

20100448D

HOUSE BILL NO. 99

Offered January 8, 2020

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A BILL to amend and reenact §§ 36-96.1 through 36-96.3, 36-96.4, 36-96.6, and 55.1-1310 of the Code of Virginia, relating to Virginia Fair Housing Law; unlawful discriminatory housing practices; status as a victim of family abuse.

Patrons—Rasoul, Murphy, Adams, D.M., Aird, Carter, Cole, J.G., Delaney, Gooditis, Hope, Jenkins, Jones, Kory, Levine, Lopez, Price, Roem, Samirah, Watts and Willett; Senators: Edwards and Morrissey

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-96.1 through 36-96.3, 36-96.4, 36-96.6, and 55.1-1310 of the Code of Virginia are amended and reenacted as follows:

§ 36-96.1. Declaration of policy.

A. This chapter shall be known and referred to as the Virginia Fair Housing Law.

B. It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, status as a victim of family abuse, or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

§ 36-96.1:1. Definitions.

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

"Complainant" means a person, including the Fair Housing Board, who files a complaint under § 36-96.9.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Discriminatory housing practices" means an act that is unlawful under § 36-96.3, 36-96.4, 36-96.5, or 36-96.6.

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

"Elderliness" means an individual who has attained his fifty-fifth birthday.

"Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

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57 "Family" includes a single individual, whether male or female.

58 "*Family abuse*" means the same as that term is defined in § 16.1-228.

59 "Handicap" means, with respect to a person, (i) a physical or mental impairment that substantially
60 limits one or more of such person's major life activities; (ii) a record of having such an impairment; or
61 (iii) being regarded as having such an impairment. The term does not include current, illegal use of or
62 addiction to a controlled substance as defined in Virginia or federal law. For the purposes of this
63 chapter, the terms "handicap" and "disability" shall be interchangeable.

64 "Lending institution" includes any bank, savings institution, credit union, insurance company, or
65 mortgage lender.

66 "Major life activities" means, but shall not be limited to, any the following functions: caring for
67 oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

68 "Person" means one or more individuals, whether male or female, corporations, partnerships,
69 associations, labor organizations, fair housing organizations, civil rights organizations, organizations,
70 governmental entities, legal representatives, mutual companies, joint stock companies, trusts,
71 unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

72 "Physical or mental impairment" means, but shall not be limited to, any of the following: (i) any
73 physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of
74 the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including
75 speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or
76 endocrine or (ii) any mental or psychological disorder, such as an intellectual or developmental
77 disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical
78 or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing
79 impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart
80 disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities;
81 emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled
82 substance; and alcoholism.

83 "Respondent" means any person or other entity alleged to have violated the provisions of this
84 chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined
85 pursuant to the provisions of § 36-96.9.

86 "Restrictive covenant" means any specification in any instrument affecting title to real property that
87 purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color,
88 religion, national origin, sex, elderliness, familial status, *status as a victim of family abuse*, or handicap.

89 "To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to
90 occupy premises not owned by the occupant.

91 **§ 36-96.2. Exemptions.**

92 A. Except as provided in subdivision A 3 of § 36-96.3 and subsections A, B, and C of § 36-96.6,
93 this chapter shall not apply to any single-family house sold or rented by an owner, provided that such
94 private individual does not own more than three single-family houses at any one time. In the case of the
95 sale of any single-family house by a private individual-owner not residing in the house at the time of
96 the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall
97 apply only with respect to one such sale within any 24-month period; provided that such bona fide
98 private individual owner does not own any interest in, nor is there owned or reserved on his behalf,
99 under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from
100 the sale or rental of, more than three such single-family houses at any one time. The sale or rental of
101 any such single-family house shall be exempt from the application of this chapter only if the house is
102 sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental
103 services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in
104 the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any
105 broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of
106 any advertisement or written notice in violation of this chapter. However, nothing herein shall prohibit
107 the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as
108 necessary to perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any
109 licensee of the Real Estate Board or regulant of the Fair Housing Board, regardless of whether the
110 licensee is acting in his personal or professional capacity.

111 B. Except for subdivision A 3 of § 36-96.3, this chapter shall not apply to rooms or units in
112 dwellings containing living quarters occupied or intended to be occupied by no more than four families
113 living independently of each other, if the owner actually maintains and occupies one of such living
114 quarters as his residence.

115 C. Nothing in this chapter shall prohibit a religious organization, association or society, or any
116 nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a
117 religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings
118 that it owns or operates for other than a commercial purpose to persons of the same religion, or from

119 giving preferences to such persons, unless membership in such religion is restricted on account of race,
 120 color, national origin, sex, elderliness, familial status, *status as a victim of family abuse*, or handicap.
 121 Nor shall anything in this chapter apply to a private membership club not in fact open to the public,
 122 which as an incident to its primary purpose or purposes provides lodging which it owns or operates for
 123 other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members
 124 or from giving preference to its members. Nor, where matters of personal privacy are involved, shall
 125 anything in this chapter be construed to prohibit any private, state-owned or state-supported educational
 126 institution, hospital, nursing home, religious or correctional institution, from requiring that persons of
 127 both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or
 128 restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

129 D. Nothing in this chapter prohibits conduct against a person because such person has been convicted
 130 by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled
 131 substance as defined in federal law.

132 E. It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to
 133 persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

134 F. A rental application may require disclosure by the applicant of any criminal convictions and the
 135 owner or managing agent may require as a condition of acceptance of the rental application that
 136 applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the
 137 rental application. The owner or managing agent may collect from the applicant moneys to reimburse
 138 the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record
 139 checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an
 140 individual who, based on a prior record of criminal convictions involving harm to persons or property,
 141 would constitute a clear and present threat to the health or safety of other individuals.

142 G. Nothing in this chapter limits the applicability of any reasonable local, state, or federal restriction
 143 regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing
 144 agents of dwellings may develop and implement reasonable occupancy and safety standards based on
 145 factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so
 146 long as the standards do not violate local, state, or federal restrictions. Nothing in this chapter prohibits
 147 the rental application or similar document from requiring information concerning the number, ages, sex,
 148 and familial relationship of the applicants and the dwelling's intended occupants.

149 **§ 36-96.3. Unlawful discriminatory housing practices.**

150 A. It shall be an unlawful discriminatory housing practice for any person:

151 1. To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale
 152 or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color,
 153 religion, national origin, sex, elderliness, ~~or~~ familial status, *or status as a victim of family abuse*;

154 2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a
 155 dwelling, or in the provision of services or facilities in the connection therewith to any person because
 156 of race, color, religion, national origin, sex, elderliness, ~~or~~ familial status, *or status as a victim of family*
 157 *abuse*;

158 3. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or
 159 advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or
 160 discrimination or an intention to make any such preference, limitation or discrimination based on race,
 161 color, religion, national origin, sex, elderliness, familial status, *status as a victim of family abuse*, or
 162 handicap. The use of words or symbols associated with a particular religion, national origin, sex, or race
 163 shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by
 164 a general disclaimer. However, reference alone to places of worship including, but not limited to,
 165 churches, synagogues, temples, or mosques in any such notice, statement, or advertisement shall not be
 166 prima facie evidence of an illegal preference;

167 4. To represent to any person because of race, color, religion, national origin, sex, elderliness,
 168 familial status, *status as a victim of family abuse*, or handicap that any dwelling is not available for
 169 inspection, sale, or rental when such dwelling is in fact so available;

170 5. To deny any person access to membership in or participation in any multiple listing service, real
 171 estate brokers' organization, or other service, organization or facility relating to the business of selling or
 172 renting dwellings, or to discriminate against such person in the terms or conditions of such access,
 173 membership, or participation because of race, color, religion, national origin, sex, elderliness, familial
 174 status, *status as a victim of family abuse*, or handicap;

175 6. To include in any transfer, sale, rental, or lease of housing; any restrictive covenant that
 176 discriminates because of race, color, religion, national origin, sex, elderliness, familial status, *status as a*
 177 *victim of family abuse*, or handicap or for any person to honor or exercise, or attempt to honor or
 178 exercise any such discriminatory covenant pertaining to housing;

179 7. To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry

180 or prospective entry into the neighborhood of a person or persons of a particular race, color, religion,
181 national origin, sex, elderliness, familial status, *status as a victim of family abuse*, or handicap;

182 8. To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate
183 or make unavailable or deny a dwelling because of a handicap of (i) the buyer or renter;; (ii) a person
184 residing in or intending to reside in that dwelling after it is so sold, rented or made available;; or (iii)
185 any person associated with the buyer or renter; *or*

186 9. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a
187 dwelling, or in the provision of services or facilities in connection therewith because of a handicap of (i)
188 that person;; (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented
189 or made available;; or (iii) any person associated with that buyer or renter.

190 B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of
191 the handicapped person, reasonable modifications of existing premises occupied or to be occupied by
192 any person if such modifications may be necessary to afford such person full enjoyment of the premises;
193 except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition
194 permission for a modification on the renter's agreeing to restore the interior of the premises to the
195 condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make
196 reasonable accommodations in rules, practices, policies, or services when such accommodations may be
197 necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection
198 with the design and construction of covered multi-family dwellings for first occupancy after March 13,
199 1991, a failure to design and construct dwellings in such a manner that:

200 1. The public use and common use areas of the dwellings are readily accessible to and usable by
201 handicapped persons;

202 2. All the doors designed to allow passage into and within all premises are sufficiently wide to allow
203 passage by handicapped persons in wheelchairs; and

204 3. All premises within covered multi-family dwelling units contain an accessible route into and
205 through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are
206 in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab
207 bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver
208 about the space. As used in this subdivision, the term "covered multi-family dwellings" means buildings
209 consisting of four or more units if such buildings have one or more elevators and ground floor units in
210 other buildings consisting of four or more units.

211 C. Compliance with the appropriate requirements of the American National Standards for Building
212 and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of
213 regulations promulgated by HUD providing accessibility and usability for physically handicapped people
214 shall be deemed to satisfy the requirements of subdivision B 3.

215 D. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation
216 which requires dwellings to be designed and constructed in a manner that affords handicapped persons
217 greater access than is required by this chapter.

218 **§ 36-96.4. Discrimination in residential real estate-related transactions; unlawful practices by**
219 **lenders, insurers, appraisers, etc.; deposit of state funds in such institutions.**

220 A. It shall be unlawful for any person or other entity, including any lending institution, whose
221 business includes engaging in residential real estate-related transactions, to discriminate against any
222 person in making available such a transaction, or in the terms or conditions of such a transaction, or in
223 the manner of providing such a transaction, because of race, color, religion, national origin, sex,
224 elderliness, familial status, *status as a victim of family abuse*, or handicap. It shall not be unlawful,
225 however, for any person or other entity whose business includes engaging in residential real estate
226 transactions to require any applicant to qualify financially for the loan or loans for which such person is
227 making application.

228 B. As used in this section, the term "residential real estate-related transaction" means any of the
229 following:

230 1. The making or purchasing of loans or providing other financial assistance (i) for purchasing,
231 constructing, improving, repairing, or maintaining a dwelling or (ii) secured by residential real estate; or

232 2. The selling, brokering, insuring or appraising of residential real property. However, nothing in this
233 chapter shall prohibit a person engaged in the business of furnishing appraisals of real property to take
234 into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status,
235 *status as a victim of family abuse*, or handicap.

236 C. It shall be unlawful for any state, county, city, or municipal treasurer or governmental official
237 whose responsibility it is to account for, to invest, or manage public funds to deposit or cause to be
238 deposited any public funds in any lending institution provided for herein which is found to be
239 committing discriminatory practices, where such findings were upheld by any court of competent
240 jurisdiction. Upon such a court's judicial enforcement of any order to restrain a practice of such lending
241 institution or for said institution to cease or desist in a discriminatory practice, the appropriate fiscal

242 officer or treasurer of the Commonwealth or any political subdivision thereof which has funds deposited
 243 in any lending institution which is practicing discrimination, as set forth herein, shall take immediate
 244 steps to have the said funds withdrawn and redeposited in another lending institution. If for reasons of
 245 sound economic management, this action will result in a financial loss to the Commonwealth or any of
 246 its political subdivisions, the action may be deferred for a period not longer than one year. If the lending
 247 institution in question has corrected its discriminatory practices, any prohibition set forth in this section
 248 shall not apply.

249 **§ 36-96.6. Certain restrictive covenants void; instruments containing such covenants.**

250 A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or
 251 ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial
 252 status, *status as a victim of family abuse*, or handicap, whether heretofore or hereafter included in an
 253 instrument affecting the title to real or leasehold property, are declared to be void and contrary to the
 254 public policy of the Commonwealth.

255 B. Any person who is asked to accept a document affecting title to real or leasehold property may
 256 decline to accept the same if it includes such a covenant or reversionary interest until the covenant or
 257 reversionary interest has been removed from the document. Refusal to accept delivery of an instrument
 258 for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise
 259 deal with such property.

260 C. No person shall solicit or accept compensation of any kind for the release or removal of any
 261 covenant or reversionary interest described in subsection A. Any person violating this subsection shall be
 262 liable to any person injured thereby in an amount equal to the greater of three times the compensation
 263 solicited or received, or \$500, plus reasonable attorneys' attorney fees and costs incurred.

264 D. A family care home, foster home, or group home in which individuals with physical handicaps,
 265 mental illness, intellectual disability, or developmental disability reside, with one or more resident
 266 counselors or other staff persons, shall be considered for all purposes residential occupancy by a single
 267 family when construing any restrictive covenant which purports to restrict occupancy or ownership of
 268 real or leasehold property to members of a single family or to residential use or structure.

269 **§ 55.1-1310. Sale or lease of manufactured home by manufactured home owner.**

270 No landlord shall unreasonably refuse or restrict the sale or rental of a manufactured home located in
 271 his manufactured home park by a tenant. No landlord shall prohibit the manufactured home owner from
 272 placing a "for sale" sign on or in the owner's home except that the size, placement, and character of all
 273 signs are subject to the rules and regulations of the manufactured home park. Prior to selling or leasing
 274 the manufactured home, the tenant shall give notice to the landlord, including the name of the
 275 prospective vendee or lessee if the prospective vendee or lessee intends to occupy the manufactured
 276 home in that manufactured home park. The landlord shall have the burden of proving that his refusal or
 277 restriction regarding the sale or rental of a manufactured home was reasonable. The refusal or restriction
 278 of the sale or rental of a manufactured home exclusively or predominantly based on the age of the home
 279 shall be considered unreasonable. Any refusal or restriction based on race, color, religion, national
 280 origin, familial status, *status as a victim of family abuse*, elderliness, handicap, or sex shall be
 281 conclusively presumed to be unreasonable. *As used in this section, "family abuse" means the same as*
 282 *that term is defined in § 16.1-228.*