

94-348 PROPOSED CHANGES TO RULES

Me. Hum. Rights Comm'n Reg., Chapter 2, is revised as follows:

94-348 MAINE HUMAN RIGHTS COMMISSION

Chapter 2: PROCEDURAL RULE

DESCRIPTION: The following rule describes the process by which complaints of discrimination will be filed, processed, and considered by the Maine Human Rights Commission, with the exception of complaints alleging unlawful education discrimination, which are governed by Chapter 4-A.

2.01 DEFINITIONS

All terms used in these regulations, unless the context otherwise indicates, shall have the same definition as in the Maine Human Rights Act, 5 M.R.S.A. §§ 4551 *et seq.* (the Act).

2.02 COMPLAINTS

A. Who may file

- (1) ~~Any person who believes that he or she has been subjected to unlawful discrimination~~ aggrieved person may file a complaint with the Maine Human Rights Commission (the Commission).
- (2) Any employee of the Commission may file a complaint with the Commission alleging an act or practice of unlawful discrimination.

B. Contents

A complaint should briefly set forth the facts and circumstances surrounding the alleged discrimination.

C. When to file

A complaint of discrimination must be filed with the Commission not more than 300 days after the act of alleged discrimination occurred.

D. Where to file

Complaints must be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051; complaints filed with the Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD) pursuant to work sharing agreements between

the Commission and EEOC and HUD shall be deemed filed with the Commission on the date of filing with EEOC or HUD.

E. How to file

Complaints may be filed in person or by mail by filling out a form provided by the Commission or by EEOC or HUD pursuant to work sharing agreements between the Commission and EEOC or HUD. Complaints must be sworn to under oath before a Notary Public or other person authorized by law to administer oaths, or before a representative of the EEOC or HUD pursuant to work sharing agreements signed between the Commission and the EEOC and HUD.

Upon request, Commission staff will assist in the preparation of the necessary complaint forms. Aggrieved persons may provide information by mail, telephone, or email. Commission staff may request that intake forms be prepared and submitted. If the information received alleges a violation of the Act, Commission staff will reduce the information to writing on the appropriate complaint form and send it to the aggrieved person to be notarized and filed with the Commission.

F. Amendment of complaints

Complaints may be amended to cure technical defects or omissions, including failure to swear to the complaint under oath before a Notary Public, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts that constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

G. Withdrawal of complaints

(1) A complaint may be withdrawn at any time, by written request, prior to the issuance of a statement of finding by the Commission, by the person who originally filed it provided, however, that where the investigation and processing of a complaint has been completed prior to the receipt of a written request for withdrawal, withdrawal is subject to Commission approval. Upon notification or approval of withdrawal, the Commission shall cease its investigation.

(2) Withdrawal of an individual complaint will not, however, preclude the investigation and processing of any complaint filed by any employee or member of the Commission, which alleges the same acts of discrimination.

H. Administrative dismissal

The Commission's Executive Director may, in her/his discretion, administratively dismiss complaints of discrimination for such reasons as:

(1) lack of jurisdiction;

(2) failure to substantiate the complaint of discrimination;

- (3) failure to file a complaint of discrimination within 300 days of the date of alleged discrimination; or
- (4) failure by complainant to proceed or cooperate with the investigation; or
- (5) ~~failure by complainant to accept reasonable offers to resolve the allegations in the complaint~~ bankruptcy filing by respondent.

Immediately following administrative dismissal, the Commission shall notify the complainant and the respondent of its action, and shall inform the complainant of her/his right to proceed pursuant to 5 M.R.S.A. §4621.

I. Notice of Right to Sue

A right to sue letter may be requested by a complainant, in writing, 180 days or more after the filing of a complaint with the Commission. If the Commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the Commission's Executive Director or her/his designee shall issue a right-to-sue letter, provided, however, that where the investigation and processing of the complaint have been completed and an Investigator's Report issued prior to the receipt of a written request for a right-to-sue letter, the issuance of the right-to-sue letter is subject to the Commission's approval. Upon issuance of the right-to-sue letter, the Commission shall end its investigation.

J. Conflict of Interest

- (1) As used in the subsection, "conflict of interest" means that:
 - a) a Commissioner has an adverse or pecuniary interest as defined by 5 M.R.S.A. §18; or
 - b) a Commissioner is a complainant or respondent in a case under investigation; or
 - c) a Commissioner is an employee or member of an entity that is a party in a case under investigation by the Commission, or an employee or member of an entity operating as an advocate for a party appearing before the Commission.
- (2) The Commission will not provide any information to a Commissioner with a conflict of interest as defined in (1) above, which it would not provide to any other respondent or complainant.
- (3) All communications with the Commission made by the Commissioner with the conflict of interest relative to the merits of the case prior to the conclusion of the investigation as defined in 5 M.R.S.A. §4612(1)(B), will be directed to the investigator assigned to the case, not to the Executive Director, the Commission Counsel, or any other Commissioner. All such communications will be noted in the case file.

- (4) Any Commissioner who has a conflict of interest in a case before the Commission will excuse himself or herself from the Commission decision affecting that case pursuant to Rules 2.07 and 2.08.

2.03 NOTIFICATION

Within 10 days after a complaint has been pre-screened, notarized, filed, and assigned a case number, the party against whom the complaint has been filed, referred to as respondent, will be notified and provided with a copy of the complaint. The complainant will be provided with a copy of the notification. The notice will advise the parties of time limits applicable to complaint processing under this chapter and of the procedural rights and obligations of the parties under the Act and this chapter; the complainant's right to commence a civil action in the Superior Court; and that it is unlawful to discriminate against any person because the person made a complaint or testified, assisted, or participated in an investigation, proceeding, or hearing under the Act.

2.04 EARLY RESOLUTION SETTLEMENT

- A. Subsequent to notification and separate from the investigation of the allegations in the complaint, the Commission's Compliance Manager or her/his designee will provide an opportunity to the parties for discussion of settlement. This may include an opportunity for the parties to participate in a third-party neutral mediation program established by the Commission.
- B. Evidence of conduct or statements made in settlement negotiations, mediation, settlement offers, and any final agreement are confidential and may not be disclosed without the written consent of the parties, nor used as evidence in any subsequent proceeding, except in an action for breach of agreement. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement.
- C. Prior to a determination by the Commission of whether there are reasonable grounds to believe that unlawful discrimination has occurred, if the matter is resolved to the mutual satisfaction of the parties and to the satisfaction of the Commission's Executive Director or her/his designee, the Executive Director or her/his designee shall have the authority to sign any settlement agreement on behalf of the Commission, together with the parties. When the Commission agrees in any negotiated settlement not to process that complaint further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement. The complaint will be dismissed by the Commission's Executive Director or her/his designee upon ascertainment that the terms of settlement have been met.
- D. In the alternative, the Commission's Compliance Manager or her/his designee or a mediator assigned pursuant to a third-party neutral mediation program established by the Commission may facilitate a settlement between the parties resulting in the withdrawal of the complaint pursuant to 2.02(G).

2.05 INVESTIGATION

- A. After a complaint has been pre-screened, notarized, filed, and assigned a case number, a Commission investigator will conduct such preliminary and impartial investigation as is necessary. An investigation may involve fact-finding meetings and interviews with the complainant, the respondent, and any other persons whose statement may provide a source of evidence. The investigator may record, by mechanical, electronic or other means, all statements by all persons involved. If the investigator calls for a fact-finding meeting, the parties shall be given reasonable notice in advance of the meeting.
- B. The Commission's investigator shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The Commission's investigators are hereby delegated the authority to administer oaths. The investigator shall maintain a written record of all interviews. The parties shall have the right to review the interview record, but the timing of such review shall be subject to the investigator's discretion.
- C. Documents, records, files or other possible sources of evidence shall be produced within the time specified by a Commission representative's written request for their production, unless the person possessing them shows cause to the Commission's representative that production within the time specified would impose an unjustifiable burden. Excessive delay or failure to produce the requested materials may result in the issuance of a subpoena by the Commission for their production.
- D. Subpoena power
- (1) Form. Subpoenas shall be issued in the name of the Maine Human Rights Commission, shall designate the Commission as recipient of the material or testimony specified, and shall designate a specific time and place for the production of the documents and/or testimony.
 - (2) When available. A subpoena may be used to compel testimony or the production of documents whenever there is reasonable cause to believe that those materials or the testimony of the persons are material to the complaint.
 - (3) Procedure. When the Commission's Executive Director or Commission Counsel determines that there is reasonable cause to believe that the testimony or documents withheld are material to investigation of the complaint, the Executive Director or Commission Counsel may issue a subpoena.

The subpoena shall include: the name and address of the respondent subject of the subpoena; if the subject of the subpoena is not an individual, the name of the senior officer or person in charge; a brief description of the documents requested and/or the name and title of the person(s) whose testimony is requested; and the date, time and place such production and/or testimony is requested.

If a subpoena is issued, notice must be given to the complainant and the respondent.

- (4) Service. Subpoenas may be served by any person who is not a party to the proceeding and who is not less than eighteen (18) years of age. Service shall be made by delivering a copy of the subpoena to the person named therein and tendering to that person the fees and mileage paid to witnesses in the Superior Court of this State.
 - (5) Return. The person serving the subpoena shall make proof of service by filing the original of such subpoena and an affidavit of acknowledgment of service with the Commission. However, failure to make such proof of service shall not affect the validity of such subpoena and service.
 - (6) Enforcement. If any person refuses to obey a subpoena, the Commission may apply to any justice of the Superior Court for an order compelling compliance with the subpoena.
 - (7) Opposition. Any person served with a subpoena may oppose it by applying for judicial review in Superior Court.
- E. Prior to the conclusion of an investigation, all information possessed by the Commission relating to the investigation is confidential and may not be disclosed, except that the Commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. The complaint and evidence collected during the investigation, other than data identifying persons who are not parties, shall become a matter of public record upon issuance of a letter of dismissal or upon listing of the complaint on a published Commission meeting agenda. The complaint and evidence collected may be used as evidence in any subsequent proceeding, civil or criminal.
- F. Upon completion of the investigation, the Commission's investigator will make and transmit a report of the investigation together with recommendations concerning the disposition of the complaint (hereafter referred to as Investigator's Report), to the complainant and the respondent. The Investigator's Report shall be approved for legal sufficiency by the Commission Counsel or her/his designee before it is issued. All parties to a complaint shall be given a reasonable opportunity to review and respond to all evidence considered by the Commission before the Investigator's Report is issued, but the timing of any such review shall be subject to the investigator's discretion. With respect to complaints alleging unlawful housing discrimination, unless it is impracticable to do so, the Commission will issue an Investigator's Report within 100 days of the filing of the complaint. If the Commission is unable to do so, it will notify the complainant and respondent by mail of the reasons for the delay.
- G. Upon receipt of the Investigator's Report described in 2.05(F), a party shall have an opportunity to make a written submission to the Commission setting forth specific items of disagreement with the report and/or recommendations. The written submission shall be filed with the Commission's office within seventeen (17) days of issuance of the Investigator's Report. Only specific items of disagreement that address the following will be considered:
- (1) relevant factual errors;
 - (2) relevant omissions of fact; and/or

- (3) relevant issues and questions concerning interpretation of the law.
- H. At the expiration of the seventeen (17) day period, a Commission representative will transmit the Investigator's Report and the written matter submitted by the complainant and/or respondent to the Commission.
- I. The Commission must conclude its investigation within 2 years after a notarized complaint is filed with the Commission. An investigation is concluded for purposes of this requirement upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs.
- J. With respect to complaints alleging unlawful housing discrimination, the Commission must make final administrative disposition of the complaint within one year of the date of receipt of the complaint, unless it is impracticable to do so. If the Commission is unable to do so, it shall notify the parties, in writing, of the reasons for not doing so.

2.06 COMMISSION MEETING

The Commission may allow the parties to make an oral presentation on information related to the complaint of discrimination at a monthly Commission meeting. Information presented must comply with 2.05(G). The Commission may impose time limits.

2.07 COMMISSION DECISION UNDER NON-EMERGENCY PROCEDURE

After considering the Investigator's Report, complainant's and respondent's submissions, if any, and other related information, the Commission will make a determination of whether or not reasonable grounds exist to believe that unlawful discrimination has occurred. The Commission shall issue a statement of finding in support of its determination.

- A. No reasonable grounds. If the Commission finds no reasonable grounds to believe that unlawful discrimination has occurred, it will dismiss the complaint. The Commission will promptly notify the parties of the dismissal and provide them a copy of its statement of finding.
- B. Reasonable grounds. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred, it will so notify the parties of its determination and provide them a copy of its statement of finding. The Commission's Compliance Manager or her/his designee will then endeavor to resolve the matter by informal means such as conference, conciliation, or persuasion.
- C. New investigation. If, subsequent to a finding, the Commission determines that there have been relevant, factual errors or relevant omissions of fact that, if they are true, would likely change the finding of the Commission, it may order a new investigation of the matter. The Commission will promptly notify the parties of its decision to investigate the matter again.

2.08 COMMISSION DECISION UNDER EMERGENCY PROCEDURE

If the preliminary investigation of the complaint persuades the Commission's Executive Director or other designated employee that a situation comparable to those described in 5 M.R.S.A. §4612(4)(B) exists, the Executive Director or other designated employee shall so notify the Commission. As soon as practical after notification, the Commissioners will consider the matter by means of a special meeting or other appropriate method. The Executive Director or other designated employee will take all reasonable steps to notify the parties of the special meeting or other appropriate method and of their right to participate.

- A. If the Commission finds no reasonable grounds to believe that unlawful discrimination has occurred, it will issue an order dismissing the complaint. The Commission shall issue a statement of finding in support of its determination.
- B. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred, but does not believe that irreparable injury or great inconvenience will be caused to the victims of such discrimination if relief is not immediately granted; it will notify the parties of its determination, provide them with a copy of its statement of finding and process the complaint under its non-emergency procedure.
- C. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred and further believes that irreparable injury or great inconvenience will be caused the victim or victims of such discrimination if relief is not immediately granted, it may request the Commission Counsel or her/his designee to file a civil action in the Superior Court seeking appropriate relief. As soon thereafter as practicable, the Commission shall issue a statement of finding in support of its determination.

2.09 POST-DETERMINATION CONCILIATION

- A. Conference, conciliation and persuasion

In conciliating a matter in which a determination of reasonable grounds has been made pursuant to the non-emergency procedure of section 2.07(B) of these regulations, the Commission shall attempt to achieve a just resolution and to obtain assurances that the respondent will eliminate the unlawful discrimination and take any appropriate corrective action. Disposition of a matter pursuant to this section shall be in the form of a written agreement and approved by a majority of the Commission, and notice thereof shall be sent to the parties. Upon ascertainment by the Commission's Executive Director or her/his designee that the terms of the signed agreement have been met, the proceeding shall be dismissed.

- B. Refusal of respondent to cooperate

If a respondent fails or refuses to confer with the Commission or its representatives, or fails or refuses to make a good faith effort to resolve any dispute, the Commission may terminate its efforts to conciliate the dispute. In such event, the respondent shall be notified promptly, in writing, that such efforts have been unsuccessful.

- C. Refusal of complainant to agree

If a complainant fails or refuses to agree to the terms of a conciliation agreement or settlement that the Commission believes represents a just resolution of the complaint of discrimination, the Commission may execute a conciliation agreement with the respondent limited to assurances that the respondent will eliminate such unlawful discrimination and take any appropriate corrective action. The proceeding shall be dismissed upon ascertainment by the Commission's Executive Director or her/his designee that the terms of the signed agreement have been met. Where the complainant is not a party to such a conciliation agreement, the execution of the agreement by the Commission and the respondent shall not extinguish or in any way prejudice the complainant's right to pursue any and all appropriate individual remedies. This subsection shall not apply to complaints investigated pursuant to an agreement between the Commission and the United States Secretary of Housing and Urban Development that requires the Commission to file a civil action for the use of the complainant.

D. Confidentiality of conciliation efforts

Everything said or done during and as part of the Commission's informal endeavors to eliminate unlawful discrimination by conference, conciliation and persuasion is confidential and may not be disclosed without the written consent of the parties concerned or used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the Commission or a party. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. In addition, the Commission will insist that the executed conciliation agreement contain a provision that the agreement shall be made public, unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of the Act.

2.10 PROCEDURE AFTER FAILURE OF CONCILIATION

- A. If the Commission's Compliance Manager or her/his designee determines that conciliation efforts have failed, she/he shall so notify the complainant and respondent.
- B. When post-determination conciliation efforts have failed, the Commission Counsel or her/his designee is authorized to file a civil action in the Superior Court seeking appropriate relief, including, but not limited to, temporary restraining orders and preliminary injunctions.
- C. When the Commission's Counsel or her/his designee is unable to file expeditiously such a civil action, the Commission shall so notify the complainant of her/his right to file a civil action pursuant to 5 M.R.S.A. §4621, and make available a referral list of attorneys who have indicated an interest in undertaking such litigation. The Commission shall furnish to the complainant, the respondent, or their cooperating attorneys, upon request, with access to the investigatory case file and will provide such technical assistance as possible under the existing circumstances. Referral under this subsection does not terminate the Commission's jurisdiction of the proceeding.

- D. In complaints investigated pursuant to a Memorandum of Understanding between the Commission and the United States Department of Housing and Urban Development that results in a reasonable grounds determination, the Commission shall file a civil action for the use of complainant if conciliation efforts are unsuccessful.

2.11 TIME LIMITS

- A. When these regulations establish any time limit for the filing, submission, or production of any document, record, file or other possible source of evidence, or for the filing of any request with the Commission, such item must be received in the office of the Commission before the close of business on the last day of the time limit.
- B. In computing any period of time prescribed or allowed by these regulations, the day of the act, event or default from or after which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal state or federal holiday, in which event the period shall run until the end of the next day that is not a Saturday, Sunday or legal state or federal holiday.
- C. The Commission's Executive Director or her/his designee, or the Commission, may extend any time limit provided in this chapter for good cause shown, and shall notify the parties of any such extension.

2.12 ADVISORY RULINGS

- A. Upon written request of any interested person, the Commission's Compliance Manager or her/his designee may make an advisory ruling with respect to the applicability of the Maine Human Rights Act or the rules promulgated by the Commission to that person or an actual state of facts.
- B. Advisory rulings made pursuant to this section shall not be binding upon the Commission, provided that, in any subsequent civil action initiated by the Commission, any person's justifiable reliance upon the ruling shall be considered in mitigation of any civil penal damages or punitive damages sought by the Commission.

Fiscal Impact Note: This proposed rule will not impose any additional cost on municipalities or counties.

STATUTORY AUTHORITY: This rule is proposed pursuant to 5 M.R.S.A. §4566(7).

94-348 PROPOSED CHANGES TO RULES

Me. Hum. Rights Comm'n Reg., Chapter 8, is revised as follows:

94-348 MAINE HUMAN RIGHTS COMMISSION

Chapter 8: HOUSING REGULATIONS OF THE MAINE HUMAN RIGHTS COMMISSION

8.01 GENERALLY

A. Purpose

Pursuant to Title 5 M.R.S.A. §4566(7), the Maine Human Rights Commission has adopted the following regulations which are designed to inform owners, lessees, sublessees, managing agents and other interested parties of the Commission's interpretation of the Maine Human Rights Act, Title 5 M.R.S.A. §4551, *et seq.*, hereinafter referred to as "the Act."

B. Effect

The regulations shall be accorded the full force and effect of interpretative administrative regulations.

C. Construction

- (1) Consistent with the public policy underlying the Act (as expressed in §4552), and with firmly established principles for the interpretation of such humanitarian legislation, the remedial provisions of the Act shall be given broad construction and its exceptions shall be construed narrowly.
- (2) The provisions of these regulations are severable. If any provision or the application of any provision of these regulations to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

8.02 EXEMPTIONS

A. This part does not:

- (1) Prohibit a religious organization, association, or society, or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving

preference to such persons, unless membership in such religion is restricted because of race, color, or national origin;

- (2) Prohibit a private club, not in fact open to the public, which incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.
 - (3) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or
 - (4) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in State or Federal Controlled Substance Acts.
- B. Nothing in this part regarding discrimination based on familial status applies with respect to housing for older persons as defined in Section 8.07 of this Rule.
- C. Nothing in this part, other than ~~the prohibitions against discriminatory advertising §§ 8.04(A)(4) (statements or advertisements), 8.04(A)(7) (brokerage services), 8.04(E) (advertisement, statements and notices), 8.04(H) (brokerage services), and 8.05 (residential real estate-related transactions),~~ applies to:
- (1) The rental of a one-family unit of a 2-family dwelling, one unit of which is occupied by the owner.
 - (2) The rental of not more than 4 rooms of a one-family dwelling which is occupied by the owner.
- D. Nothing in the Act or these regulations regarding discrimination based on sexual orientation applies to the rental of any dwelling owned, controlled, or operated for other than a commercial purpose to its membership by a religious corporation that does not receive public funds. Any for-profit organization owned, controlled, or operated by a religious association or corporation and subject to the provisions of the Internal Revenue Code, 26 United States Code, Section 511(a), is not covered by the exemptions set forth in this paragraph.

8.03 DEFINITIONS

Accessible, when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical or mental disabilities. The phrase *readily accessible to and usable by* is synonymous with accessible. A public or common use area that complies with ~~ANSI A117.1-1986 or a comparable standard~~ the appropriate standards of construction is *accessible* within the meaning of this paragraph.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other physical or mental

disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1 1986 or a comparable standard standards of construction is an *accessible route*.

Alteration means a change to a facility that affects or could affect the usability of the facility or any part of the facility, including, but not limited to, reconstruction, remodeling, rehabilitation, historic restoration, changes or rearrangement in structural parts or elements and changes or rearrangement in the plan configuration of walls and full-height partitions. Alteration does not include normal maintenance, decoration and upgrades, including, but not limited to, reroofing, re-siding, painting or wallpapering, replacement of doors or windows, asbestos removal and changes to mechanical and electrical systems unless they affect the usability of the facility.

~~Aggrieved person includes any person who—~~

- ~~(a) Claims to have been injured by a discriminatory housing practice; or~~
- ~~(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.~~

Broker or Agent includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions. “Real estate broker”, “associate real estate broker”, and “real estate sales agent” have the same definitions as are given respectively in Title 32, sections 13198, 13199 and 13200; but include all persons meeting those definitions, whether or not they are licensed or required to be licensed.

Builder means the applicant for a building permit in a municipality that requires these permits or the owner of the property in a municipality that does not require building permits.

Building means a structure, facility or portion thereof that contains or serves one or more dwelling units.

Building entrance on an accessible route means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 1986 or a comparable standard the appropriate standards of construction complies with this paragraph.

Common use areas means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

Controlled substance means any drug or other substance, or immediate precursor as defined in State or Federal Controlled Substance Acts.

Covered multifamily dwellings means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units.

Design professional means an architect or professional engineer registered to practice under Title 32.

Discriminatory housing practice means an act that is unlawful under Subchapter IV of the Maine Human Rights Act.

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

Dwelling unit means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home, an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

Entrance means any access point to a building or portion of a building used by residents for the purpose of entering.

Exterior means all areas of the premises outside of an individual dwelling unit.

Family includes, but is not limited to, a single individual.

Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with –

- (a) A parent or another person having legal custody of such individual or individuals; or
- (b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded 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 individual who has not attained the age of 18 years.

First occupancy means a building that has never before been used for any purpose.

Ground floor or ground level means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor or ground level. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor or ground level. A multistory dwelling unit does not have a ground floor or ground level unless its floors are connected by an elevator.

Housing accommodation includes any building or structure or portion thereof, or any parcel of land, developed or undeveloped, that is occupied, or is intended to be occupied or to be developed for occupancy, for residential purposes.

Interior means the spaces, parts, components or elements of an individual dwelling unit.

Modification means any change to the public or common use areas of a building or any change to a dwelling unit.

New construction includes, but is not limited to, the design and construction of facilities for first occupancy or an alteration if the cost of the alteration is 75% or more of the replacement cost of the completed facility.

Person includes one or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, labor organizations, mutual companies, joint-stock companies and unincorporated organizations and includes the State and all agencies thereof.

Person in the business of selling or renting dwellings means any person who:

- (a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;
- (b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or
- (c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Premises means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

Public housing means any housing that is financed in whole or in part with public funds offering 20 or more dwelling units in a building or structure or on a parcel of land.

Public use areas means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

Rent includes to lease, to sublease, to let or otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Replacement cost of the completed facility means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Residential real estate-related transactions means:

- (a) The making or purchasing of loans or providing other financial assistance –
 - (i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or
 - (ii) Secured by residential real estate; or
- (b) The selling, brokering or appraising of residential real property.

Service animal means:

- (a) Any animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician’s assistant, nurse practitioner or licensed social worker; or
- (b) Any animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or fetching dropped items.

Sexual orientation means a person’s actual or perceived heterosexuality, bisexuality, homosexuality, gender identity, or gender expression.

- (a) The term “gender identity” means an individual’s gender-related identity, whether or not that identity is different from that traditionally associated with that individual’s assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.
- (b) The term “gender expression” means the manner in which an individual’s gender identity is expressed, including, but not limited to, through dress, appearance, manner, speech, or lifestyle, whether or not that expression is different from that traditionally associated with that individual’s assigned sex at birth.

Site means a parcel of land bounded by a property line or a designated portion of a public right of way.

Standards of construction means the ~~1986 standards set forth by the American National Standards Institute in the publication “Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People,” ANSI A117.1-1986~~ American National Standards Institute (“ANSI”) ICC A117.1-2009 standards. Departures from particular technical and scoping requirements of ANSI ICC A117.1-2009 by the use of other methods are permitted where substantially equivalent or greater access to and usability of the facility is provided.

8.04 DISCRIMINATORY HOUSING PRACTICES

A. Real estate practices prohibited

It shall be unlawful to:

- (1) Refuse to sell or rent a dwelling after a *bona fide* offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (2) Discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (4) 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 because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (5) Represent to any person because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability that a dwelling is not available for sale or rental when such dwelling is in fact available.
- (6) Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (7) Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions of membership or participation, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

~~Nothing contained in Regulation 8.04, other than the prohibitions against discriminatory advertisements, statements and notices, applies to:~~

- ~~(1) The rental of a one family unit of a 2 family dwelling, one unit of which is occupied by the owner.~~

- (2) ~~The rental of not more than 4 rooms of a one family dwelling which is occupied by the owner.~~

B. Unlawful refusal to sell or rent or to negotiate for the sale or rental

- (1) It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a *bona fide* offer, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (2) Prohibited actions under this section include, but are not limited to:
- (a) Failing to accept or consider a *bona fide* offer because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (b) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (c) Imposing different sale prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (d) Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (e) Evicting tenants because of their race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability or because of the race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability of a tenant's guest.

C. Discrimination in terms, conditions and privileges and in services and facilities

- (1) Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (2) Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (3) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (4) Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, of an owner, tenant or a person associated with him or her.
- (5) Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

D. Other prohibited sale and rental conduct

- (1) It shall be unlawful, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.
- (2) It shall be unlawful because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to any persons.
- (3) Prohibited practices under this section generally refer to unlawful steering practices that include, but are not limited to:
 - (a) Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability of persons in a community, neighborhood or development.
 - (b) Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status,

or physical or mental disability, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

- (c) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (d) Assigning any person to a particular section of a community, neighborhood or development or to a particular floor of a building because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (4) It shall be unlawful, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, to engage in any conduct relating to the provision of housing or services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons. Prohibited sales and rental practices under this section include, but are not limited to:
- (a) Discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory housing practice;
 - (b) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability;
 - (c) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability;
 - (d) Refusing to provide municipal services or property or hazard insurance for a dwelling or providing such services differently because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

E. Discriminatory advertisements, statements and notices

- (1) It shall be unlawful 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 which indicates any preference, limitation or discrimination because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, or an intention to make any such preference, limitation or discrimination.
- (2) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.
- (3) Discriminatory notices, statements and advertisements include, but are not limited to:
 - (a) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (b) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability of such persons.
 - (c) Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (d) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

F. Discriminatory representations on the availability of dwellings

- (1) It shall be unlawful because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

- (2) Prohibited actions under this section include, but are not limited to:
- (a) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (b) Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, preclude the sale or rental of a dwelling to a person.
 - (c) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (d) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (e) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

G. Blockbusting

- (1) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or with a physical or mental disability.
- (2) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.
- (3) Prohibited actions under this section include, but are not limited to:
 - (a) Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.

- (b) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, can or will result in undesirable consequences for the project, neighborhood or community, such as lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

H. Discrimination in the provision of brokerage services

- (1) It shall be unlawful 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, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (2) Prohibited actions under this section include, but are not limited to:
 - (a) Setting different fees for access to or membership in a multiple listing service because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (b) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (c) Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (d) Establishing geographic boundaries or office location or residence requirements for 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, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

8.05 DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

A. Discriminatory practices in residential real estate-related transactions

It shall be unlawful 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 transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

B. Discrimination in the making of loans and in the provision of other financial assistance

- (1) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (2) Prohibited practices under this section include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

C. Discrimination in the purchasing of loans

- (1) It shall be unlawful for any person or entity engaging in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (2) Unlawful conduct under this section includes, but is not limited to:
 - (a) Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability of persons in such neighborhoods or communities.

- (b) Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (c) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (3) This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of State or Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

D. Discrimination in the terms and conditions for making available loans or other financial assistance

- (1) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (2) Unlawful conduct under this section includes, but is not limited to:
- (a) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (b) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

E. Unlawful practices in the selling, brokering, or appraising of residential real property

- (1) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering, or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (2) For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.
- (3) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
- (4) Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.

8.06 PROHIBITION AGAINST DISCRIMINATION BECAUSE OF PHYSICAL OR MENTAL DISABILITY

A. General prohibitions against discrimination because of physical or mental disability

- (1) It shall be unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a physical or mental disability of:
 - (a) That buyer or renter;
 - (b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
 - (c) Any person associated with that person.
- (2) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or

facilities in connection with such dwelling, because of a physical or mental disability of:

- (a) That buyer or renter;
 - (b) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (c) Any person associated with that person.
- (3) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person, has a physical or mental disability or to make inquiry as to the nature or severity of a disability of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have physical or mental disabilities.
- (a) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy.
 - (b) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with physical or mental disabilities or to persons with a particular type of physical or mental disability.
 - (c) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with physical or mental disabilities or to persons with a particular type of physical or mental disability;
 - (d) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;
 - (e) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.
- (4) Nothing in this subpart requires that a dwelling be made to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

B. Reasonable modifications of existing premises

- (1) It shall be unlawful for any person to refuse to permit, at the expense of a person with a physical or mental disability, reasonable modifications of existing premises, occupied or to be occupied by a person with such a disability, if the proposed modifications may be necessary to afford the person with such a disability full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the

condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for persons with physical or mental disabilities any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

- (2) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

C. Reasonable accommodations

It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a physical or mental disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

D. Design and construction requirements for multifamily dwellings and public housing

- (1) **Application.** The Act's design and construction requirements for multifamily dwellings and public housing apply to new construction of covered multifamily dwellings and new construction and alterations of public housing if the date when the last application for a building permit or permit extension is certified to be complete by a state, county or local government or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension received by the state, county or local government is on or after September 1, 2012 or, if no permit is required, if the start of physical construction or alterations occurs on or after September 1, 2012. For new construction and alterations prior to that, please contact the Maine Human Rights Commission to receive a copy of the applicable design and construction requirements.

(2) **Accessible covered multifamily dwellings**

(a) Covered multifamily dwellings ~~for first occupancy after March 13, 1991~~ shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. ~~For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if the dwelling is occupied by that date, or if the last building permit or renewal thereof for the dwelling is issued by a State, county, or local government on or before June 15, 1990.~~ The burden of establishing impracticality because of terrain or unusual circumstances is on the person or persons who designed or constructed the housing facility.

(2) (b) All covered multifamily dwellings ~~for first occupancy after March 13, 1991~~ with a building entrance on an accessible route shall be designed and constructed in such a manner that –

(~~ai~~) The public and common use areas are readily accessible to and usable by persons with physical or mental disabilities;

(~~bi~~) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and

(~~eiii~~) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(~~i~~) An accessible route into and through the covered dwelling unit;

(~~ii~~) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(~~iii~~) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where such facilities are provided; and

(~~iv~~) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(~~d~~)

(3) **Accessible public housing**

(a) For new construction of public housing, in addition to any applicable requirements for covered multifamily dwellings, public housing shall be designed and constructed in such a manner that no less than 10% of the

ground level units and no less than 10% of the upper story units connected by an elevator are accessible to and usable by persons with physical disabilities, and no less than 2% of the units, no fewer than one unit, have accessible communication features. Newly constructed public housing shall have at least one ground level.

(b) For alterations to public housing units, the altered units shall meet the parts of the standards of construction concerning accessible routes, accessible doors and adaptable bathrooms until at least 10% of the total ground level units and a minimum of 10% of the total upper story units connected by an elevator meet those standards. Altered public housing shall have at least one ground level.

(4) **Compliance with standards.** Compliance with the appropriate requirements of ANSI A117.1-1986 standards of construction suffices to satisfy the design and construction requirements of paragraph (2) of this subsection. For example, the requirements for covered multifamily dwellings in paragraphs (D)(2)(b)(ii) and (D)(2)(b)(iii) above may be met by complying with the applicable specifications in ANSI ICC A117.1-2009 § 1004, Type B Units; the requirement in paragraph (D)(3)(a) that 10% of newly constructed public housing units be accessible to and usable by persons with physical disabilities may be met by complying with ICC A117.1-2009 § 1002, Accessible Units, or § 1003, Type A Units; the requirement in paragraph (D)(3)(a) that 2% of the units, no fewer than one unit, have accessible communication features may be met by complying with ICC A117.1-2009 § 1006, Units with Accessible Communication Features; and the requirement in paragraph (D)(3)(b) that 10% of altered public housing units meet the parts of the standards of construction concerning accessible routes, accessible doors and adaptable bathrooms may be met by complying with ICC A117.1-2009 §§ 1002.2 and 1002.3 (Accessible Units, Primary Entrance and Accessible Route) or §§ 1003.2 and 1003.3 (Type A Units, Primary Entrance and Accessible Route), § 1002.5 (Accessible Units, Doors and Doorways) or § 1003.5 (Type A Units, Doors and Doorways), and § 1002.11 (Accessible Units, Toilet and Bathing Facilities) or § 1003.11 (Type A Units, Toilet and Bathing Facilities). Compliance with the requirements for multifamily dwellings in paragraph (D)(2) may also be achieved by compliance with the federal Fair Housing Act design and construction requirements adopted by the United States Department of Housing and Urban Development, 24 Code of Federal Regulations, Section 100.205, except that the definition of “new construction” in the Act and this chapter controls.

(35) **Statement; inspection.** All covered buildings must obtain a certification and inspection as follows. For new construction of covered multifamily dwellings and public housing:

(a) The builder of a facility to which this subsection applies must shall obtain a certification statement from a design professional that, based on professional judgment, the plans of the facility at the time of the statement meet the standards of construction required by this subsection.

Prior to commencing construction of the facility, the builder shall submit the ~~certification~~statement to:

- (i) The municipal authority that reviews plans in the municipality where the facility is to be constructed; or
 - (ii) If the municipality where the facility is to be constructed has no authority who reviews plans, the municipal officers of the municipality.
- (b) If municipal officials of the municipality where the facility is to be constructed inspect buildings for compliance with construction standards, that inspection ~~must~~shall include an inspection for compliance with the standards required by this subsection. The municipal officials shall require the facility inspected to meet the construction standards of this subsection before the municipal officials permit the facility to be occupied. A municipal official may satisfy the requirements in this paragraph by inspecting a building for compliance with the plans accompanying the statement required by paragraph (D)(5)(a) above.

~~E.~~ **Additional requirements for public housing**

~~In addition to requirements set forth in §8.06(B) and (D), the following requirements pertain to housing containing 20 or more units that is financed in whole or in part with public funds.~~

- ~~(1) Covered dwellings for first occupancy after October 1, 1988, require that no less than 10% of the ground level units and a minimum of 10% of the upper story units connected by an elevator must be accessible to and usable by persons with physical disabilities.~~
- ~~(2) For purposes of this section, a newly constructed housing unit is determined accessible to and usable by persons with physical disabilities if it meets the requirements of the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings Accessible to and Useable by Physically Handicapped People," ANSI A117.1-1986.~~
- ~~(3) For purposes of this section, a remodeled, renovated or enlarged housing unit is determined accessible to and usable by persons with physical disabilities if it meets the requirements of the following 4 parts of the 1986 ANSI standards: 4.3 accessible routes; 4.23 doors; 4.34.5 adaptable bathrooms; and 4.29.3 tactile warnings on doors to hazardous areas.~~

~~FE.~~ **Service Animals**

It shall be unlawful for any owner, lesseeor, sublesseeor, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the housing

accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. The use of a service animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such a service animal.

8.07 HOUSING FOR OLDER PERSONS

A. Exemption

- (1) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §8.07 (B) (C) or (D).
- (2) Nothing in this part limits the applicability of any reasonable, local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

B. State and Federal elderly housing programs

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the United States Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

C. 62 or over housing

The provision regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

- (1) There are persons in such housing on June 6, 1989 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;
- (2) There are unoccupied units, provided that such units are reserved for occupancy by 62 years of age or over;
- (3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

D. 55 or over housing

- (1) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older, per unit, pursuant to this section.

- (2) In order to qualify as housing for older persons under this section, the housing facility must show:
 - (a) That at least 80% of the dwellings are occupied by at least one person 55 years of age or older per unit, and
 - (b) That the housing facility publishes, and adheres to, policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
- (3) Housing satisfies the requirements of this section even though:
 - (a) On September 13, 1988, under 80 percent of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that are occupied after September 13, 1988, are occupied by at least one person 55 years of age or older.
 - (b) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
 - (c) There are units occupied by employees of the housing provider (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties directly related to the management or maintenance of the housing.

8.08 SOURCE OF INCOME DISCRIMINATION -- reserved

8.09 INTERFERENCE, COERCION OR INTIMIDATION

- A. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.
- B. Conduct made unlawful under this section includes, but is not limited to, the following:
 - (1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability.
 - (2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability of such persons, or of visitors or associates of such persons.

- (3) Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability of that person or of any person associated with that person.
- (4) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.
- (5) Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under Subchapter IV of the Maine Human Rights Act.

Fiscal Impact Note: This proposed rule will not impose any additional cost on municipalities or counties.

STATUTORY AUTHORITY: This rule is proposed pursuant to 5 M.R.S.A. §4566(7).