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# Fair Housing Law

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# Fair Housing Principles

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- Equality
- Integration
- Choice
- Individuality



# Equality

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- People should have an equal opportunity to live where they want, and not be subjected to rules or requirements that are different from those applied to other people.



# Integration

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- Everyone is entitled to live in communities with their neighbors.
- Integration does not just mean physical presence in a neighborhood but also participation in community services and activities.



# Choice

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- People are entitled to choose where they want to live.



# Individuality

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- Housing providers must respect the unique needs and circumstances of individuals with disabilities and offer reasonable accommodations to meet these needs when requested.



# Laws Addressing Fair Housing

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- Federal Fair Housing Act (FHA)
  - 42 U.S.C. §3601, *et seq.*
- N.C. Fair Housing Act
  - N.C. Gen. Stat. §41A-1, *et seq.*
- Civil Rights Act of 1866
  - 42 U.S.C. §1981
- Title VI of Civil Rights Act of 1964
  - 42 U.S.C. §2000d, *et seq.*
- Americans with Disabilities Act (ADA)
  - 42 U.S.C. §1201, *et seq.*
- Section 504 of the Rehabilitation Act of 1973
  - 29 U.S.C. §794
- State and local building codes



# Federal Fair Housing Act

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- 42 USC 3601
- It is the policy of the United States to provide, within constitutional limits, for fair housing throughout the United States.





# NC State Fair Housing Act

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- Chapter 41A of NC General Statutes
- Purpose: To provide Fair Housing
- Both laws cover both sale and rental of housing; this presentation focuses on the rental aspects of the statutes.



# Protected Classes

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- Race
- Color
- Religion
- Sex
- National Origin
- Handicapping Condition
- Familial Status
- Affordable Housing – NC only



# Prohibited Acts

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- Refuse to engage in a real estate transaction
- Discriminate in terms or conditions or privileges of rental of a dwelling or the provision of services or facilities in connection with a rental
- Refuse to negotiate



# Prohibited Acts

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- Represent a dwelling as not available when it is, fail to bring to one's attention, or refuse to permit inspection
- Discriminate in publications or advertising:
  - “For active adults only”
  - “No wheelchairs”



# Prohibited Acts

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- Deny occupancy
- Otherwise make unavailable or deny housing



# Types of Property Covered

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The FHA broadly applies to "dwellings," which includes almost every residential rental unit.

- Single and Multi-family housing
  - houses, apartments & condos
- Group homes
- Shelters
- Migrant housing
- Assisted living housing
- Long-term transient lodging



# FHA Dwelling Exemptions

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- Rental of a single family home without a broker or advertising.
- Units in an owner-occupied building having no more than four families living independently of each other.
- Private clubs may provide noncommercial lodging for their members.
- Religious organizations may limit or give preference to persons of the same religion in noncommercial dwellings.



# Protected Classes

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# Familial Status

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- Families with Children
- Pregnant Women
- Seniors
  - Housing for Older Persons is defined as housing (1) provided to assist elderly persons as part of a State or Federal program; (2) intended for persons 62 years or older; or (3) intended for occupancy by at least 1 person 55 or older per unit.



# Discrimination Based On Disability

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## Definition of “disability” –

- A physical or mental impairment that substantially limits one or more major life activities;
- Having a history of such an impairment; or
- Being perceived as having such an impairment (whether person is impaired or not).



# Disability Protections Under FHA

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- Discrimination based on disability prohibited.
  - Includes disability of buyer/tenant, people residing in unit, and people associated with buyer/renter.
- Inquiries into nature/existence of disability also prohibited.



# Examples of Violations

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- Refusing to rent or sell a house to a person because the individual has AIDS.
- Refusing to rent an apartment to a couple because their child has autism.
- Asking prospective tenant whether he is disabled or why he receives SSI or SSDI.



# Disability Protections Under FHA

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- Reasonable Modifications
  - Physical change in premises to allow a person with a disability to fully use & enjoy dwelling
    - Includes common areas & interior of unit
  - May be req'd to show proof of disability & connection to requested modification
  - May be req'd to return interior of unit to original condition on termination of residency.



# Disability Protections Under FHA

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- Reasonable Modifications
  - In private housing (including tenant-based “Section 8” vouchers), modification is made at tenant’s own expense.
  - In federally-funded public housing, housing provider/landlord is required to pay for modification unless it will cause significant financial or administrative hardship.



# Examples of Reasonable Modifications

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- Installing a grab bar in a bathroom
- Widening a doorway
- Installing a wheelchair ramp
- Installing a light switch or thermostat in an accessible location
- Installing a flashing smoke detector or doorbell
- Installing lever door handles



# Disability Protections Under FHA

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- Reasonable Accommodations
  - Exceptions or changes to rules, policies, practices, or services so a person with a disability can have an “equal opportunity to use and enjoy a dwelling unit.”
  - Can request at any time
  - May be req’d to show proof of disability & connection to requested accommodation





# Examples of Reasonable Accommodations

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- Allow service or therapy animal despite “No Pets” policy
- Provide tenant with a mobility impairment a parking spot close to unit in an otherwise first come, first served parking facility
- Assigning a mailbox to an accessible location
- Change rent due date to accommodate receipt of SSI or other disability payment
- Helping a prospective tenant with cognitive disabilities fill out an application.
- Allow live-in aide to be added to lease.
- Allowing a tenant to terminate his lease early when based on the tenant’s disability (e.g., emergency hospitalization, or conditions at unit exacerbates disability).



# Standard To Be Considered “Unreasonable”

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- A request for an accommodation may be considered unreasonable (and does not have to be granted) if:
- the request would require a “fundamental alteration” in the nature of the services, program or activity, or
  - the request creates an undue financial and administrative burden.



# Disability Protections Under FHA

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- Unlawful Statements & Advertising
  - Indicating limitation based on disability
  - Applies to all property (including single-family houses and other property exempt from other parts of the FHA).
- Examples:
  - Newspaper ad stating complex is for “physically active community.”
  - “I’m sorry, but we had problems in the past with children who had ADHD and therefore we can’t rent to you.”
  - “Have you ever been in a drug rehab. program?”
  - “Can you live independently?”



# Exceptions

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- **Direct Threat.** The FHA does not require a tenancy that would be a “direct threat” to the health or safety of other individuals, or result in substantial damage to the property of others unless a reasonable accommodation could eliminate the threat.
  - A determination that a person poses a direct threat must be based on an individualized assessment
  - Unlawful to exclude individuals based on fear, speculation or stereotypes
- **Drug use.** The *current* use of illegal drugs is excluded from the definition of disability.



# Affordable Housing – NC only

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- Cannot discriminate against land use decisions or the permitting of development because of any of the protected classes OR because development includes affordable housing for people making below 80% of area median income.
- **Exception:** limiting high concentrations of poverty.



# Enforcement - NC

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- File complaint to NC Human Relations Commission  
<https://ncadmin.nc.gov/about-doa/divisions/human-relations-commission>
- Within 1 year of alleged act of omission



# Enforcement - NC

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- NCHRC forwards complaint to respondent
- Complaint must be filed within 1 year of alleged act or omission
- NCHRC has 1 year to make a final disposition



# Enforcement - NC

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- Complaints may be resolved at any time by informal conference, conciliation or persuasion.
- NCHRC investigates, and if necessary, can file suit and request a TRO or other relief.





# Enforcement - NC

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- If NCRCH finds no reasonable ground to believe act or omission occurred, it will dismiss complaint and issue a right-to-sue letter.
- If NCHRC finds reasonable grounds, it must try to correct the problem by informal conference, conciliation, or persuasion.



# Enforcement - NC

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- If NCHRC cannot resolve the problem, it must notify the parties.
- The complainant can then request a right-to-sue letter.
- Complainant has 1 year from the date of the right-to-sue letter



# Enforcement - NC

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- If no right-to-sue letter is requested, either party or the NCHRC, can bring a case in Superior Court. If neither action happens, NCHRC must file with the Office of Administrative Hearings.



# Enforcement - NC

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- Superior Court may grant a TRO, preliminary or temporary injunction, actual and punitive damages, court costs and attorneys fees to the prevailing party.
- The administrative process can result in compensatory damages, injunctive, and other equitable relief, and FINES



# Enforcement - NC

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- Fines:
  - \$10,000 for the first offense
  - \$25,000 for second offense within 5 years
  - \$50,000 if there are two or more violations in the last (7) years!
  
- If acts or omissions are by the same natural person, there is no regard to time frames.



# Enforcement - Federal

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- For violations of the Fair Housing Act, exhaustion of administrative remedies is not a prerequisite to a claim in federal court. A party may institute civil action on the administrative level as well as commence civil action in federal court.



# Enforcement - Federal

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- Damages include:
  - Specific Performance
  - Injunctive Relief
  - Punitive Damages
  - Compensatory Damages
  - Actual Expenses and Diversion of Resources
  - Cost of Alternative Housing
  - Emotional Distress
  - Lost Wages



# Questions?

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