

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 507
HOUSE BILL 334

AN ACT TO AMEND THE STATE FAIR HOUSING ACT BY EXTENDING
PROTECTION TO THE HANDICAPPED AND FAMILIES WITH CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 41A-3 is amended by adding three new subdivisions to read:

"(1a) 'Covered multifamily dwellings' means:

- a. A building, including all units and common use areas, in which there are four or more units if the building has one or more elevators; or
- b. Ground floor units and ground floor common use areas in a building with four or more units.

(1b) 'Familial status' means one or more persons who have not attained the age of 18 years being domiciled with:

- a. A parent or another person having legal custody of the person or persons; or
- b. The designee of the parent or other person having custody, provided the designee has the written permission of the parent or other person.

The protections against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any person who has not attained the age of 18 years.

(3a) 'Handicapping condition' means (i) a physical or mental impairment which substantially limits one or more of a person's major life activities, (ii) a record of having such an impairment, or (iii) being regarded as having such an impairment. Handicapping condition does not include current, illegal use of or addiction to a controlled substance as defined in 21 U.S.C. § 802, the Controlled Substances Act. The protections against discrimination on the basis of handicapping condition shall apply to a buyer or renter of a dwelling, a person residing in or intending to reside in the dwelling after it is sold, rented, or made available, or any person associated with the buyer or renter."

Sec. 2. G.S. 41A-4 reads as rewritten:

"§ 41A-4. Unlawful discriminatory housing practices.

(a) It is an unlawful discriminatory housing practice for any person in a real estate transaction, because of race, color, religion, sex, ~~or~~ national origin, handicapping condition, or familial status to:

- (1) Refuse to engage in a real estate transaction;

- (2) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (2a) Refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to the handicapped person's full enjoyment of the premises; except that, in the case of a rental unit, the landlord may, where it is reasonable to do so, condition permission for modifications on agreement by the renter to restore the interior of the premises to the condition that existed before the modifications, reasonable wear and tear excepted;
- (2b) Refuse to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to a handicapped person's equal use and enjoyment of a dwelling;
- (2c) Fail to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, so that:
 - a. The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or
 - b. With respect to dwellings with a building entrance on an accessible route:
 - 1. The public and common use portions are readily accessible to and usable by handicapped persons;
 - 2. There is an accessible route into and through all dwellings and units;
 - 3. All doors designed to allow passage into, within, and through these dwellings and individual units are wide enough for wheelchairs;
 - 4. Light switches, electrical switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
 - 5. Bathroom walls are reinforced to allow later installation of grab bars; and
 - 6. Kitchens and bathrooms have space for an individual in a wheelchair to maneuver;
- (3) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction;
- (4) Refuse to negotiate for a real estate transaction;
- (5) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or fail to bring a property listing to his attention, or refuse to permit him to inspect real property;
- (6) Make, print, circulate, post, or mail or cause to be so published a statement, advertisement, or sign, or use a form or application for a

real estate transaction, or make a record or inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

- (7) Offer, solicit, accept, use, or retain a listing of real property with the understanding that any person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; or
- (8) Otherwise make unavailable or deny housing.

~~(b) It is an unlawful discriminatory housing practice for a financial institution to whom application is made for a loan, or other financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property to:~~

- ~~(1) Discriminate against the applicant because of race, color, religion, sex, or national origin; or~~
- ~~(2) Use a form of application for a loan, or other financial assistance, or make or keep a record of inquiry in connection with an application for a loan, or other financial assistance which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination as to race, color, religion, sex, or national origin.~~

~~The provisions of this subsection shall not prohibit any financial institution from basing its actions on the income or financial abilities of any person.~~

(b1) It is an unlawful discriminatory housing practice for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of race, color, religion, sex, national origin, handicapping condition, or familial status. As used in this subsection, 'residential real estate related transaction' means:

- (1) The making or purchasing of loans or providing financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling, or (ii) where the security is residential real estate; or
- (2) The selling, brokering, or appraising of residential real estate.

The provisions of this subsection shall not prohibit any financial institution from using a loan application which inquires into a person's financial and dependent obligations or from basing its actions on the income or financial abilities of any person.

(c) It is an unlawful discriminatory housing practice for a person to induce or attempt to induce another to enter into a real estate transaction from which such person may profit:

- (1) By representing that a change has occurred, or may or will occur in the composition of the residents of the block, neighborhood, or area in which the real property is located with respect to race, color, religion, sex, or national origin, handicapping condition, or familial status of the owners or occupants; or

- (2) By representing that a change has resulted, or may or will result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

(d) It is an unlawful discriminatory housing practice to deny any person who is otherwise qualified by State law membership in any real estate brokers' organization, multiple listing service, or other service, organization, or facility relating to the business of engaging in real estate transactions, or to discriminate in the terms or conditions of such membership because of race, color, religion, sex, ~~or~~ national origin, handicapping condition, or familial status.

(e) It is an unlawful discriminatory housing practice to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this Chapter."

Sec. 3. G.S. 41A-5 reads as rewritten:

"§ 41A-5. Proof of violation.

(a) It is a violation of this Chapter if:

- (1) A person by his act or failure to act intends to discriminate against a person. A person intends to discriminate if, in committing an unlawful discriminatory housing practice described in G.S. 41A-4 he was motivated in full, or in any part at all, by race, color, religion, sex, national origin, ~~or any other characteristic or classification protected by this Chapter~~ handicapping condition, or familial status. An intent to discriminate may be established by direct or circumstantial evidence; or
- (2) A person's act or failure to act has the effect, regardless of intent, of discriminating, as set forth in G.S. 41A-4, against a person of a particular race, color, religion, sex, national origin, ~~or any other characteristic or classification protected by this Chapter~~ handicapping condition, or familial status. However, it is not a violation of this Chapter if a person whose action or inaction has an unintended discriminatory effect, proves that his action or inaction was motivated and justified by business necessity.

(b) It shall be no defense to a violation of this Chapter that the violation was requested, sought, or otherwise procured by another person."

Sec. 4. G.S. 41A-6 reads as rewritten:

"§ 41A-6. Exemptions.

(a) The provisions of G.S. 41A-4 do not apply to the following:

- (1) The rental of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the lessor or a member of his family resides in one of the housing accommodations;
- (2) The rental of a room or rooms in a private house, not a boarding house, if the lessor or a member of his family resides in the house;

- (3) Religious institutions or organizations or charitable or educational organizations operated, supervised, or controlled by religious institutions or organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by race, color, sex, ~~or~~ national origin, handicapping condition, or familial status;
- (4) Private clubs, not in fact open to the public, which incident to their primary purpose or purposes provide lodging, which they own or operate for other than a commercial purpose, to their members or give preference to their members;
- (5) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property;
- (6) Any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under the provisions of this Chapter or under the provisions of the Federal Fair Housing Act, 42 U.S.C. § 3601 **et seq.**, or is voluntary and is consistent with the purposes thereof;
- (7) The sale, rental, exchange, or lease of commercial real estate. For the purposes of this Chapter, commercial real estate means real property which is not intended for residential use.

(b) No provision of this Chapter requires that a dwelling be made available to a person whose tenancy would constitute a direct threat to the health or safety of other persons or whose tenancy would result in substantial physical damage to the property of others.

(c) No provision of this Chapter limits the applicability of any reasonable local or State restrictions regarding the maximum number of occupants permitted to occupy a dwelling unit.

(d) Nothing in this Chapter shall be deemed to nullify any provisions of the North Carolina Building Code applicable to the construction of residential housing for the handicapped.

(e) No provision of this Chapter regarding familial status applies with respect to housing for older persons. 'Housing for older persons' means housing:

- (1) Provided under any State or federal program specifically designed and operated to assist elderly persons as defined in the program;
- (2) Intended for and solely occupied by person 62 years or older. Housing satisfies the requirements of this subdivision even though there are persons residing in such housing on October 1, 1989, who are under 62 years of age, provided that all new occupants after October 1, 1989, are 62 years or older; or
- (3) Intended for and operated for occupancy by at least one person 55 years of age or older per unit as shown by such factors as (i) the existence of significant facilities and services specifically designed to

meet the physical and social needs of older persons or, if this is not practicable, that the housing provides important housing opportunities for older persons, (ii) at least eighty percent (80%) of the units are occupied by at least one person 55 years of age or older per unit; and (iii) the publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years or older. Housing satisfies the requirements of this subdivision even though on October 1, 1989, under eighty percent (80%) of the units in the housing facility are occupied by at least one person 55 years or older per unit, provided that eighty percent (80%) of the units that are occupied by new tenants after October 1, 1989, are occupied by at least one person 55 years or older per unit until such time as eighty percent (80%) of all the units in the housing facility are occupied by at least one person 55 years or older. Housing facilities newly constructed for first occupancy after October 1, 1989, shall satisfy the requirements of this subdivision if (i) when twenty-five percent (25%) of the units are occupied, eighty percent (80%) of the occupied units are occupied by at least one person 55 years or older, and thereafter (ii) eighty percent (80%) of all newly occupied units are occupied by at least one person 55 years or older until such time as eighty percent (80%) of all the units in the housing facility are occupied by at least one person 55 years of age or older.

Housing satisfies the requirements of subdivisions (2) and (3) of this subsection even though there are units occupied by employees of the housing facility who are under the minimum age or family members of the employees residing in the same unit who are under the minimum age, provided the employees perform substantial duties directly related to the management of the housing."

Sec. 5. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 29th day of June, 1989.