



## NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS

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### FREQUENTLY ASKED QUESTIONS ABOUT EXCEPTIONS TO THE N.H. LAW AGAINST HOUSING DISCRIMINATION

#### Who is protected by NH's law against housing discrimination?

Anyone who is engaged in the transaction of buying or renting a residence or commercial property is protected from discrimination on the basis of:

- Race
- Sex
- Religion
- Marital status
- Disability (mental or physical)
- Color
- Age
- National origin
- Sexual Orientation
- Familial status (essentially, children domiciled in the home, or the possibility, through adoption, pregnancy, etc.)
- Individuals with AIDS or HIV infection are also protected.

#### What activities are covered?

Covered activities include:

1. Selling or renting;
2. The terms, conditions, or privileges of sale or rental (including eviction of a tenant solely on the grounds that the person has HIV or is regarded as having HIV);
3. Advertising and statements made in connection with the sale or rental (verbal/written statements);
4. Financing;

5. Provision of real estate sales, brokerage, or appraisal services;
6. Coercion, intimidation or threatening a person who attempts to exercise his or her rights under RSA 354-A;
7. Retaliating against anyone who opposes what he or she believes is housing discrimination under RSA 354-A, files a claim with the Commission for Human Rights, or testifies or assists in a proceeding at the Commission;
8. Aiding and abetting another person to engage in housing discrimination, or obstructing or preventing any person from complying with the requirements of RSA 354-A or with any order issued pursuant to its authority.

Who/what is exempt from the provisions of the housing discrimination law?

1. Under RSA 354-A:13, I(a), sales or rentals of a single-family home by the owner are exempt, provided the following conditions are met:
  - a. The owner does not own more than one such single-family home at any one time;
  - b. No real estate broker, agent, or salesman, no services or facilities of any person in the business of selling or renting dwellings, and no employee or agent of a broker, agent, or salesman is used in the sale; and
  - c. The seller/renter does not make any statements, post any notices, or publish any advertising regarding the sale/rental that are discriminatory (in violation of RSA 354-A:10, III).
  - d. The owner-seller/renter of a single family home may use the services of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer title to the property.
2. Rentals of rooms in a housing accommodation with not more than 5 such rooms are exempt, if the rental is by the occupant of the housing accommodation or by the owner, and if the owner or members of the owners family reside in the housing accommodation. RSA 354-A:13, I(c) (Note that there is no comparable provision in federal fair housing law.)
3. Rental of housing accommodations in a building which contains housing accommodations for **not more than 3** families living independently of each other, if the owner or members of his family reside in one such housing accommodation. (Note difference between this provision and federal fair housing law, which applies to buildings with accommodations for not more than **4** families living independently, and requires only the owner to reside in the building (it does not extend to members of the owners family). RSA 354-A:13, I(b)

4. Religious Organizations: Religious organizations, associations, or societies, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, may limit the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, and may give preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. RSA 354-A:13, II
5. A private club not in fact open to the public may limit rental or occupancy of lodgings it owns to its members or give preference to its members, if such lodging is provided as an incident to its primary purpose or purposes and is owned or operated for other than a commercial purpose. RSA 354-A:13, III
6. Housing for older persons, as defined in RSA 354-A:15, I, II, III and IV, is exempt from the provisions of the housing discrimination law pertaining to **age** and **familial status**. Housing for older persons is not exempt from the other provisions against illegal discriminatory practices. The three types of housing for older persons are:
  - a. Housing provided under any state or federal program that the Secretary of HUD determines is specifically designed and operated to assist elderly persons as defined in the state or federal program;
  - b. Housing intended for and solely occupied by persons 62 years of age or older; or
  - c. Housing intended and operated for occupancy by at least one person 55 years of age or older per unit.
7. What are the specific requirements that must be met for housing to qualify as "*housing for older persons 55 and older*"?
  - a. The housing must provide significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, such housing must demonstrate that it is necessary to provide important housing opportunities for older persons. "Significant facilities and services" are this such as: programs designed to provide a social life for residents; continuing education programs of interest to residents; information and counseling services; recreational programs; homemaker services; services designed to assist residents with the maintenance and upkeep of building and grounds; an accessible physical environment; emergency and preventive health care programs; congregate dining facilities; transportation to facilitate access to social services;

referral services; and services designed to encourage and assist residents to use the services and facilities available to them.

- b. At least 80 percent of the units must be occupied by at least one person 55 years of age or older per unit; and
- c. There must be publication of, and adherence to, policies and procedures which demonstrate intent by the owner or manager to provide housing for persons 55 years of age or older. These would include, but not necessarily be limited to, rules for verification of occupancy and ages of occupants.



1. May persons younger than 55 years of age live in housing for persons 55 years of age or older?

Yes. The requirements in RSA 354-A:15, IV(b) state the minimum requirements regarding the age of residents: in *at least* 80 percent of the units *at least* one person must be 55 years of age or older. Thus, younger persons, such as younger spouses, or even children, may be allowed to reside in such housing. So long as the minimum requirement is met, persons younger than 55 may reside in such housing. However, see the next question and answer.

2. Does the 80 percent rule mean that housing for older persons 55 and older may "set aside" 20 percent of its units (or some percentage less than 20) for persons under 55?

No. The 80 percent rule is designed to allow more flexibility in housing for persons 55 and older than is allowed for housing for persons 62 and older, where everyone must be 62 or older. For example, many persons 55 or older have a younger spouse, an older person may live with a younger, adult child, or an older person may have a younger person living with him or her who provides in home care or assistance. But housing for persons 55 and older must adopt policies and procedures which demonstrate that the development *as a whole* is intended for and marketed to older persons. A policy setting aside 20% of the units for persons under the age of 55 would contradict that purpose.

Moreover, allowing 20 percent of the units to be rented or sold to persons younger than 55 would mean that the exemption could be

lost as a result of a single turnover or the death of an over-55 resident with a younger spouse. Housing providers are advised to stay well above the 80 percent minimum requirement to avoid such a circumstance.

3. May 55 and older housing require that all of the occupants in 100 percent of its units be aged 55 or older?

Yes. RSA 354-A:15,IV(b) requires that "at least" 80 percent of the units be occupied by at least one person 55 or older. This is a minimum requirement. More stringent requirements can be adopted.

4. May 55 and older housing allow some persons younger than age 55 to reside in the housing but set an age limit such as age 21 or 18?

Yes. Housing for older persons is exempt from the provisions against discrimination on the bases of both age and familial status. Provided the housing meets the requirements for 55 and older housing in RSA 354-A:15, IV(a), (b), and (c), the owner or manager may set additional age limits on occupancy. (RSA 354-A:15 was amended in 2003. Housing for older persons was exempted from the provisions against age discrimination effective January 1, 2004. Previously, it was exempt only from the provisions against familial status discrimination.

5. If housing for persons 55 and older is exempt from the provisions against discrimination on the basis of age or familial status, can it be advertised as "adult" housing?

**NO.** It is housing for older persons, not all adults. Advertising designed to attract prospective residents should indicate that it is intended for older persons, without advertising that the housing is an "adult community" or "adult housing," which implies that the purpose of the housing is to create a community which excludes families with children.

6. Does the Commission for Human Rights certify that housing for older persons meets the requirements for the exemption in RSA 354-A:15?

No. There is no process for prior certification by the HRC that housing "qualifies" as housing for older persons. The Commission has no authority to oversee construction of housing. It becomes involved in the "operation" of housing only when someone alleges that they are being illegally discriminated against in the purchase or rental of property. A property owner or manager charged with

housing discrimination may claim exemption from the prohibitions against discrimination on the basis of age or familial status on the grounds that the property is housing for older persons within the meaning of RSA 354-A:15. As a threshold matter, the Commission would determine whether evidence shows that the housing qualifies as housing for older persons. If the housing qualifies, then it is exempt from the provisions against age and familial status discrimination.

If the allegation is discrimination on some basis other than age or familial status (race, color, religion, etc.), then the property is not exempt, even if it is housing for older persons, and the issue of its qualification as housing for older persons would be irrelevant.

The HRC will work with developers, their attorneys, towns, and the Consumer Protection Division of the Attorney General's Office (which oversees registration of condominiums) to assist them in planning housing projects that will comply with the requirements of RSA 354-A:15. The Commission staff is available to answer questions and review project plans.

7. Are housing projects or mobile home parks that are "adult" housing limited to persons 45 years of age or older legal under the provisions of NH RSA 354-A?

**No.** Both federal and state fair housing laws were amended over twelve years ago (federal in 1988, and state in 1992) to change the requirements for housing for older persons. Adult parks or housing for persons 45 and older are no longer allowed under either state or federal law. The only housing for older persons which is allowed is that which is set forth in RSA 354-A:15.

Revised: 09/14/2007

9/23/09 - Per review by the Executive Director of the Commission for Human Rights, this handout is up to date.

## CORE COURSE - CONTACTS FOR MORE INFORMATION

Department of Environmental Services (DES)	603-271-2975	<a href="http://www.des.state.nh.us">www.des.state.nh.us</a>
Department of Revenue Administration	603-271-6000	<a href="http://www.revenue.nh.gov">www.revenue.nh.gov</a>
Board of Manufactured Housing	603-271-1468	<a href="http://www.nh.gov/nhmbh">www.nh.gov/nhmbh</a>
Human Rights Commission	603-271-2767	<a href="http://www.nh.gov/hrc">www.nh.gov/hrc</a>
Department of Justice -- Consumer Protection	603-271-3641	<a href="http://www.doj.nh.gov/consumer">www.doj.nh.gov/consumer</a>
Department of Housing and Urban Development (HUD)	202-708-1112	<a href="http://www.hud.gov">www.hud.gov</a>
US Environmental Protection Agency (EPA)	800-372-7341	<a href="http://www.epa.gov">www.epa.gov</a>
New Hampshire Real Estate Commission (NHREC)	603-271-2701	<a href="http://www.nh.gov/nhrec">www.nh.gov/nhrec</a>
State of New Hampshire		<a href="http://www.nh.gov">www.nh.gov</a>
New Hampshire Housing Finance Authority (NHHFA)	603-472-8623	<a href="http://www.nhhfa.org">www.nhhfa.org</a>
New Hampshire Banking Department	603-271-3561	<a href="http://www.nh.gov/banking">www.nh.gov/banking</a>
Internal Revenue Service (IRS)	800-829-1040	<a href="http://www.irs.gov">www.irs.gov</a>
New Hampshire Insurance Department	603-271-2261	<a href="http://www.nh.gov/insurance">www.nh.gov/insurance</a>
New Hampshire General Court (To check status of House and Senate Bills)	<a href="http://www.gencourt.state.nh.us/ie/billstatus/quickbill.html">www.gencourt.state.nh.us/ie/billstatus/quickbill.html</a>	