

TITLE 10. LAW

CHAPTER 2. ATTORNEY GENERAL
FAIR HOUSING

(Authority: A.R.S. §§ 41-1491.04 and 41-1491.08)

ARTICLE 1. FAIR HOUSING

Article 1, consisting of Sections R10-2-101 through R10-2-124, adopted effective December 2, 1994 (Supp. 94-4).

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ARTICLE 1. FAIR HOUSING

R10-2-101. Definitions

- A.** Words and phrases defined in A.R.S. §§ 41-1491.04, 41-1491.19, and 41-1491.20, when used in this Article, have the defined meaning.
- B.** Other definitions:
1. "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 handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible.
 2. "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 disabilities. Interior accessible routes include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with 24 CFR 40 (1993), and no further amendments or additions, incorporated herein by reference and on file with the Office of the Secretary of State and at the Offices of the Attorney General, Civil Rights

Division, or a comparable standard is an "accessible route".

3. "Act" means the Fair Housing Act or A.R.S. Title 41, Chapter 9, Article 7.
4. "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.
5. "Attorney General" means the Attorney General of the state of Arizona, the Civil Rights Section or Division of the Arizona Attorney General's Office, or any person or persons the Attorney General may delegate to act on his or her behalf.
6. "Broker" or "Agent" means any person authorized to act on behalf of another person regarding any matter related to the administration, sale, rental, or lease of dwellings. Acts may include offers, solicitations, contracts, or any residential real estate-related transactions.
7. "Building" means a structure, facility, or portion of a structure or facility that contains or serves one or more dwelling units.
8. "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 parking and passenger loading zones, or to public streets or sidewalks, if available.
9. "Civil Rights Section" means the Civil Rights Section or Division of the Arizona Attorney General's Office.
10. "Common-use areas" means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of a building or their guests. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, parking lots, and passageways among and between buildings.
11. "Drug" means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812 (1994)), and no further amendments or additions, incorporated herein by reference and on file with the Office of the Secretary of State and the Arizona Attorney General, Civil Rights Division.
12. "Dwelling unit" means a single unit of residence for a household of one or more persons.
13. "Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.
14. "Exterior" means all areas of the premises outside of an individual dwelling unit.
15. "First occupancy" means occupancy of a building that has never before been used for any purpose.
16. "Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.
17. "Handicap" means:
 - a. With respect to an individual:

- i. A physical or mental impairment that substantially limits one or more of the major life activities of the individual;
- ii. A record of the impairment; or
- iii. Being regarded as having such an impairment.
- b. Nothing in this Article or the Act excludes from the definition of a "handicap" an individual who:
 - i. Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;
 - ii. Is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs; or
 - iii. Is erroneously regarded as engaging in the illegal use of drugs but is not doing so.
- c. As used in this definition:
 - i. "Physical or mental impairment" includes:
 - (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
 - (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical and mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.
 - ii. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
 - iii. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
 - iv. "Is regarded as having an impairment" means:
 - (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such limitation;
 - (2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such an impairment; or
 - (3) Has none of the impairments defined in subsection (c)(i) of this definition but is treated by another person as having such an impairment.
18. "Illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812) (1994) and no further additions or amendments, incorporated herein by reference and on file with the Office of the Secretary of State and the Arizona Attorney General, Civil Rights Division. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act (21 U.S.C. 801 et seq.) (1994) and no further additions or amendments, incorporated herein by reference and on file with the Office of the Secretary of State and the Arizona Attorney General, Civil Rights Division.
19. "Interior" means the spaces, parts, components, or elements of an individual dwelling unit.
20. "Modifications" means any change to the public or common-use areas of a building or any change to a dwelling unit.
21. "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.
22. "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.
23. "Receipt of notice" occurs when service of notice is completed.
24. "Service of notice" means service instituted by the Attorney General in accordance with A.R.S. § 41-1403 or Rule 4 of the Rules of Civil Procedure.
25. "Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-102. Fifty-five or Over Housing

- A. A housing facility shall be recognized as meeting the definition of "housing for older persons", and thus achieving exemption status, if it meets the standards set forth in A.R.S. § 41-1491.04 and this Section.
- B. "Significant facilities and services specifically designed to meet the physical or social needs of older persons", as used in A.R.S. § 41-1491.04(C), include, among others, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them. The housing facility does not need to have all of these features to qualify for the exemption under this subsection; or
- C. The housing facility can still meet the requirements of A.R.S. § 41-1491.04, even if it is not practicable to provide significant services and facilities designed to meet the physical or social needs of older persons, as long as the owner or manager of the housing facility demonstrates through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements:
 1. Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services

designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that the services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is impractical;

2. The amount of rent charged, if the dwelling is rented, or the price of the dwelling, if it is offered for sale;
 3. The income range of the residents of the housing facility;
 4. The demand for housing for older persons in the relevant geographic area;
 5. The range of housing choices for older persons within the relevant geographic area;
 6. The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this paragraph; and
 7. The vacancy rate of the housing facility.
- D.** The following factors are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of A.R.S. § 41-1491.04(C)(3):
1. The manner in which the housing facility is described to prospective residents;
 2. The nature of any advertising designed to attract prospective residents;
 3. Age verification procedures;
 4. Lease provisions;
 5. Written rules and regulations; and
 6. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.
- E.** A housing facility will not be denied or lose its recognition as "housing for older persons" solely because:
1. There are unoccupied units, provided that at least 80% of such unoccupied units are reserved for occupancy by at least one person 55 years of age or over; or
 2. There are units occupied by employees of the housing facility (and family members residing in the same unit) who are under 55 years of age, provided they perform substantial duties directly related to the management or maintenance of the housing.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-103. Discrimination in Terms, Conditions, or Privileges in Services or Facilities

- A.** Conduct prohibited by A.R.S. §§ 41-1491.14(A) and 41-1491.19(A) includes:
1. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin.
 2. 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, handicap, familial status, or national origin.
 3. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.
 4. Using different qualification criteria or applications, 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, handicap, familial status, or national origin.

5. Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

- B.** Conduct prohibited by A.R.S. § 41-1491.14(B) and 41-1491.19(B) includes:
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, handicap, familial status, or national origin.
 2. Failing or delaying maintenance or repairs of dwellings that are rented or are for sale or rent because of race, color, religion, sex, handicap, familial status, or national origin.
 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, handicap, familial status, or national origin.
 4. Limiting the use of privileges, services, or facilities associated with a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of an owner or tenant or a person associated with the owner or tenant.
 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.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-104. Other Prohibited Sale and Rental Conduct

- A.** It is unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, 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.
- B.** It is unlawful, because of race, color, religion, sex, handicap, familial status, or national origin 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 persons. This prohibition includes:
1. Discharging or taking other adverse action against an employee, broker, or agent because the person refused to participate in a discriminatory housing practice;
 2. 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, handicap, familial status, or national origin; 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, handicap, familial status, or national origin;
 3. 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, handicap, familial status, or national origin; and
 4. Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.
- C.** Conduct prohibited by A.R.S. § 41-1491.16, generally referred to as unlawful steering practices, includes:

1. Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the race, color, religion, sex, handicap, familial status, or national origin of persons in community, neighborhood, or development;
 2. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin by exaggerating drawbacks or failing to inform of desirable features of a dwelling or of a community, neighborhood, or development;
 3. 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, handicap, familial status, or national origin;
 4. 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, handicap, familial status, or national origin.
- D.** It is unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental. Prohibited actions under this Section include:
1. 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, handicap, familial status, or national origin;
 2. 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, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person;
 3. 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, handicap, familial status, or national origin;
 4. Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale, or rental because of race, color, religion, sex, handicap, familial status, or national origin; and
 5. 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, handicap, familial status, or national origin.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-105. Blockbusting

- A.** Conduct prohibited by A.R.S. § 41-1491.17 includes:
1. 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, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental; and
 2. 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, handicap, familial status, or national origin, 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.

- B.** 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 activities.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-106. Interference, Coercion, or Intimidation

Conduct prohibited by A.R.S. § 41-1491.18 includes 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, handicap, familial status, or national origin;
2. Threatening, intimidating, or interfering with a person in the enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of the person, or of visitors or associates of the person;
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, handicap, familial status, or national origin 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 other persons to exercise, rights granted or protected by the Act; and
5. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-107. General Prohibitions Against Discrimination Because of Handicap

It is unlawful under A.R.S. § 41-1491.19 to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in a dwelling after it is sold, rented, or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. Neither the Act nor this Article prohibits the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

1. Inquiry into an applicant's ability to meet the bona fide requirements of ownership or tenancy;
2. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;
3. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;
4. Inquiring whether an applicant for a dwelling is a current illegal drug abuser or addict of a controlled substance; and
5. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-108. Reasonable Modifications of Existing Premises

- A. The landlord may not increase for handicapped persons the customarily required security deposit; however, to ensure 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, an 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.
- B. A landlord may condition permission for a modification on the renter providing a description of the proposed modifications as well as assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.
- C. When an interior modification will not interfere with the landlord's, or a subsequent tenant's use and enjoyment of the premises, the landlord shall not require the tenant to remove the alteration at the end of the lease, or condition approval of a modification on the tenant paying for the restoration of the property at the conclusion of the lease.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-109. Design and Construction Requirements

- 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 certificate of occupancy was issued, or a building permit or renewal for the dwelling was issued by a state, county, or local government before March 13, 1991. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who owns or contracted for the construction of the housing facility.
- B. All covered multifamily dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route shall have:
 - 1. Public and common-use areas, if any, that are readily accessible to and usable by handicapped persons;
 - 2. All doors into and throughout the premises that are sufficiently wide to allow passage of handicapped persons in wheelchairs; and
 - 3. The following features of adaptable design:
 - a. An accessible route into and through the covered dwelling unit;
 - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - c. 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
 - d. Kitchens and bathrooms that permit an individual in a wheelchair to maneuver about the space.
- C. Compliance with the applicable requirements of 24 CFR 40 (1993), incorporated by reference and with no additions or amendments, satisfies the requirements of paragraph (B)(3).

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-110. Discrimination in the Making of Loans and in the Provision of Other Financial Assistance

- A. Conduct prohibited by A.R.S. § 41-1491.20 includes:
 - 1. 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, handicap, familial status, or national origin;
 - 2. 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 the race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities;
 - 3. 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, handicap, familial status, or national origin; and
 - 4. Imposing or using different terms or conditions in 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, handicap, familial status, or national origin.
- B. 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, handicap, familial status, or national origin. Unlawful conduct includes:
 - 1. Using different policies, practices, or procedures in evaluating or in determining credit-worthiness 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, handicap, familial status, or national origin; and
 - 2. 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 which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.
- C. Notwithstanding A.R.S. § 41-1491.05, it is unlawful to use 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, handicap, familial status, or national origin.
- D. It is unlawful for any person or entity engaged 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, handicap, familial status, or national origin.
- E. This Section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of federal law, relating to a transaction's financial security or to protection against default or reduction of the

value of the security. A business necessity connotes an irresistible demand, and not only fosters the above goals but is essential to them. This provision does not preclude necessary considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status, or national origin.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-111. Discrimination in the Provision of Brokerage Services

Conduct prohibited by A.R.S. § 41-1491.21 includes:

1. Setting different fees for access to or membership in a multiple listing service because of race, color, religion, sex, handicap, familial status, or national origin;
2. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin;
3. Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap, familial status, or national origin; and
4. 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, handicap, familial status, or national origin.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-112. Discrimination in Advertising

- A. The prohibitions in this Section 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 other documents used with respect to the sale or rental of a dwelling.
- B. Discriminatory notices, statements, and advertisements include:
 1. 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, handicap, familial status, or national origin;
 2. 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, handicap, familial status, or national origin of such persons;
 3. 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, handicap, familial status, or national origin;
 4. 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, handicap, familial status, or national origin.
- C. The Attorney General shall review the following criteria in evaluating complaints alleging discriminatory housing practices involving advertising and in determining whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur:

1. Use of words, phrases, symbols, and forms in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations as set forth at 24 CFR 109.20 (1993), and 24 CFR 109.25 (1993) with no further amendments or additions, and which are on file with the Office of the Secretary of State and at the Offices of the Attorney General, Civil Rights Division;
 2. Use of symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin;
 3. Use of colloquialisms, including words or phrases used regionally or locally, which imply or suggest race, color, religion, sex, handicap, familial status, or national origin;
 4. Use of maps or written instructions directing potential purchasers or renters to real estate for sale or rent which imply a discriminatory preference, limitation, or exclusion; and
 5. Reference to area (location) description by use of names of facilities that cater to a particular racial, national origin, or religious group, including country club or private school designations, or by names of facilities which are used exclusively by one sex.
- D. Nothing in this rule restricts advertisements of dwellings from stating or implying that the housing being advertised is available to persons of only one sex and not the other, where the sharing of living areas is involved, such as dwellings used exclusively for living quarters by educational institutions.
 - E. Nothing in this rule restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.
 - F. Nothing in this rule restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in A.R.S. § 41-1491.04.
 - G. Nothing in this Section shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-113. Selective Use of Advertising Media or Content

The selective use of advertising media or content in particular combinations used exclusively for a housing development or site which leads to discriminatory results is a violation of the Act. In determining whether a media advertising campaign is violative of the Fair Housing Act, the Attorney General shall consider the following factors:

1. The use of English media alone or the exclusive use of media catering to the majority population in an area when, in the area, there are also available non-English or other minority media; and
2. The selective use of human models which primarily cater to one racial, sexual, or national origin segment of the population without a complementary advertising campaign that is directed at other groups.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-114. Fair Housing Policy and Practices

In the investigation of complaints, the Attorney General shall consider the following as evidence of compliance with the prohibitions against discrimination in advertising under the Act.

1. Use of Equal Housing Opportunity logotype, statement, or slogan. All advertising of residential real estate for sale, rent, or financing shall contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home-seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin.
2. Use of human models. Human models in photographs, drawings, or other graphic techniques shall not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models shall be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, shall portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group;
3. Coverage of local laws. Whether the advertisement includes a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental, or financing of dwellings; and
4. Notification of fair housing policy.
 - a. Employees. Whether the publisher of the advertisement, the advertising agency, and the firm engaged in the sale, rental, or financing of real estate provided a printed copy of their nondiscrimination policy to each employee and officer.
 - b. Clients. Whether the publishers of the advertisement and the advertising agency posted a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and have copies available for all firms and persons using its advertising services.
 - c. Publishers' notice. Whether the publisher published at the beginning of the real estate advertising section a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental, or financing of dwellings.
- D. Complainants may file complaints in person or by mail to: Attorney General, Civil Rights Section, 1275 West Washington, Phoenix, Arizona 85007, or Attorney General, Tucson Office, Civil Rights Section, 402 Congress West, Tucson, Arizona 85701, or such alternate or additional offices as the Attorney General may from time to time establish.
- E. Complainants may provide information necessary to state a violation of the Act by telephone to the Civil Rights Section. The Civil Rights Section shall reduce the information provided by telephone to writing on the prescribed complaint form and shall send the form to the complainant to be signed and affirmed. Such a complaint shall be deemed to have been filed on the date that the information has been telephonically taken, provided that the complainant subsequently signs and affirms the complaint.
- F. Each complaint shall be in writing and shall be signed and affirmed by the person filing the complaint. The signature and affirmation may be made at any time during the investigation. The affirmation shall state:

"I believe under penalty of perjury that the foregoing is true and correct."
- G. Complaint forms shall be available in the Civil Rights Section of the Attorney General's Office. The Attorney General shall accept as timely pursuant to A.R.S. § 41-1491.22(C) any written statement which substantially sets forth in accordance with subsection (H) the allegations of a discriminatory housing practice under the Act, if the Complainant signs and affirms the complaint on the required form at any time during the investigation. The Attorney General shall provide assistance in filling out forms and in filing a complaint.
- H. Each complaint shall contain the following information:
 1. The name and address of an aggrieved person;
 2. The name and address of a respondent;
 3. A description and the address of the dwelling which is involved, if appropriate; and
 4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.
- I. Except as provided in subsection (E), a complaint is filed when it is received by the Civil Rights Section of the Attorney General's Office.
- J. A complaint is timely filed if, within the one-year period for the filing of complaints, written information identifying the parties and describing generally the alleged discriminatory housing practice is filed as provided in subsection (E), (G), or (H).
- K. Where a complaint alleges a discriminatory housing practice that is continuing, as manifested by a number of incidents of such conduct, the complaint shall be timely if filed within one year of the last alleged occurrence of that practice.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-115. Complaints

- A. A complaint that any person has engaged in or is engaging in an unlawful housing practice within the meaning of the Act may be filed by or on behalf of a person claiming to be aggrieved or by the Attorney General not later than one year after an alleged discriminatory housing practice has occurred or terminated.
- B. A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to be engaged, in a discriminatory housing practice.
- C. A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, insuring, or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings, if that other person acting within the scope of his or her authority as an employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-116. Amendment of Complaints

Complaints may be amended at any time. Amendments may be used:

1. To cure technical defects or omissions, including failure to sign or affirm a complaint;
2. To clarify or amplify the allegations in a complaint; or
3. To join additional or substitute respondents or aggrieved persons as complainants. Except for the purpose of notifying new respondents under R10-2-118, amended complaints shall be considered as having been made as of the original filing date.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-117. Notification to the Complainant

Upon the filing of a complaint, the Attorney General shall serve a notice upon each complainant on whose behalf the complaint was filed. The notice shall:

1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;
2. Include a copy of the complaint;
3. Advise the complainant of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under this Article;
4. Advise the complainant of his or her right to commence a civil action under A.R.S. § 41-1491.31 in an appropriate court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice or the breach of a conciliation agreement entered into pursuant to A.R.S. § 41-1491.26. The notice shall state that the computation of this two-year period excludes any time during which a subpoena enforcement procedure is pending under this Article; and
5. Advise the complainant that retaliation against the complainant or any other person because of the filing of a complaint or because the person testified, assisted, or participated in an investigation or conciliation under this Article is a discriminatory housing practice that is prohibited by A.R.S. § 41-1491.18.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-118. Notification of Respondent

A. Within 20 days of the filing of a complaint under R10-2-115 or the filing of an amended complaint under R10-2-116, the Attorney General shall serve a notice on each respondent. A person who is not named as a respondent in a complaint but who is identified in the course of the investigation as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person.

B. The notice shall:

1. Identify the alleged discriminatory housing practice upon which the complaint is based and include a copy of the complaint;
2. State the date that the complaint was accepted for filing;
3. Advise the respondent of the time limits to file a response, of the procedural rights and obligations of the respondent, and that the response shall be signed and affirmed by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct";
4. Advise the respondent of the complainant's right to commence a civil action under the Act in Arizona Superior Court at any time within two years after the occurrence or termination of the alleged discriminatory housing practice or the breach of a conciliation agreement entered into pursuant to A.R.S. § 41-1491.26. The notice shall state that the computation of this two-year period excludes any time during which a subpoena enforcement procedure is pending under this Article with respect to a complaint based on the alleged discriminatory housing practice;
5. If the person is not named in the complaint but is being joined as an additional or substitute respondent, explain the basis for the Attorney General's determination that the joined person is properly joined as a respondent; and
6. Advise the respondent that retaliation against any person because the person made a complaint or testified, assisted, or participated in an investigation or conciliation

involving the Act, is a discriminatory housing practice that is prohibited under A.R.S. § 41-1491.18.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-119. Answer to a Complaint

The respondent may file an answer not later than ten days after receipt of the notice and copy of the complaint described in R10-2-118. The answer shall be signed and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct".

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-120. Investigations

A. Upon the filing of a complaint under R10-2-115, the Attorney General shall initiate an investigation to:

1. Obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint;
2. Document policies or practices of the respondent involved in the alleged discriminatory housing practice arising out of the complaint or the investigation of the complaint;
3. Obtain information concerning and document policies or practices of housing discrimination which suggest that the respondent is currently engaging in other housing practices or policies which are in violation of the Act; and
4. Develop factual data necessary for the Attorney General to make a determination under R10-2-124 whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided for under this Act.

B. During the course of this investigation, the Attorney General may develop data by formal and informal means including propounding interrogatories, conducting formal and informal interviews of witnesses, conducting on-site inspections of the property and dwelling, and issuing subpoenas and subpoenas duces tecum.

1. Interrogatories: The Attorney General's office may cause to be issued interrogatories upon any person. Interrogatories issued pursuant to this rule shall require that the person to whom the interrogatories are addressed answer those interrogatories under oath or affirmation. Interrogatories issued pursuant to this rule shall be answered and returned to the Attorney General's Office within 14 days of the receipt of the interrogatories except that any person served with such interrogatories may request of the Attorney General an extension of time in which to answer the interrogatories. Such extension may be granted upon a showing of good cause.
2. Subpoenas: The Attorney General may issue a subpoena compelling the attendance and testimony of a witness or requiring the production for examination or copying of documents, provided such evidence relates to unlawful practices covered by the Act and is relevant to the complaint which is being investigated or arises out of the investigation of the complaint. Except upon good cause or upon agreement of the witness, such subpoena shall provide a minimum of five days' notice before the witness must appear or produce documents. Within five days after the service of a subpoena on any person requiring the production of any evidence in the person's possession or control, such person may petition the Attorney General to revoke, limit, or modify the subpoena. The Attorney

General shall revoke, limit, or modify such subpoena if in its opinion the evidence required:

- a. Does not relate to unlawful practices prohibited by the Act;
 - b. Is not relevant to the complaint which is being investigated;
 - c. Does not describe with sufficient particularity the evidence whose production is required; or
 - d. Is unduly burdensome or oppressive.
3. Witness interviews: All witness interviews may be under oath or affirmation. Any member of the Attorney General's office, or any agent designated by that office, may administer oaths or affirmations, examine witnesses, and receive evidence. Any person appearing before the Attorney General shall have the right to be represented by counsel. The Attorney General may re-interview a witness. Testimony provided in connection with any investigation conducted pursuant to A.R.S. § 41-1491.24 may be recorded by audio or video recording equipment, stenographic means, or other devices. A person who submits data or evidence to the Attorney General may retain or, on payment of lawful prescribed costs, procure a copy or transcript, if available, of the data or evidence submitted by that witness. A person who testifies before the Attorney General may obtain a copy of his or her own testimony upon request and upon providing the Attorney General with a blank audio or video tape of appropriate length.
 4. On-site inspections: Any representative of the Attorney General's office may enter upon a property or dwelling which is the subject of a complaint of discrimination under the Act at reasonable hours, for purposes of inspecting such property or dwelling in connection with such complaint.
 5. Time periods: Any time periods established under subsection (B) shall be governed by Rule 6(a), Arizona Rules of Civil Procedure (1993).

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-121. Reserved

R10-2-122. Dismissal of Complaints

The Attorney General may dismiss a complaint alleging an unlawful discriminatory housing practice under the following circumstances:

1. A party or parties and the Attorney General have entered into a conciliation agreement relating to the complaint;
2. The Attorney General has determined that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur;
3. The complainant has failed to cooperate with requests by the Attorney General for information necessary to investigate the complaint of discrimination, after having received notice that this failure to cooperate will result in dismissal of the complaint;
4. The complainant is no longer located at the address stated in the complaint of discrimination and the Attorney General is unable to locate the complainant, despite reasonable attempts to do so;
5. The Attorney General has determined that it lacks jurisdiction to investigate the complaint; and
6. The Attorney General has approved a complainant's request to withdraw the complaint.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-123. Conciliation

- A. During the period beginning with the filing of the administrative complaint and ending with the issuance of a complaint in superior court or the dismissal of the administrative complaint by the Attorney General, the Attorney General shall attempt to conciliate the administrative complaint.
- B. In conciliating an administrative complaint, the Attorney General shall attempt to achieve a just resolution and obtain assurances that the respondent will remedy any violations of the rights of the aggrieved person and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their recurrence.
- C. Where the rights of the aggrieved person and the respondent can be protected, the Attorney General may suspend fact finding and engage in efforts to resolve the complaint by conciliation.
- D. The terms of a settlement of an administrative complaint shall be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in subsection (F). The provisions that may be sought for the vindication of the public interest are described in subsection (H).
- E. The Attorney General may issue a determination under R10-2-124 if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Attorney General or its agent.
- F. The following types of relief may be sought (without limitation) for aggrieved persons in conciliation:
 1. Monetary relief in the form of damages, including compensatory damages for out-of-pocket losses, emotional distress, humiliation, embarrassment, inconvenience, and lost housing opportunity, and punitive damages and attorney fees and costs;
 2. Equitable relief, including access to the dwelling at issue or to a comparable dwelling, provision of services or facilities in connection with a dwelling, reasonable accommodation of handicap, or other specific relief; and
 3. Affirmative relief, including fair housing training, and posting of approved fair housing notices or rules, and injunctive relief appropriate to the elimination of discriminatory housing practices.
- G. The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in subsection (F). The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.
- H. The following types of provisions will vindicate the public interest:
 1. Elimination of discriminatory housing practices;
 2. Prevention of future discriminatory housing practices;
 3. Remedial affirmative activities designed to overcome discriminatory housing practices;
 4. Reporting requirements;
 5. Monitoring and enforcement activities; and
 6. Fair housing training.
- I. If the complainant cannot be located, withdraws his complaint, or the Attorney General determines that there is not reasonable cause to believe that discrimination has occurred or is expected to occur with respect to the complainant, the Attorney General may enter into a conciliation agreement with one or more of the respondents to vindicate the public interest.
- J. The Attorney General shall terminate its efforts to conciliate the administrative complaint if the respondent or aggrieved

person fails or refuses to confer with the Attorney General; the aggrieved person or the respondent fails to make a good faith effort to resolve any dispute; or the Attorney General finds, for any reason, that voluntary agreement is not likely to result.

- K. Where the aggrieved person has commenced a civil action under an Act of Congress or a state law seeking relief from the alleged discriminatory housing practice, and the trial in the action has commenced, the Attorney General shall terminate conciliation efforts unless the court specifically directs the Attorney General to continue.
- L. The Attorney General shall, from time to time, review compliance with the terms of any conciliation agreement.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).

R10-2-124. Reasonable Cause Determinations

If a conciliation agreement under R10-2-123 has not been executed and approved by the Attorney General, or the complaint has not otherwise been dismissed pursuant to R10-2-122(C) - (F), the Attorney General shall determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. Any determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by

complainant and respondent or otherwise disclosed during the investigation. In making this determination, the Attorney General shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in Superior Court.

1. If the Attorney General determines that reasonable cause exists, the Attorney General shall attempt to conciliate the administrative complaint for a period not to exceed 30 days. If no conciliation is reached within that period, the Attorney General shall file a civil action against the respondent.
2. Nothing in these rules shall prevent the Attorney General from filing a civil action prior to the expiration of the 30-day conciliation period if it appears that conciliation is unlikely to occur within 30 days of the issuance of a finding of reasonable cause to believe that discrimination has occurred.
3. These requirements do not mandate the issuance of a reasonable cause determination prior to the filing of an action under A.R.S. § 41-1491.35.

Historical Note

Adopted effective December 2, 1994 (Supp. 94-4).