent proceeding under this chapter without the written consent of the parties concerned.

(b) If the conciliation conference results in voluntary compliance with this chapter, a conciliation agreement setting forth the resolution of the issues shall be executed by the parties and approved by the division. The parties may enforce the conciliation agreement in an action filed in a court of competent jurisdiction.

(c) If the division is unable to obtain a conciliation agreement, the director shall issue a written determination stating the director's findings and ordering any appropriate relief under [Section 57-21-11](#).

### **Utah Fair Housing Act §57-21-5**

(1) It is a discriminatory housing practice to do any of the following because of a person's race, color, religion, sex, national origin, familial status, source of income, or disability:

(a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental, or otherwise deny or make unavailable any dwelling from any person;

(b) discriminate against any person in the terms, conditions, or privileges of the sale or rental of any dwelling or in providing facilities or services in connection with the dwelling; or

(c) represent to any person that any dwelling is not available for inspection, sale, or rental when in fact the dwelling is available.

(2) It is a discriminatory housing practice to make a representation orally or in writing or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or posted any notice, statement, or advertisement, or to use any application form for the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status, source of income, or disability, or expresses any intent to make any such preference, limitation, or discrimination.

(3) It is a discriminatory housing practice to induce or attempt to induce, for profit, any person to buy, sell, or rent any dwelling by making representations about the entry or prospective entry into the neighborhood of persons of a particular race, color, religion, sex, national origin, familial status, source of income, or disability.

(4) A discriminatory housing practice includes:

(a) a refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford that person full enjoyment of the premises, except that in the case of a rental, the landlord, where it is reasonable to do so, may condition permission for a modification on the renter agreeing to restore the interior of the premises, when reasonable, to the condition that existed before the modification, reasonable wear and tear excepted;

(b) a refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; and

(c) in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:

- (i) the dwellings have at least one building entrance on an accessible route, unless it is impracticable to have one because of the terrain or unusual characteristics of the site; and
  - (ii) with respect to dwellings with a building entrance on an accessible route:
    - (A) the public use and common use portions of the dwelling are readily accessible to and usable by disabled persons;
    - (B) all the doors designed to allow passage into and within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
    - (C) all premises within these dwellings contain the following features of adaptive design:
      - (I) an accessible route into and through the dwelling;
      - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
      - (III) reinforcements in the bathroom walls to allow later installation of grab bars; and
      - (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver about and use the space.
- (5) This section also applies to discriminatory housing practices because of race, color, religion, sex, national origin, familial status, source of income, or disability based upon a person's association with another person.

## Vermont

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This law took effect July 1, 2003.

### **Enforcement: Vermont Statutes Title 9, section 4506:**

- (a) A person aggrieved by a violation of this chapter may file a charge of discrimination with the human rights commission pursuant to chapter 141 of this title or may bring an action for injunctive relief and compensatory and punitive damages and any other appropriate relief in the superior court of the county in which the violation is alleged to have occurred.
- (b) The court may award costs and reasonable attorney's fees to an aggrieved person who prevails in an action brought under subsection (a) of this section.
- (c) The human rights commission may bring an action in the name of the commission to enforce the provisions of this chapter in accordance with its powers established in chapter 141 of this title.
- (d) The initiation or completion of an investigation by the human rights commission shall not be a condition precedent to the filing of any lawsuit for violation of this chapter.

### **Title 9, §4503**

(a) It shall be unlawful for any person:

- (1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.
- (2) To discriminate against, or to harass any person in the terms, conditions or privileges of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, because of the race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.
- (3) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling or other real estate that indicates any preference, limitation or discrimination based on race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person,

or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(4) To represent to any person because of the race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, that any dwelling or other real estate is not available for inspection, sale or rental when the dwelling or real estate is in fact so available.

(5) To coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or for having filed a charge, testified or cooperated in any investigation or enforcement action pursuant to chapter 139 or 141 of this title.

(6) To discriminate against any person in the making or purchasing of loans or providing other financial assistance for real estate related transactions or in the selling, brokering or appraising of residential real property, because of the race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(7) To engage in blockbusting practices, for profit, which may include inducing or attempting to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons of a particular race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(8) To deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership, or participation, on account of race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person is a recipient of public assistance....

## Wisconsin

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Wisconsin passed source of income protection in 1989. It amended its source of income discrimination legislation July 27, 2005. Previously Wisconsin courts have held that section 8 vouchers aren't income for the purposes of the state's fair housing statute.

### **Relevant Case Law**

A federal court found that Section 8 vouchers are not clearly encompassed by the term "source of income", and that participation in the Section 8 program is voluntary. See *Knapp v. Eagle Property Management*, 54 F3d 1272 (7th Cir. 1995).

### **Enforcement:**

**Fair housing administrative enforcement.** (a) *Complaints.* 1. The department may receive and investigate a complaint charging a violation of sub. (2), (2m) or (2r) if the complaint is filed with the department not later than one year after the alleged discrimination occurred or terminated.

2. The complaint shall include a written statement of the essential facts constituting the discrimination that is charged, and shall be signed by the complainant.

3. The complaint may be filed by an aggrieved person, by an interested person, by the department of workforce development under par. (b) or, if the complaint charges a violation of sub. (2r) (c), by the department of commerce. The department of workforce development shall, upon request, provide appropriate assistance in completing and filing complaints.
4. The department shall serve notice on the aggrieved person acknowledging the filing of the complaint and advising the complainant of the time limits and choice of forums provided under this subsection and the right to bring a private civil action under sub. (6m).
5. Upon the filing of an initial, amended, final or supplemental complaint, the department shall promptly serve a copy of the complaint upon the respondent, except where testing may be conducted. The initial complaint shall be served before the commencement of the investigation by the department, except where testing may be conducted. The notice shall be sent by certified mail, return receipt requested. The notice to the respondent shall include a written statement from the department directing the respondent to respond in writing to the allegations in the complaint within 20 days after the date of the notice and further stating that, if the respondent fails to answer the complaint in writing, the department will make an initial determination as to whether discrimination has occurred based only on the department's investigation and the information supplied by the complainant.

### **Wisconsin Statute Section 106.50**

**Intent.** It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry and it is the duty of the political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under [ss. 66.0125](#) and [66.1011](#). The legislature hereby extends the state law governing equal housing opportunities to cover single-family residences which are owner-occupied. The legislature finds that the sale and rental of single-family residences constitute a significant portion of the housing business in this state and should be regulated. This section shall be deemed an exercise of the police powers of the state for the protection of the welfare, health, peace, dignity and human rights of the people of this state.

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## **Maryland**

Article 49B § 19 of the Maryland Annotated Code makes it illegal to discriminate on the bases of race, color, religion, marital status, physical or mental disability, national origin, sex, or familial status. The Maryland Commission on Human Relations investigates and conciliates complaints filed under Article 49B. Real Estate Law (BOP, Section 16-526), forbids discriminatory practices by real estate brokers or agents, putting them at risk of losing their license. This law is enforced by the Real Estate Commission.

### **Relevant Case Law**

*Glenmont Hills Associates Privacy World at Glenmont Metro Center, v. Montgomery Country, Maryland.* Upholding Montgomery County's SOI Protection. Cert. by Supreme Court Denied.

## LOCAL LAWS AND ORDINANCES

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### Cities in California

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#### **Corte Madera**

City's ordinance protects existing tenants in buildings of 10 or more units from discrimination based on their Section 8 status. While the ordinance does not require these landlords to rent to a Section 8 tenant in the first place, it does require them to accept Section 8 from an existing tenant who qualifies for Section 8 after moving in.

#### **East Palo Alto**

This "urgent" ordinance prohibits any person from certain activities based on source of income. Under the ordinance, "source of income" means all lawful sources of income or rental assistance from any federal, state, local or nonprofit administered benefit or subsidy program as well as participation in rental, homeless or security deposit assistance programs or housing subsidy programs.

**Los Angeles:** Municipal Code § 151.04(B)(amended by Or. No. 174.501. Eff. 4/11/02)

"It shall be unlawful for any landlord to terminate or fail to renew a rental assistance contract with the Housing Authority of the City of Los Angeles (HACLA), and then demand that the tenant pay rent in excess of the tenant's portion of the rent under the rental assistance contract."

#### **San Francisco**

Article 33, Section 3304 of the San Francisco Police Code prohibits discrimination based on source of income, including rental and other related subsidies. See

<http://www.amlegal.com/all/lpext.dll?f=templates&fn=altmain-nf-contents.htm&cp=California%2FInfobase6&2.0>

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### Cities in New York

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#### **New York City**

Section 1. Legislative Intent. The Council hereby finds that some landlords refuse to offer available units because of the source of income tenants, including current tenants, plan to use to pay the rent. In particular, studies have shown that landlords discriminate against holders of section 8 vouchers because of prejudices they hold about voucher holders. This bill would make it illegal to discriminate on that basis.

§2. Section 8-101 of chapter one of title eight of the administrative code of the city of New York, as last amended by local law 75 of 2003, is amended to read as follows:

#### § 8-101 Policy.

In the city of New York, with its great cosmopolitan population, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences, including those based on race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, partnership status, any lawful source of income, status as a victim of domestic violence or status as a victim of sex offenses or stalking....

**West Seneca, New York:** West Seneca prohibits discrimination in the rental or sales of housing based on source of income. "Source of income" is not defined. (West Seneca Codes, Sec. 71-3.)

**Hamburg, New York:** Hamburg local law provides that a landlord cannot discriminate due to a person's lawful source of income as long as that person has enough income to afford to rent the apartment. "Source of income" is not defined. (Hamburg Codes, Chapter 109-3.)  
; Available at <http://www.nls.org/housing/discrim.html>

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## Counties in Maryland

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**Montgomery County:** Chapter 27, Article I of the Montgomery County Code makes it illegal to discriminate in the sale or rental of commercial and residential real estate on the bases of race, sex, marital status, physical or mental disability, color, religion, national origin, ancestry, presence of children, source of income, sexual orientation and age.

**Prince George's County's** fair housing ordinance prohibits discrimination based on source of income in sales and rental of housing. However, Section 8 voucher- holders are not protected unless the landlord or property owner has rented to Section 8 tenants in the past. In addition, it is illegal for a property owner to make or advertise a blanket denial of Section 8 tenants.  
Available at <http://egov.co.pg.md.us/lis>

**Howard County:** Howard County's fair housing ordinance prohibits discrimination based on source of income in sales and rental of housing, and specifically defines source of income to include government housing subsidies (Title 12, Health and Social Services, Sub. 2. Human Rights, §§ 12.200-12.218).  
Available at [http://www.co.ho.md.us/CountyCouncil/CC\\_HoCoCode.asp](http://www.co.ho.md.us/CountyCouncil/CC_HoCoCode.asp)

### Other Local Ordinances

**Chicago, Illinois:** Fair Housing Ordinance §5-08-030: "It shall be an unfair practice and unlawful: A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago predicated upon the race, color, sex, age, religion, disability,, or source of income of the prospective or actual buyer or tenant thereof." See *Godinez v. Sullivan-Lackey*, 352 Ill. App.3d 87 (2004) (stating that the Chicago housing authority has the authority to award damages for source of income discrimination).

**Iowa City, Iowa:** Iowa City prohibits discrimination in housing sales and rentals housing on the basis of "public assistance source of income". However, the ordinance specifically excludes rent subsidies. (Iowa City Code, Title 2, 2-5-1, and 2-1-1.)

**Multnomah County, Oregon:** Multnomah County prohibits discrimination in housing (employment and public accommodations) on a variety of grounds, including source of income. "Source of income" is defined to include any legal source of funds that a person uses to support "himself or herself and his or her dependents". Though Section 8 is not listed specifically, funds from "federal or state payments" are included, and the general definition of source of income is broad. (Multnomah County Code §§15.340 and 15.342.)  
Available at <http://www2.co.multnomah.or.us/counsel/code/index.shtml>

**King County, Washington:** King County's fair housing ordinance specifically prohibits discrimination in housing rentals or sales based on participation in the Section 8 program (King County,

Wash., Ord. §12.20.040).

Available at <http://www.metrokc.gov/mkcc/Code/>

**Portland, Oregon:** Portland’s prohibition against discrimination in sales or rental of housing based on source of income includes funds from “federal or state payments” in its source of income definition (Portland Municipal Code, §23.01.060).

**Seattle, Washington:** Seattle prohibits discrimination in residential sales and rentals based on “Possession or use of a Section 8 certificate” (Seattle, Wash., Code §14-.08-.040).

**Borough of State College, Pennsylvania:** The Borough of State College prohibits discrimination in the renting or selling of housing based on source of income. “Source of income” is defined to mean income received through any legal means, which would, thus, probably include Section 8 voucher income. (Borough of State College, Fair Housing Code, Sections. 501 and 502.)

Available at <http://www.gov.state-college.pa.us/3housing.html>

**Champaign, Illinois:**

Sec. 17-2. Intent.

It is the intent of the City, in adopting this chapter, to secure an end, in the City, to discrimination, including, but not limited to, discrimination by reason of age, color, creed, family responsibilities, marital status, matriculation, national origin, personal appearance, physical and mental disability, political affiliation, race, religion, sex, sexual preference, prior arrest or conviction record or source of income or any other discrimination based upon categorizing or classifying a person which is not based upon factual data about the persons or group and is not related to the purpose for which it is used. (C.B. No. 94-167, § 1, 7-5-94)

**Dane County, Wisconsin:**

**31.02 INTENT.**

It is the intent of this chapter to render unlawful discrimination in housing. It is the declared policy of the County of Dane that all persons shall have an equal opportunity for housing regardless of race, gender, age, religion, color, national origin, ancestry, marital status of the person maintaining a household, family status, mental illness, physical condition, appearance, lawful source of income, student status, arrest or conviction record, sexual orientation, military discharge status or political beliefs. This chapter shall be deemed an exercise of the police powers of the County of Dane for the protection of the welfare, health, peace, dignity and human rights of the people of this county, and as a fulfillment of the legislative directive of sec. 66.432, Wis. Stats.

**Philadelphia, Pennsylvania:** (Chapter 9-1100 of Philadelphia Code). Enforcement is pursued by the Philadelphia Commission on Human Relations (PCHR), and complaints must be filed within 300 days of the last act of discrimination. Owner occupied residences are exempt under the Fair Practices Ordinance. Exempt are duplexes in which the owner lives in one unit, shared living quarters in which there are no more than 3 roomers living with the owner, and independently of one another.

**Saint Louis City Ordinance 67119**

(1) Prohibited Discriminatory Housing or Realty Practices. It shall be a prohibited housing or realty practice and shall constitute a discriminatory housing practice:

(d) For any person to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, legal source of income, disability, sexual orientation, national origin or ancestry;

(e) For any person to discriminate against any other person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, legal source of income sexual orientation, disability, national origin, or ancestry;

(f) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion sex, familial status, lawful source of income, sexual orientation, disability, national origin, or ancestry, or an intention to make any such preference, limitation, or discrimination;

(g) For any person to represent to another person because of race, color, religion sex, familial status, lawful source of income, sexual orientation, disability, national origin, or ancestry that any dwelling is not available for inspection, sale, or rental when such dwelling is, in fact, so available.

### **Memphis, Tennessee**

#### **Sec. 10-36-5 Unlawful housing practices.**

A. It is unlawful for an owner or other person engaging in a real estate transaction, or for a real estate broker or salesperson, real estate operator, or person acting by or on behalf of any of these to discriminate against any person in the sale or rental of real property or any housing accommodation because of race, color, religion, national origin, sex, age, familial status, source of income or handicap/disability.

B. It shall be a discriminatory practice for any person because of race, color, religion, national origin, sex, age, familial status, source of income or handicap/disability to:

1. Refuse to sell or rent after the making of a bona fide offer or to negotiate for the sale or rental of, or otherwise to make unavailable or deny, real property or a housing accommodation to a person;

2. Discriminate against any person in the terms, conditions, or privileges of sale or rental of real property or a housing accommodation, or in the provision of services or facilities in connection therewith; and it shall specifically be a violation of this section for an owner or manager of rental property to fail to maintain rental property in compliance with applicable housing code provisions because some or all of the tenants are members of classes protected by this chapter or the Tennessee Human Rights Act.

3. Refuse to receive or transmit a bona fide offer to purchase, rent or lease real property or a housing accommodation from a person;

4. Represent to a person that real property or a housing accommodation is not available for inspection, sale, rental or lease when in fact it so available, or to refuse to permit a person to inspect real property or a housing accommodation;

5. Make, print, publish, circulate, post or mail or cause to be made, printed, published, circulated, posted or mailed a notice, statement, advertisement, or sign, or to use a form of application for the purchase, rental or lease of real property or a housing accommodation, or make a record of inquiry in connection with the prospective purchase, rental or lease of real property or a housing accommodation, which indicates, directly or indirectly, a limitation, specification, or discrimination as to race, color, religion, national origin, sex, age, familial status, source of income, or handicap/disability or an intent to make such a limitation, specification, or discrimination.

### **Ann Arbor, Michigan. (Section 5:86)**

The Ann Arbor City Council provides in Section 9:150 that no person shall be discriminated against because of actual or perceived race, color, religion, national origin, sex, age, height, weight, condition of pregnancy, marital status, physical or mental limitation, source of income, family responsibilities, educational association, sexual orientation, gender identity or HIV status. The ordinance describes a number of prohibited activities including discrimination in leasing or selling of real estate, maintenance of housing, or lending.

**Grand Rapids Michigan**

City ordinances also prohibit discrimination in housing. Section 9.362 lists protected classes under the city ordinance and includes source of income as one of those classes. Section 9.364 describes a number of prohibited practices in sales and rental of housing.

**Naperville, Illinois****10-5-1: DECLARATION OF POLICY:**

It is the policy of the City that all individuals shall have an equal opportunity to purchase, own, lease, and occupy housing within the City without being discriminated against based on race, color, religion, sex, national origin, ancestry, age, marital status, familial status, physical or mental handicap or disability, military status, sexual orientation, or legal source of income. It is also the policy of the City that members of those protected classes shall have the right to be free from discriminatory practices when engaging in real estate transactions and seeking access to financial credit for real estate transactions. The City's fair housing regulations shall be consistent with and, in some cases, more stringent than the provisions of the Fair Housing Act (42 USC section 3601 et seq., as amended) and the Illinois Human Rights Act <sup>1</sup>. Both laws as used in this Chapter shall be identified as the "Fair Housing Act" and the "Illinois Human Rights Act" without citation to the Statutes unless a specific citation is necessary. (Ord. 00-92, 6-6-2000)

## FEDERAL LAWS

### **Low-Income Housing Tax Credit Program**

#### **26 U.S.C. § 42(h)(6)(B)(iv):**

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing...

(B) Extended low-income housing commitment. For purposes of this paragraph, the term “extended low-income housing commitment” means any agreement between the taxpayer and the housing credit agency...

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder...

#### **26 C.F.R. § 1.42-5(c)(1)(xi): Regulations Relating to IRS**

(c) Certification and review provisions—

(1) Certification. Under the certification provision, the owner of a low-income housing project must be required to certify at least annually to the Agency that, for the preceding 12- month period—

(xi) An extended low-income housing commitment as described in section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308-2311), including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439);

### **Mark-to-Market**

#### **United State Housing Act of 1937, 42 U.S.C. § 1437f**

#### **24 C.F.R § 401.556: Regulations Relating to HUD**

A Restructuring Plan must prohibit any refusal of the owner to lease a unit solely because of the status of the prospective tenant as a section 8 voucher holder.

### **Multifamily properties purchased from HUD**

#### **National Housing Act, 12 U.S.C § 1701z–12**

The Secretary shall require any purchaser of a multifamily housing project owned by the Secretary which is sold on or after October 1, 1978, to agree not to refuse unreasonably to lease a vacant dwelling unit in the project which rents for an amount not greater than the fair market rent for a comparable unit in the area as determined by the Secretary under section 1437f of Title 42 to a holder of a certificate of eligibility under that section solely because of such prospective tenant's status as a certificate holder.

#### **24 C.F.R § 290.19: Regulations Relating to Multifamily properties purchased from HUD**

The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its

application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 Fair Market Rent, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

#### **24 C.F. R § 290.39: Regulations Relating to Multifamily properties purchased from HUD**

(a) Nondiscrimination requirement. For any mortgage described in paragraphs (c) or (d) of this section that HUD sells without FHA mortgage insurance, the project owner shall not unreasonably refuse to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is a certificate or voucher holder under 24 CFR part 982...

(c) Applicability to mortgages securing unsubsidized projects receiving project-based assistance (partially-assisted projects) or securing subsidized projects.

(1) The nondiscrimination requirement in paragraph (a) of this section applies to the project owner upon the sale of a mortgage without FHA mortgage insurance if, at the time HUD offers it for sale, the mortgage secures:

(i) An unsubsidized project that receives any of the forms of assistance enumerated in paragraphs (4)(i) to (4)(iv) of the "subsidized project" definition in § 290.5; or

(ii) A subsidized project, as defined in § 290.3.

(2) This requirement shall continue in effect until the mortgage debt is satisfied.

(d) Covenant requirement for all delinquent mortgages sold without FHA mortgage insurance. This paragraph (d) applies to the sale of any mortgage that is delinquent at the time HUD offers it for sale without FHA mortgage insurance, without regard to the subsidy status of the project. The mortgage purchaser and its successors and assigns shall require the mortgagor to record a covenant running with the land as part of any loan restructuring or final compromise of the mortgage debt and shall include a covenant in any foreclosure deed executed in connection with the mortgage. The covenant shall set forth the nondiscrimination requirement in paragraph (a) of this section. The covenant shall continue in effect until a date that is the same as the maturity date of the mortgage sold by HUD.

#### **HUD Regulations and Notices**

See also HUD Notice PIH 2002-15 (HA) (June 7, 2002) Reinstatement - Notice PIH 2001-2 (HAs), Prohibition of Discrimination against Families with Housing Choice Vouchers by Owners of Low-Income Housing Tax Credit and HOME Developments (This Notice reinstates Notice PIH 2001-2 (HA), same subject, indefinitely. Notice PIH 2001-2 (HA) expired January 31, 2002)

#### **Neighborhood Stabilization Act of 2008 – engrossed and referred to Senate committee**

In response to the federal loan and foreclosure crisis in the United States, the House of Representatives passed legislation which provided a loan and grant program for the distribution of money to areas severely impacted by foreclosures and predatory lending. Participants in this program cannot discriminate against holders of Section 8 vouchers. Section 8(h) of H.R. 5818.

## ADDITIONAL RESOURCES

### Annotated Bibliography: Law Reviews and studies

#### **Law Review Articles on Source-of-Income Discrimination**

Paula Beck, *Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier*, 31 Harv. C.R.-C.L. L. Rev. 155 (1996).

Author discusses the failures of the section 8 program to promote integration, reviews the effectiveness of current state and federal laws to protect against source-of-income discrimination, and suggests that an amendment to the Fair Housing Act is needed. By prohibiting discrimination on the basis of source-of-income, the social and economic burdens of section 8 vouchers will be shifted from low income renters to the landlords and middle-income renters who are in a better position to absorb them.

Kim Johnson-Spratt, Note, *Housing Discrimination and Source of Income: A Tenant's Losing Battle*, 32 Ind. L. Rev. 457 (1999).

Author presents an overview of source-of-income litigation and discusses remedies for the lack of protection given to source-of-income under federal law. Previous discrimination cases have met with success by molding source-of-income discrimination into discrimination of a protected category such as familial status or gender. In jurisdictions where source-of-income protection does exist, results have been mixed and suggest that existing protections are inadequate. Without a federal law banning source-of-income discrimination, section 8 voucher holders lack a meaningful choice in obtaining housing. The author examines Paula Beck's proposal to amend the Fair Housing Act and rejects the proposed amendment as incomplete and unlikely. The author further suggests that given legislative intent and the purpose of the section 8 statute and Personal Responsibility and Work Opportunity Reconciliation Act of 1996, protection against source-of-income discrimination may be implied in both laws. Given the public's fears of judicial activism, however, the best approach may be for HUD to promulgate a rule prohibiting discrimination on the basis of income source.

Laura Bacon, Note, *Godinez v. Sullivan-Lackey: Creating a Meaningful Choice for Housing Choice Voucher Holders*, 55 DePaul L. Rev. 1273 (2006).

Author offers Chicago and its local law barring source-of-income discrimination as a potential model for creating a realistic solution to discrimination against section 8 voucher recipients. Focusing on the HCVP in Chicago, the author discusses the history of the program and its limited effectiveness in the face of source-of-income discrimination. The city's ordinance, subject to challenge in *Godinez v. Sullivan-Lackey*, was upheld by the Illinois Appellate Court. The case may serve as an example to other cities and municipalities of the legal viability of local fair housing ordinances. Although there are shortcomings to the local legislative approach, if states and cities add source-of-income protection to their legislative agendas, the goals of HCVP can be more likely realized.

#### **Related Law Review Articles**

Mark A. Malaspina, Note, *Demanding the Best: How to Restructure the Section 8 Housing-Based Rental Assistance Program*, 14 Yale L. & Pol'y Rev. 287 (1996).

Author reviews the flaws in the section 8 program, noting that many of the program's problems result from inappropriate use of supply-side housing policies in a demand-side program (including federal

eviction standards, housing quality requirements, and fixed payment structure which may fail to motivate voucher-holders). Author further suggests reforms to (1) improve the administration of the program by replacing local public housing authorities with regional government agencies, (2) increase mobility through the implementation of counseling services and extended deadlines for finding an acceptable apartment, and (3) introduce a new payment structure. Landlord acceptance of section 8 vouchers could be further increased by a federal nondiscrimination provision, barring source-of-income discrimination.

Paul Boudreaux, *Vouchers, Buses, and Flats: The Persistence of Social Segregation*, 49 Vill. L. Rev. 55 (2004).

Author presents an analysis of the failure of the Housing Choice Voucher Program in the face of the social trend towards racial and socio-economic segregation, the scarcity of affordable housing in many cities, and the difficulties of finding a landlord who will accept the voucher. Despite its goals, the rental subsidy program fails to protect its recipients from the discrimination that promotes segregation. Unless landlords are prevented from discrimination on the basis of source-of-income, real integration will not be possible.

Kristine L. Zeabart, Note, *Requiring a True Choice in Housing Choice Voucher Programs*, 79 Ind. L.J. 767 (2004).

Author offers an overview of the *Gautreaux* litigation and suggests that its remedies should be adopted by HUD, ensuring metropolitan-wide mobility. Author also argues that the HCVP is inadequate to meet its goals of increasing disbursement of public housing residents throughout an area and decreasing segregation. In looking at segregation, focus is given to the individual, community, and programmatic barriers that limit true housing choice. Through increased counseling, heightened enforcement against hate crimes, mobility grants, and equity insurance, the government may better promote low-income renters' moves to integrated areas. At the same time, the continued need for public housing stock suggests the possibility of redevelopment of demolished buildings as mixed communities.

### **Recent Studies of Source-of-Income Discrimination**

Susan J. Popkin & Mary K. Cunningham, The Urban Institute, *CHAC Section 8 Program: Barriers to Successful Leasing Up* (1999).

This Urban Institute study examines the reasons behind voucher holders' unsuccessful searches for housing in Chicago. The authors describe four types of discrimination: (1) racial discrimination; (2) discrimination against families with children; (3) discrimination against Section 8 tenants; and (4) discrimination against former public housing high rise residents now attempting to use Section 8 vouchers. Although the study found that many factors may contribute to families' difficulty in locating housing, discrimination against voucher holders particularly demonstrates the need for mobility services to facilitate the transition to less segregated housing.

Susan J. Popkin & Mary K. Cunningham, The Urban Institute, *Searching for Rental Housing with Section 8 in Chicago Region* (2000).

This Urban Institute report examines the challenges facing a growing population of Section 8 voucher holders in Chicago and seeks to build on their 1999 study of unsuccessful voucher holders. The authors find that Chicago voucher holders have special needs as a group that will require a more intensive approach to housing counseling. Additionally, they find that few differences exist between those

voucher holders who are successful at finding housing and those holders who are unsuccessful. Discrimination, financial barriers, and participants' personal problems create barriers to finding housing through Section 8 in Chicago. Housing authorities must strategize as to how these difficulties can be managed.

Lawyers Committee for Better Housing, Inc., *Locked Out: Barriers to Choice for Housing Voucher Holders, Report on Section 8 Housing Choice Voucher Discrimination* (2002).

This study by Lawyers Committee for Better Housing seeks to substantiate the accounts of discrimination encountered by Section 8 voucher holders in the Chicago area. LCBH worked with two fair housing centers to conduct phone and in-person testing. The study finds that (1) voucher holders are routinely discriminated against, (2) evidence exists indicating increased discrimination against vouchers seeking to rent in an area designated by the Chicago Housing Authority as an "exception rent area," and (3) evidence shows that vouchers face increased discrimination due to race and ethnicity. As a result, LCBH recommends: mandatory landlord education, education for voucher holders regarding their rights and remedies, increased enforcement of Chicago's Fair Housing Ordinance, increased landlord testing for noncompliance with fair housing laws, greater inclusion source-of-income protection of county and state laws, and implementation of a media campaign to debunk myths of renting to voucher holders.

New York ACORN, *Housing for Everyone: New York City, Section 8, and Source of Income Discrimination* (2007).

ACORN conducted three series of tests to document discrimination experienced by Section 8 voucher holders seeking to rent in New York City. Results indicated that only a limited number (less than 21%) of property management companies offered apartments within voucher rent limits. Of these, less than half would accept a Section 8 voucher. In addition, only 13% of those apartments identified by common rental listing sources would accept vouchers. ACORN also found that over 40% of the units listed in the New York City Housing Authority's own rental materials were unavailable. To remedy this, ACORN recommends that New York City adopt source-of-income/Section 8 protection similar to than in place in a number of other states and cities.

Fred Freiberg and Diane L. Houk, Fair Housing Justice Center, *No License to Discriminate: Real Estate Advertising, Source of Income Discrimination, and Homelessness in New York City* (2008).

The Fair Housing Justice Center examines whether real estate brokers in New York City comply with the March 2008 addition of a prohibition on source-of-income discrimination to local fair housing law. The report focuses on the listings placed by brokers on the [www.craigslist.org](http://www.craigslist.org) website during the month of July 2008. During that period, at least 363 postings used discriminatory language that made unavailable housing units based on receipt of Section 8 vouchers or of other "program" assistance. Seventy-six percent of those advertised units were priced at rates affordable to low- and moderate-income renters, and many were within the fair market rent allowed for voucher-holders. In response, the FHJC makes a number of recommendations aimed at strengthening and expanding fair housing enforcement activity: (1) City government should support systemic testing investigations; (2) fair housing organizations should increase efforts to notify state authorities when there is evidence of discrimination; and (3) fair housing enforcement should emphasize remedies that end discrimination, provide redress, and promote future compliance with fair housing laws. Additionally, the FHJC recommends that appropriate standards be created to evaluate the fair housing training received by brokers and that such training be required of all brokers. Finally, the FHJC also recommends that source-of-income protection be included in New York State fair housing law.

## **Other Resources**

The web site of the National Housing Law Project (<http://www.nhlp.org>). Click on “Section 8” and “Source of Income Discrimination Protections for Section 8 Tenant-Based Assistance in California,” which contains both California and national information regarding source of income.

[HTTP://thomas.loc.gov](http://thomas.loc.gov) is the website which maintains all federal legislation and regulation.