

**AMERICAN BAR ASSOCIATION**

**SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE  
SECTION OF STATE AND LOCAL GOVERNMENT LAW  
COMMISSION ON HOMELESSNESS AND POVERTY  
COMMISSION ON VETERANS LEGAL SERVICES**

**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

1RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial  
2governments to enact legislation prohibiting discrimination in housing on the basis of lawful  
3source of income.

REPORT

5The American Bar Association has a long tradition of actively opposing discrimination on the  
6basis of classifications including race, gender, national origin, disability, age, sexual orientation,  
7and gender identity and expression. The Association has adopted policies calling upon local,  
8state, and federal lawmakers to prohibit such discrimination in housing, as well as in public  
9accommodations, credit, education, and public funding and has sought to eliminate such  
10discrimination in all aspects of the legal profession.<sup>1</sup> The ABA’s fundamental position  
11condemning such discrimination is based on its underlying commitment to the ideal of equal  
12opportunity and advancement of human rights.<sup>2</sup> These two principles united in August 2013,  
13when the ABA adopted policy to urge governments to “promote the human right to adequate  
14housing for all” and to “prevent infringement of that right.”<sup>3</sup>

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16A common form of discrimination in housing is the denial of housing based on a housing  
17applicant’s lawful source of income. As a threshold matter, lawful source of income includes  
18income from: 1) a lawful profession, occupation or job; 2) any government or private assistance,  
19grant, loan or rental assistance program, including low-income housing assistance certificates  
20and vouchers issued under the United States Housing Act of 1937; 3) a gift, an inheritance, a  
21pension, an annuity, alimony, child support, or other consideration or benefit; or 4) the sale or  
22pledge of property or an interest in property. Lawful source of income does not prevent a  
23property owner from determining, in a commercially reasonable and non-discriminatory manner,  
24the ability of a housing applicant to afford to purchase or rent the property.

25

26Every year, families are rejected from housing of their choice because their income, albeit lawful  
27and sufficient in amount, is not accepted by a property owner. Often the denial of housing will  
28serve as a pretext for a prohibited form of discrimination. For example, a property owner who  
29does not want to rent to elderly persons will simply deny a housing application claiming that  
30retirement benefits are not a sufficient source of income. A property owner who does not wish to  
31rent to persons with disabilities will tell an applicant on Supplemental Security Income (SSI) that  
32government benefits are not an acceptable source of income.

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34The most common form of source of income discrimination is the denial of housing to families  
35who rely on government-funded rental assistance, such as the federally-funded Housing Choice  
36Voucher Program.

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11 See, e.g., resolutions adopted 8/65 (addressing race, color, creed, national origin); 8/78 (race); 8/72, 2/74, 2/78,  
28/74, 8/75, 8/80, 8/84 (gender); 8/86 (race and gender); 2/72 (sex, religion, race, national origin); 8/77 (“handicap”);  
38/87 (condemning hate crimes related to race, religion, sexual orientation, or minority status); 8/89 (urging  
4prohibition of sexual orientation discrimination in employment, housing and public accommodation); 9/91 (urging  
5study and elimination of judicial bias based on race, ethnicity, gender, age, sexual orientation and disability); 2/92  
6(opposing penalization of schools that prohibit on-campus recruiting by employers discriminating on the basis of  
7sexual orientation); 8/94 (requiring law schools to provide equal educational and employment opportunities  
8regardless of race, color, religion, national origin, sex or sexual orientation); 8/06 (addressing gender identity and  
9expression).

102 Am. Bar Ass’n, *ABA Mission and Goals*, available at [http://www.americanbar.org/utility/about\\_the\\_aba/aba-](http://www.americanbar.org/utility/about_the_aba/aba-mission-goals.html)  
11mission-goals.html (last visited April 10, 2017).

123 Resolution adopted 8/2013.

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39 *The Housing Choice Voucher Program*

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41 The Housing Choice Voucher Program (HCVP), also known as “Section 8,” is the largest  
42 subsidized housing program in the United States.<sup>4</sup> The HCVP provides participating low-income  
43 families with a housing subsidy that covers a percentage of private market housing costs.<sup>5</sup> The  
44 HCVP serves elderly persons, persons with disabilities, veterans,<sup>6</sup> families and other vulnerable  
45 populations through eight population-specific sub-programs<sup>7</sup> and is administered locally by  
46 Public Housing Agencies (PHA). In 2015, the Program served approximately 2.2 million  
47 families comprised of 5 million people.<sup>8</sup>

48

49 Low-income households wait years to receive HCVP vouchers,<sup>9</sup> but not every voucher household  
50 succeeds in finding a housing unit.<sup>10</sup> Those who receive vouchers typically must find a housing  
51 unit and a landlord willing to accept the voucher within two months.<sup>11</sup> This search can prove to  
52 be prohibitive for many households.

53

54 *Discrimination against Voucher Holders*

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56 A 2001 national study on voucher usage found that households had less than a 50% chance to use  
57 their vouchers in some jurisdictions.<sup>12</sup> Furthermore, despite the HCVP’s stated goal to enable  
58 low-income families to relocate to communities of lower poverty or minority concentration,<sup>13</sup> a  
59 recent study of voucher holders found that 41% are more likely to live in more impoverished and  
60 more racially segregated neighborhoods than non-voucher renters.<sup>14</sup> This segregation of voucher  
61 holders restrains positive health outcomes for low-income women,<sup>15</sup> educational progress for

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134 U.S. Department of Housing and Urban Development, *Housing Choice Voucher Fact Sheet*, available at  
14 [https://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](https://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8).

155 Regulations governing the Housing Choice Voucher Program at found at 24 C.F.R. Part 982.

166 HCVs for veterans are known as HUD-VASH (Veterans Affairs Supportive Housing). The HUD-VASH program  
17 has provided vouchers and supportive services to 79,000 veterans since 2008 and is the primary reason that the  
18 United States has reduced veteran homelessness to just over 47,000 veterans, a 35% decline since 2009. See  
19 National Alliance to End Homelessness, *Veterans – Overview*, available at  
20 [http://www.endhomelessness.org/pages/veterans\\_overview](http://www.endhomelessness.org/pages/veterans_overview) (last visited Apr. 10, 2017)

217 U.S. Department of Housing and Urban Development, *Housing Choice Vouchers List*, available at  
22 [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/about/list](https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/list).

238 Center on Budget & Policy Priorities, *Policy Basics: The Housing Choice Voucher Program*. Washington, DC  
24 (2015).

259 E.g. Wick, J., *The Waiting List For Section 8 Vouchers In L.A. Is 11 Years Long*, available at  
26 [http://laist.com/2017/04/04/section\\_8\\_waiting\\_list.php](http://laist.com/2017/04/04/section_8_waiting_list.php).

2710 Office of Policy Development and Research, U.S. Dep’t of Housing and Urban Development, 1 *Study on*  
28 *Section 8 Voucher Success Rates* i (Nov. 2001), available at  
29 <https://www.huduser.gov/publications/pdf/sec8success.pdf>.

3011 U.S. Department of Housing and Urban Development, *HUD-VASH Vouchers*, available at  
31 [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/vash](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/vash).

3212 *Supra* Note 10, at C-6.

3313 U.S. Department of Housing and Urban Development, *Housing Choice Voucher Guidebook*, Ch. 2, available at  
34 [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/forms/guidebook](https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook)

3514 Molly W. Metzger, *The Re-concentration of Poverty: Patterns of Housing Voucher Use 2000-2008*, *Housing*  
36 *Policy Debate* 24:3 at 552 (2014), available at [https://rampages.us/aliciagarcia/wp-](https://rampages.us/aliciagarcia/wp-content/uploads/sites/14178/2016/03/The-Reconcentration-of-Poverty-Patterns-of-Housing-Voucher-Use-2000-to-2008.pdf)  
37 [content/uploads/sites/14178/2016/03/The-Reconcentration-of-Poverty-Patterns-of-Housing-Voucher-Use-2000-to-](https://rampages.us/aliciagarcia/wp-content/uploads/sites/14178/2016/03/The-Reconcentration-of-Poverty-Patterns-of-Housing-Voucher-Use-2000-to-2008.pdf)  
38 [2008.pdf](https://rampages.us/aliciagarcia/wp-content/uploads/sites/14178/2016/03/The-Reconcentration-of-Poverty-Patterns-of-Housing-Voucher-Use-2000-to-2008.pdf).

3915 Jens Ludwig, Ph.D, et al., *Neighborhoods, Obesity, and Diabetes – A Randomized Social Experiment*, *The New*  
40 *England Journal of Medicine* (Oct. 20, 2011) (finding that female heads of voucher households able to relocate to  
41 lower poverty communities reduced their risk for extreme obesity by 19% and reduced their risk of diabetes by

62 children, and employment achievements that come from relocation to lower poverty and racially  
63 segregated communities.<sup>16</sup>

64

65 A primary cause of this segregation is landlord discrimination against voucher holders. A 2002  
66 Chicago study found that voucher holders were denied access to 70% of the rental housing in the  
67 City because of landlord refusal or equivocation to accept households with vouchers.<sup>17</sup> A recent  
68 HCVP participant summarized her experience as follows, “They [the owners] had the stigma  
69 about everybody that’s on Section 8 are nasty, the children tear up the house, that type of thing.  
70 So I ran into a lot of issues with that.”<sup>18</sup> For veterans utilizing the Veterans Affairs Supportive  
71 Housing (VASH) vouchers, a sub-set of HCVP vouchers, the U.S. Department of Housing and  
72 Urban Development reports that landlord unwillingness to accept vouchers is a “primary  
73 challenge” in the administration of the program.<sup>19</sup> In 2017, a veteran of the U.S. Coast Guard  
74 testified before the Maryland General Assembly about difficulties using her VASH voucher  
75 because of landlord discrimination. “I was only able to use my voucher after a housing specialist  
76 from the VA told me about properties in [a particular area] that take Section 8. Let me be clear,  
77 this is not where I want to live. But . . . I was at the point where my voucher was about to expire.  
78 I am a U.S. veteran – I signed on the line to protect my fellow citizens and I did so honorably. I  
79 have no Criminal Record. Yet . . . the same landlords that wanted me to sacrifice my life to  
80 protect them won’t even let me live in their buildings.”<sup>20</sup>

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82 *Source of Income Non-discrimination Laws*

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84 To address discrimination against voucher holders and other persons with lawful source of  
85 income, state and local governments have enacted laws prohibiting discrimination based on  
86 lawful source of income. Currently, 12 states and the District of Columbia, including Utah,  
87 Oklahoma, and nearly 40 cities and counties including New York City, Chicago, Philadelphia,  
88 Boston, and Seattle, prohibit discrimination based on source of income.<sup>21</sup>

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4221%).

4316 Chetty, R., & Hendren, N., *The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure*  
44 *Effects and County-Level Estimates*. Cambridge, M.A.: Harvard University and National Bureau of Economic  
45 Research (2015), available at [http://www.equality-of-opportunity.org/images/nbhds\\_paper.pdf](http://www.equality-of-opportunity.org/images/nbhds_paper.pdf).

4617 Lawyers’ Committee for Better Housing, *Locked Out: Barriers to Choice for Housing Voucher Holders*, 2002 at  
4711, available at <http://lcbh.org/sites/default/files/resources/2002-lcbh-housing-voucher-barriers-report.pdf>.

4818 Wood, M., et al, *Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation*,  
49 *Housing Policy Debate* 2008, p. 392.

5019 U.S. Department of Housing and Urban Development, *HUD-VASH Best Practices – Version 1.0*, Apr. 2012,  
51 available at <http://portal.hud.gov/hudportal/documents/huddoc?id=VASH-BestPractices.pdf>.

5220 Testimony of Jill Williams before Maryland House Environment and Transportation Committee, Feb. 7, 2017.

5321 Poverty & Race Research Action Council, *Expanding Choice: Practical Strategies for Building a Successful*  
54 *Housing Mobility Program*, Appendix B (March 2017).

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90Laws prohibiting discrimination based on source of income have increased the ability of voucher  
91holders to use vouchers and decreased concentrations of vouchers holders.<sup>22/23</sup> Indeed, source of  
92income laws increase the number of voucher holders moving from high to low-poverty areas.<sup>24</sup>

93

94*Laws Prohibiting Housing Discrimination are supported by International Human Rights*  
95*Principles*

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97The international community has long recognized the United States' failure to adequately fight  
98against tenant discrimination. The U.S. has also already ratified the International Covenant on  
99Civil and Political Rights and the International Covenant on the Elimination of All Forms of  
100Racial Discrimination (both with endorsement from the ABA), both of which recognize the right  
101to be free from discrimination, including in housing.<sup>25</sup>

102

103In 2006, the UN Human Rights Committee expressed concern about the disparate racial impact  
104of homelessness in the U.S. and called for "adequate and adequately implemented policies, to  
105ensure the cessation of this form of racial discrimination."<sup>26</sup> In 2008, the UN Committee on the  
106Elimination of Racial Discrimination again recognized racial disparities in housing and ongoing  
107segregation in the U.S.<sup>27</sup>

108

109*Conclusion*

110This policy will reaffirm the ABA's commitment to ensuring that decisions about housing are  
111made on the basis of *bona fide* qualification rather than stereotypes or prejudices. By adopting  
112this Resolution, the ABA can assist the work of housing advocates, lawmakers, and litigators that  
113have tirelessly worked to end the cycle of poverty and right the long effects of racial and  
114economic housing segregation in the United States.

115

116Respectfully submitted,

117Kirke Kickingbird

118Chair, Section of Civil Rights and Social Justice

119August 2017

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5522 *Supra* Note 10 at 3-17 ("enrollees in programs that are in jurisdictions with laws that bar discrimination based on  
56source of income (with or without Section 8) had a statistically significantly higher probability of success of over 12  
57percentage points").

5823 *Supra* Note 14 at 556.

5924 Freeman, Lance, and Yunjing Li, Do Source of Income Antidiscrimination Laws Facilitate Access to Less  
60Disadvantaged Neighborhoods?, *Housing Studies* 29:88-107 (2014).

6125 U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138  
62Cong. Rec. S4781-01 (daily ed., April 2, 1992); International Covenant on Civil and Political Rights, G.A. res.  
632200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force  
64Mar. 23, 1976 (Article 2(1)); U.S. reservations, declarations, and understandings, International Convention on the  
65Elimination of All Forms of Racial Discrimination, 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994);  
66International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into  
67force Jan. 4, 1969 (Article 5(e)(i)). *See also*, ABA House Report 700 MY 1979; ABA House Report 921 AM 1978.

6826 Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the  
69Committee, CCPR/C/USA/CO/3 (2006), at para. 22.

7027 Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by State Parties  
71Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial  
72Discrimination: United States of America, CERD/C/USA/CO/6 (2008), at para. 9.

**GENERAL INFORMATION FORM**

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122 Submitting Entity: Section of Civil Rights and Social Justice

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124 Submitted By: Kirke Kickingbird, Chair, Section of Civil Rights and Social Justice

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1271. Summary of Resolution(s). The resolution urges federal, state, local, and territorial  
128 governments to enact legislation prohibiting discrimination in housing on the basis of lawful  
129 source of income.

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1312. Approval by Submitting Entity. The Council of the Section of Civil Rights and Social  
132 Justice approved sponsorship of the Resolution during its Spring Meeting on Saturday, April  
133 29, 2017.

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135 The Council of the Section of State and Local Government Law approved co-sponsorship of  
136 the Resolution during its Spring Meeting on Sunday, April 30, 2017.

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138 The Commission on Veterans Legal Services approved co-sponsorship of the Resolution on  
139 May 30, 2017.

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1413. Has this or a similar resolution been submitted to the House or Board previously? No.

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1434. What existing Association policies are relevant to this Resolution and how would they be  
144 affected by its adoption? The American Bar Association has a long tradition of actively  
145 opposing discrimination on the basis of classifications including race, gender, national  
146 origin, disability, age, sexual orientation, and gender identity and expression. The  
147 Association has adopted policies calling upon local, state, and federal lawmakers to prohibit  
148 such discrimination in housing, as well as in public accommodations, credit, education, and  
149 public funding and has sought to eliminate such discrimination in all aspects of the legal  
150 profession. The ABA's fundamental position condemning such discrimination is based on its  
151 underlying commitment to the ideal of equal opportunity and advancement of human rights.  
152 These two principles united in August 2013, when the ABA adopted policy to urge  
153 governments to "promote the human right to adequate housing for all" and to "prevent  
154 infringement of that right."

155

1565. If this is a late report, what urgency exists which requires action at this meeting of the  
157 House? N/A

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1596. Status of Legislation. (If applicable) Currently, 12 states and the District of Columbia,  
160 including Utah, Oklahoma, and nearly 40 cities and counties including New York City,  
161 Chicago, Philadelphia, Boston, and Seattle, prohibit discrimination based on lawful source of  
162 income. This Resolution will allow the ABA to encourage other jurisdictions to adopt similar  
163 laws.

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1677. Brief explanation regarding plans for implementation of the policy, if adopted by the House

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- 168 of Delegates. We will work with relevant stakeholders within and outside of the American  
169 Bar Association and the Governmental Affairs Office to implement the policy.  
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1718. Cost to the Association. (Both direct and indirect costs) Adoption of this proposed resolution  
172 would result in only minor indirect costs associated with Section staff time devoted to the  
173 policy subject matter as part of the staff members' overall substantive responsibilities.  
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1759. Disclosure of Interest. (If applicable) There are no known conflicts of interest.  
176
17710. Referrals. The Report with Recommendation will be referred to the following entities in the  
178 month of June:
- 179 Section of Administrative Law and Regulatory Practice
  - 180 Criminal Justice Section
  - 181 General Practice, Solo and Small Firm Section
  - 182 Section of Business Law
  - 183 Section of Family Law
  - 184 Section of Real Property, Trust, and Estate Law
  - 185 Section of International Law
  - 186 Section of Labor and Employment Law
  - 187 Section of Litigation
  - 188 Section of State and Local Government Law
  - 189 Section of Taxation
  - 190 Judicial Division
  - 191 Forum on Affordable Housing
  - 192 Law Student Division
  - 193 Senior Lawyers Division
  - 194 Young Lawyers Division
  - 195 Center for Racial and Ethnic Diversity
  - 196 Commission on Law and Aging
  - 197 Commission on Homelessness and Poverty
  - 198 Commission on Mental and Physical Disability Law
  - 199 Commission on Racial and Ethnic Diversity in the Profession
  - 200 Council on Racial and Ethnic Justice
  - 201 Commission on Disability Rights
  - 202 Commission on Youth at Risk
  - 203 Commission on Women in the Profession
  - 204 Commission on Domestic and Sexual Violence
  - 205 Hispanic National Bar Association
  - 206 National Asian Pacific American Bar Association
  - 207 National Association of Women Judges
  - 208 National Association of Women Lawyers
  - 209 National Bar Association Inc.
  - 210 National Conference of Women's Bar Associations
  - 211 National Lesbian and Gay Law Association (National LGBT Bar Association)
  - 212 Veterans Commission
  - 213 National Native American Bar Association
21411. Contact Name and Address Information. (Prior to the meeting. Please include name,  
215 address, telephone number and e-mail address)

216  
 217 Antonia Kivelle Fasanelli  
 218 Homeless Persons Representation Project, Inc.  
 219 201 N. Charles St., Suite 1  
 220 West Newton, MA 02465  
 221 Tel.: (410) 685-6589  
 222 Email: [afasanelli@hprplaw.org](mailto:afasanelli@hprplaw.org)  
 223

224 Tanya Terrell Coleman, Director  
 225 Section of Civil Rights and Social Justice  
 226 1050 Connecticut Avenue NW  
 227 Washington, DC 20036  
 228 Tel: (202) 662-1030  
 229 Email: [Tanya.terrell@americanbar.org](mailto:Tanya.terrell@americanbar.org)  
 230

231 **12.** Contact Name and Address Information. (Who will present the report to the House? Please  
 232 include name, address, telephone number, cell phone number and e-mail address.)  
 233

234 Estelle H. Rogers, CRSJ Section Delegate  
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 236 Forestville, CA 95436-9321  
 237 Tel.: (202) 337-3332 (Work)  
 238 E-mail: [lestellerogers@gmail.com](mailto:lestellerogers@gmail.com)  
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 246 E-mail: [wwhite@mcguirewoods.com](mailto:wwhite@mcguirewoods.com)  
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 253 (alternate address)

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## EXECUTIVE SUMMARY

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### Summary of the Resolution

The resolution urges federal, state, local, and territorial governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income.

### Summary of the Issue that the Resolution Addresses

A common form of discrimination in housing is the denial of housing based on a housing applicant's lawful source of income. As a threshold matter, lawful source of income includes income from: 1) a lawful profession, occupation or job; 2) any government or private assistance, grant, loan or rental assistance program, including low-income housing assistance certificates and vouchers issued under the United States Housing Act of 1937; 3) a gift, an inheritance, a pension, an annuity, alimony, child support, or other consideration or benefit; or 4) the sale or pledge of property or an interest in property. Lawful source of income does not prevent a property owner from determining, in a commercially reasonable and non-discriminatory manner, the ability of a housing applicant to afford to purchase or rent the property.

Every year, families are rejected from housing of their choice because their income, albeit lawful and sufficient in amount, is not accepted by a property owner. Often the denial of housing will serve as a pretext for a prohibited form of discrimination. For example, a property owner who does not want to rent to elderly persons will simply deny a housing application claiming that retirement benefits are not a sufficient source of income. A property owner who does not wish to rent to persons with disabilities will tell an applicant on Supplemental Security Income (SSI) that government benefits are not an acceptable source of income.

### Please Explain How the Proposed Policy Position Will Address the Issue

This policy will reaffirm the ABA's commitment to ensuring that decisions about housing are made on the basis of *bona fide* qualification rather than stereotypes or prejudices. By adopting this Resolution, the ABA can assist the work of housing advocates, lawmakers and litigators that have tirelessly worked to end the cycle of poverty and right the long effects of racial and economic housing segregation in the United States.

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2934. Summary of Minority Views or Opposition Internal and/or External to the ABA  
Which Have Been Identified

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No minority views or opposition have been identified.