

Fair Housing: What does that phrase mean?

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Montana Fair Housing

Our mission is to promote and ensure non-discrimination in Montana through outreach, education, dispute resolution, and enforcement.

- Private, Non-Profit
- Serving residents across the State of Montana
- Outreach and Education
- Dispute Resolution
- Investigation and Enforcement
- No Legal Counsel on Staff – we can not provide a legal opinion

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What's happening today?

1. What should attendees have?
2. Every hour we take a 10 minute break.
3. And then we do more slides.
4. We'll complete the quiz.

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Goal: For Us All to Learn Something New!



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Fair Housing

“Fair housing” = making decisions about a household’s eligibility for services based on qualifications that **don’t include reference to protected characteristics.**

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Laws we will talk about today:

- 1866 Civil Rights Act
- Federal Fair Housing Act
- MT Human Rights Act
- Section 504 of the Rehabilitation Act
- Americans with Disabilities Act

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1866 Civil Rights Act

- Be it enacted . . . , "all persons born in the United States" (except for Indigenous groups) were "hereby declared to be citizens of the United States" and that "such citizens of every race and color ... shall have the same right ... as is enjoyed by white citizens."
- 1924 – Indian Citizenship Act – granted Indigenous persons citizenship

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Fair Housing Act as Amended in 1988 - Effective March 13, 1989

"It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."

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Protected Classes - 1968

- Race – Physical traits common among peoples with shared ancestry
- Color – Skin Pigmentation

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Research Confirms Discriminatory Bias in Appraisals
Dr. Junia Howell and Dr. Elizabeth Korver-Glenn

- As reported by National Fair Housing Alliance / November 2, 2022
- Research was based on an analysis of over 32 million appraisals submitted to Fannie Mae or Freddie Mac between 2013 to 2021.

Findings:

- Homes in White neighborhoods are appraised at double the value of comparable homes in communities of color.
- Racial inequality in appraised values has increased 75 percent over the last decade.
- The pandemic and its associated monetary policy further exacerbated the racial inequality in appraised values.
- Racial inequality is growing fastest in the hottest housing markets.
- The difference between White neighborhoods and communities of color is particularly stark for American Indian, Alaska Native, Southeast Asian, and Pacific Islander communities.

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Selling Houses While Black

New York Times - Colette Coleman, freelance writer focused on race and equity. Published Jan. 12, 2023; Updated Jan. 17, 2023

“Today about 6 percent of real estate agents and brokers in the United States are Black, though 14 percent of Americans are Black. White real estate agents make almost three times as much as their Black peers, according to the N.A.R. To make it in the industry, Black agents say they are taking precautions and making concessions, including changing their names or omitting their photos from promotional materials to hide their racial identities.”

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Department of Justice - March 9, 2023

Mississippi Man Sentenced for Federal Hate Crime for Cross Burning

- Event: December 3, 2020
- Axel Cox, Age 24, Gulfport, Mississippi
- Sentenced to 42 months in prison + three years supervised release + restitution in the amount of \$7,810
- Violated the Fair Housing Act when he used threatening and racially derogatory language and burned a cross.
- Cox wedged two pieces of wood together to form a cross, placed it in clear view of the victims' residence, doused it in oil and set it on fire. During this incident, Cox yelled threats and racial slurs toward the occupants of the house.
- Cox admitted lighting the cross on fire because the victims were Black and that he intended to scare them into moving

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Protected Classes - 1968

- Religion –
Participating in or not participating in an organized religion

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What can this look like?

- Refusing to rent to persons wearing religious headscarves or turbans.
- Harassing tenants because of their religious practices or dress.
- Telling someone they aren't welcome because of their beliefs.
- Allowing some tenants to put up Christmas lights, but telling others they cannot put up decorations for their non-Christian holidays.
- Display items like a Christmas tree, the Easter Bunny, or Santa Claus vs. "religiously significant" seasonal decorations in public areas.
- Telling buyers or applicants that they won't like a neighborhood because there isn't a mosque, synagogue or church nearby.
- Prohibiting use of a community or meeting room for religious purposes, while allowing use for secular gatherings, such as parties.
- If residents are allowed to place secular items or decorations on their doors or in windows, residents should also be allowed to display religious items or decorations.
- If the name of a property references religion a preference may be inferred. Advertise these properties including a non-discrimination policy, and the FHEO logo. Ensure the agent or owner doesn't make discriminatory decisions in reference to services and eligibility.

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Protected Classes - 1968

- National Origin –
The country of an individual's birth or where their ancestors originated

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National Origin

- <https://www.equalhousing.org/wp-content/uploads/2014/09/2012-Immigration-Status-FAQ.pdf>

Common Stumblers:

- Refusing to rent to households whose primary language is other than English
- Failure to develop an **LEP Plan**
- Requiring different documentation from or refusing alternative documentation from households because of National Origin
- Offering different rates based on National Origin
- Steering prospective buyers or renters to or away from certain neighborhoods because of their National Origin, and
- Failing to provide the same services or amenities because of a household's National Origin

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Protected Classes - 1974

- Sex –

Male or Female
 Sexual Harassment
 Domestic Violence Survivors
 Sexual Orientation and Gender Identity

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Sexual Harassment

- Hostile Environment - occurs when a housing provider subjects a person to severe or pervasive unwelcome sexual conduct (like advances, innuendos, offensive language) that interferes with the sale, rental, availability, or terms, conditions, or privileges of housing or housing-related services, including financing.
- Quid Pro Quo – occurs when a housing provider requires submission to an unwelcome request to engage in sexual conduct as a condition of obtaining or maintaining housing or housing-related services.



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Domestic Violence

- **VAWA** – Federally Funded Programs & LIHTC
 - <https://www.hud.gov/VAWA>
 - <https://www.hud.gov/sites/documents/FINALNUISANCEOR DGDNCE.PDF>
- **The Fair Housing Act (FHA).** Domestic violence is not listed as a protected class under federal law, but case law supports its application to survivors of domestic violence.
- **MCA 45-5-206. Partner or family member assault –**
 - Family member - mother, father, kids, siblings, past or present family members of a household.
 - Partners - spouse, former spouse, persons having a child in common, persons who are or were dating or in a relationship.
- Housing providers are encouraged to have a domestic violence policy outlining procedures and practices.

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Sexual Orientation & Gender Identity

- FROM: Jeanine M. Worden, Acting Assistant Secretary for Fair Housing & Equal Opportunity
- February 11, 2021:
 - . . . "FHEO shall accept for filing and investigate all complaints of sex discrimination, including discrimination because of gender identity or sexual orientation, that meet other jurisdictional requirements." . . .
- Gender Identity – Who you are inside and how you express yourself
- Sexual Orientation – Who you are attracted to

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Protected Classes - 1988

- **Familial Status –** presence of children under the age of 18 in the household or pregnancy

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Familial Status

- Household Size: Keating Memo
https://www.hud.gov/sites/documents/DOC_7780.PDF

Common Stumblers:

- Bedroom size
- People per bedroom
- Bonus Rooms
- Age of Children
- Sex of Children
- Alternative sleeping arrangements
- Noise
- Increasing costs per person
- Not allowing households with children above the first floor
- Not allowing households with children based on potential dangers

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Protected Classes - 1988

- Disability -
 - Denial of services because of having a mental or physical disability
 - Denial of Requests for Reasonable Modifications
 - Denial of Requests for Reasonable Accommodations
 - Design & Construction of Multi-family Housing

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Disability

- Section 504 of the Rehabilitation Act of 1973
Federally Funded Programs Only
- Federal Fair Housing Act and MT Human Rights Act
- The Americans with Disabilities Act

DEFINITION: A physical or mental impairment that substantially limits one or more major life activities

Substantially Limits: Limitation is "significant" or "to a large degree."

Major Life Activity: Activities of central importance to daily life.

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Disability, Cont.

Who is Covered?

- 1) individuals with a physical or mental impairment;
- 2) individuals with a record of such an impairment; and
- 3) individuals who are regarded as having an impairment.

Who is not Covered:

- 1) Does not protect juvenile or sex offenders, by virtue of that status.
- 2) Does not protect persons who are currently using illegal controlled substances.
- 3) Does not protect an individual with a disability whose tenancy would constitute a "direct threat" unless the threat can be eliminated or significantly reduced.

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Disability, Cont.

- **Request for Modification:** Physical alteration of a dwelling and/or public and common areas that will afford the person with the disability full use and enjoyment.

See: https://montanafairhousing.org/forms/HUD_DOJ_RM_joint_statement.pdf

- **Request for Accommodation:** Alterations to rules, policies, practices or services to afford a person with a disability equal opportunity to use and enjoy the dwelling unit, including common use areas, by ameliorating the symptoms of the disability. See: https://montanafairhousing.org/forms/HUD_DOJ_RA_joint_statement.pdf

- ❖ **Requests can be made in any format, including verbal**
- ❖ **Use of specific language or forms can not be required**
- ❖ **Requests can be made on behalf of a person**
- ❖ **Visitors with disabilities may also submit requests – Residents responsible for compliance**

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The Housing Provider Has Right to Know:

1. What is specifically being requested (*be clear*);
2. Person has a disability unless already known or visible (*not diagnosis or treatment*);
3. "Nexus" between request and disability-related need (*unless obvious or known*).
 1. **Major life activities** limited by the disability that *specifically relate to the request and need*;
 2. **Symptoms** ameliorated to *minimize the impact* on major life activities;
 3. **Provides an equal opportunity to use and enjoy the premises.**

Information Received Must be Kept Confidential

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Requests for Modifications

Can require household to:

1. Pay for modifications;
2. Deposit monies in interest bearing account for restoration of modifications that would interfere with the use of the **unit** by someone without a disability (not exterior modifications);
3. Purchase permits;
4. Have work done professionally.

➤ Section 504 requirements for federally funded sites differ.

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Requests for Accommodations

- Parking spot on the nearest accessible route
- Ceasing efforts to evict someone engaged in hoarding behaviors
- Moving a household to a ground floor unit
- Allowing a live-in aide (does not financially need to qualify)
- Allowing a household to end their lease early without adverse action or fees
- Securing the services of a sign language interpreter
- Altering rent due dates without penalties
- Service and Assistance Animals
- Etc. . . .

Housing Provider can not assess fees, deposits, or additional rent monies for accommodations

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Service & Assistance Animals

A housing provider may refuse a reasonable accommodation for an animal if the **specific** animal poses a direct threat that cannot be eliminated or reduced.

Reasonable accommodations when the need involves unique circumstances ...

- The animal is individually trained to do work or perform tasks that cannot be performed by a dog.
- Information from health care professional confirms that:
 1. Allergies prevent the person from using a dog; or
 2. Without the animal, the symptoms or effects of the person's disability will be significantly increased;
 3. The individual seeks to keep the animal outdoors at a house with a fenced yard where the animal can be appropriately maintained.

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Service & Assistance Animals, Cont.

A Unique Type of Support Animal: An individually trained capuchin monkey performs tasks for a person with paralysis caused by a spinal cord injury. The monkey has been trained to retrieve a bottle of water from the refrigerator, unscrew the cap, insert a straw, and place the bottle in a holder so the individual can get a drink of water. The monkey is also trained to switch lights on and off and retrieve requested items from inside cabinets. The individual has a disability-related need for this specific type of animal because the monkey can use its hands to perform manual tasks that a service dog cannot perform.

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Service & Assistance Animals, Cont.

- No national source for certification – certification submission is not verification of disability and need; housing providers are not required to accept certificate as verification
- Verification of disability and need from an on-line source does not meet criteria unless medical treatment is provided virtually
- Ongoing relationship between healthcare provider and person should exist
- Verification of disability-related need for each animal
- Secure approval from housing provider before bringing animal/s to site
- HUD Service and Assistance Animal Memo <https://montanafairhousing.org/forms/2020HUDAsstAnimal.pdf>

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Service Animals

Dogs or Miniature Horses, and, in Montana, also Service Animals in Training



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Service Animals, Cont.

- individually trained to do work or perform tasks for an individual with a disability
- task(s) performed must be directly related to the person's disability
- no professional trainer or training certificate is required
- emotional support, therapy, comfort, or companion animals are **NOT** service animals (no training involved)

To verify disability and need:

- (1) Is the dog or horse a service animal required because of a disability?
- (2) What work or task(s) is the animal trained to perform?

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Assistance Animals



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MCA 70.24.114 Emotional Support Animals

- Added to the Landlord & Tenant Act in 2023
- (9) *Nothing in this section may be construed to restrict existing federal law and state law . . .*
- 2(b) if a tenant's disability-related . . . is not readily apparent, request supporting information that reasonably supports the tenant's need . . . Supporting information may include:
 - (i) information from a health care practitioner who has personal knowledge of the tenant's disability **and is acting within the scope of the practitioner's practice . . . Information submitted under this subsection (2)(b)(i) must include the effective date, license number, and type of professional . . .**; and
 - (ii) information from any other source that the landlord determines to be reliable **in accordance with the federal Fair Housing Act and Title 49, chapter 2;** and
- 2(c) **require proof of compliance with state and local licensure and vaccination requirements . . .**

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MCA 70.24.114 Emotional Support Animals, Cont.

- (3) . . . information for each emotional support animal must be provided pursuant to subsection (2).
- (4) A landlord:
 - (a) may not request information . . . that discloses a diagnosis or severity of a tenant's disability or any medical records . . .
 - (b) shall issue a written determination . . .
- (5) An emotional support animal registration of any kind, . . . is not, by itself, sufficient information . . .
- (6) A tenant . . . is liable for any damage done to the premises or to another person on the premises by the tenant's . . . animal.
- (7) A health care practitioner may be subject to disciplinary action from the health care practitioner's licensing board for a violation . . .
- (8) This section does not apply to a service animal as defined in [49-4-203](#).

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Design & Construction

Four+ units built after March 13, 1991, designed and constructed in a manner that-

- i. public and common areas accessible to and usable;
- ii. doors designed to allow passage into and within all premises; and
- iii. all premises contain:
 - I. accessible route into and through the dwelling;
 - II. light switches, electrical outlets, thermostats, other environmental controls in accessible locations;
 - III. reinforcements in bathroom walls to allow installation of grab bars;
 - IV. usable kitchens and bathrooms such that an individual in a wheelchair can maneuver.
- All ground floor units unless there is an elevator in the building, then all units reached by the elevator

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Section 504 of the Rehabilitation Act of 1973

All federally funded programs and sites must comply.

Provides protections only for persons with disabilities.

Covered Entities Must:

- Identify 504 Coordinator
- Cover costs for modifications and requires no retrofits
- Non-housing facilities must be accessible
- Requires program policies, rules, and forms be available in accessible formats
- 5% / 2% rule
- Deficiencies addressed in a 504 plan

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Americans With Disabilities Act - 1990

- Title I – Employment
 - o Employers with 15 or more employees
 - o *MHRA does not require 15 or more*
- Title II – Public Services
 - o Federal & State Provided Services
- Title III - Public Accommodations
 - o No individual shall be discriminated against in the use and enjoyment of goods, services, facilities, privileges, etc.
 - o *Requires Website Accessibility*
- Title IV - Telecommunications
 - o 711 Relay Service
- Title V – Miscellaneous Provisions

"A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act."

MT Human Rights Act - 1974

- Race
 - Color
 - National Origin
 - Religion
 - Sex
 - Disability
 - Familial Status
- AND**
- Marital Status, Age, and Creed

MT Human Rights Act

- Marital status encompasses an individual's status as being married, unmarried, divorced, or widowed, as well as the identity of an individual's spouse (including name recognition).
- Protects individuals of any Age from illegal discrimination.
- Creed is a strongly held belief system.

Prohibited Actions – The FHAA

Section 804 [42 USC 3604]:

Discrimination in sale or rental of housing

- a) Refuse to sell or rent after an offer, or to negotiate, or to otherwise make unavailable or deny
- b) Discriminate in the terms, conditions, or privileges of the sale or rental, or in the provision of services or facilities
- c) Make, print, or publish or cause to be made, printed or published a notice, statement or ad that indicates a preference, limitation or discrimination
- d) Represent that a dwelling is not available for inspection, sale or rental when it is available
- e) For profit, to induce or attempt to induce a person to sell or rent a dwelling by representations that a person/s are entering the neighborhood (BLOCKBUSTING)
- f) Discriminate in the sale or rental of a dwelling because of disability

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Advertising (CFR 109 and 110)

- Your business related brochures, business cards, social media, website, printed and radio materials, etc.
- Website accessibility compliance essential
- Include the 711 Relay for persons with disabilities
- Use the equal housing opportunity logo
- Post fair housing materials in your offices and common areas
- Avoid verbal statements inferring a limitation, preference or discrimination
- Your personal postings and statements
- Doesn't only cover application for services but following

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Prohibitions, Continued

Sec. 805 [42 USC 3605] - Discrimination in Residential Real Estate-Related Transactions

Unlawful to make unavailable a residential real-estate transaction or in the terms or conditions of a transaction

- Loans or Financial Assistance
- Appraisals
- Insurance
- Inspections

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Prohibitions, Continued

Sec. 806 [42 USC 3606] - Discrimination in Provision of Brokerage Services

Unlawful to deny any person access to, membership in 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 discriminate in the terms or conditions of such access, membership, or participation

Selling Houses While Black

"About 6 percent of real estate agents and brokers in the United States are Black. Their white peers make almost three times as much, according to data and surveys."

<https://www.nytimes.com/2023/01/12/realestate/black-real-estate-agents-discrimination.html>

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Prohibitions, Continued

Sec. 818 [42 USC 3618] – Interference, coercion, or intimidation

Unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected

This includes RETALIATION!

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Steering - 24 CFR 100.70 (c)

Prohibited actions under paragraph (a) of this section, which are generally referred to as unlawful **steering** practices, include, but are not limited to:

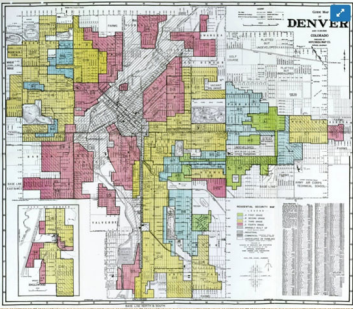
1. Discouraging any person from inspecting, purchasing or renting a dwelling because of . . . of persons in a community, neighborhood or development.
2. Discouraging the purchase or rental of a dwelling because of . . . , by exaggerating drawbacks or failing to inform any person of desirable features 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 . . .
4. Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of . . .

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Redlining - Creator: Home Owners' Loan Corporation
 Government-sponsored corporation created in 1933 as part of the New Deal



August 15, 1938.
 Redlining of neighborhoods in the City/County of Denver.
 Minorities were excluded from home loan funds.
 They were considered poor economic risks.

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Why the concern today?

1. The practices continue.
2. Contributes to segregation.
3. Impacts wealth accumulation.
4. Influences:
 - a. Employment opportunities,
 - b. Quality of education,
 - c. Shopping choices,
 - d. Location of bank branches,
 - e. Availability of healthcare,
 - f. Ability to obtain services,
 - g. Etc.

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Filing a Complaint

HUD	HRB	Court
365 Days	180 Days	Two Years
100 Days to Investigate	120 Days to Investigate	Discovery, Depositions, Hearings, Settlement Efforts
Concurrent Conciliation Efforts	Concurrent Conciliation Efforts	Compensatory & Punitive Damages Attorney Fees/ Costs
To ALJ or Election to Federal Court (DOJ)	Hearings Officer, Commission, District Court	Civil Penalties 1 st - \$24,793 One Prior: \$61,982 Two or More Priors: \$123,965

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Exemptions

Tribally Owned and Operated Housing – Can limit to tribal members.

Religious Organizations and Private Clubs - Can limit or give preference in the sale, rental or occupancy **for other than a commercial purpose:**

- ✓ To persons of same religion, unless membership is restricted based on race, color, or national origin.
- ✓ To club membership if club not open to the public, and as an incident to primary purpose/s provides lodgings

Multi-Family Units

- ✓ MHRA 49-2-305(11) – no more than two (age & familial status only)
- ✓ FHAA – 803(b)(2) – no more than four
- ✓ Owner must maintain and occupy one of living quarters as residence.
- ✓ Owner can not use an agent.

Sleeping Rooms - MHRA 49-2-305(2) Rental of sleeping rooms in single-family unit in which owner resides provided owner rents no more than three sleeping rooms.

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Exemptions - Single Family Homes

MHRA 49-2-305(11): Prohibitions against discrimination because of age and familial status do not extend to living quarters for no more than two families living independently of each other, if the owner maintains and occupies one (single family or duplex); no use of agent

FHAA 803(b)(1): single-family house sold or rented by an owner:

- ✓ owner does not own more than three;
- ✓ one sale in 24-month period if not most recent resident;
- ✓ no right to proceeds from the sale or rental of more than three;
- ✓ no use of an agent;
- ✓ no publication, posting or mailing, advertising in violation of section 804(c)

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Exemptions - HOPA

Exemption for **familial status only.**

62 & Older – 100% of residents in 100% of units

55 & Older – at least one person 55 or older in at least 80% of units

- Bi-annual survey verifying ages of residents
- Publishes and adheres to policies and procedures that demonstrate the intent

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Final Questions / Comments

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For More Information Contact:

Dept. of Housing and Urban Development
1-800-877-7353
Website: https://www.hud.gov/program_offices/fair_housing_equal_opp

MT Human Rights Bureau
1-800-542-0807
Website: <https://erd.dli.mt.gov/human-rights/>

Montana Fair Housing
(406) 782-2573 / (800) 929-2611 / MT Relay System: 711
Website: www.montanafairhousing.org

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