



## Fair Housing Law and Affordable Housing Development

When developers seeking to develop affordable housing run into community and governmental opposition, the rights and remedies of fair housing laws often come into play in the planning and zoning arena.

- **Relevant Fair Housing laws**

The Federal Fair Housing Act prohibits discrimination in housing related transactions based on race, color, religion, national origin, sex, familial status or handicap. [The CT Fair Housing Act](#) also prohibits discrimination on the basis of sexual orientation and (legal) income source. The Americans with Disability Act may also be applied to invalidate restrictive zoning provisions. Although these laws typically protect tenants and buyers, many courts have extended their protection to builders and developers as well.

[Click here for info on specific fair housing protections.](#)

- **Examples of Potentially Illegal Discrimination**

- *Disparate – or unequal – application of the law*

- *Example:* A transitional shelter program seeks a special use permit to expand its transitional housing program to 25 residents, all of whom were formerly homeless and many of whom have disabilities. The city granted the permit, but requires that it be reviewed annually, contrary to its practice with respect to other special use permits not involving people with disabilities.

- *Land Use policies that have an intentionally discriminatory impact on certain races/nationalities or disabled people.*

- *Example:* An overwhelmingly white suburb has a zoning regulation which restricts the development of multi-family housing. Other examples: restrictions on units per acre or number of units, prohibition of section 8 or tax credit housing, mandated design or other criteria that result in extremely high per-unit costs, ceiling of 4 unrelated adults in housing.
- [Summary of CT Statute 8-30G](#)  
This statute allows affordable housing developers to appeal to the state to bypass certain local planning and zoning restrictions if the city has less than 10% of their housing that is either assisted housing, financed by Connecticut Housing Finance Authority mortgages, or subject to affordable housing income restrictions of less than eighty percent of area median income. The developer must reserve 30% of the units for households earning less than 80% of the area's median income. Currently, [29 cities and towns](#) are exempted from this right to appeal – meaning they have over 10% affordable units.

Under CT Statute 30-g, the judge must determine whether the town's reasons for its denial "clearly outweigh the need for affordable housing," such as genuine traffic safety or sewer problems. But zoning decisions based on insubstantial or inappropriate reasons aimed at excluding affordable housing are overturned.

Although this law was slow in getting started, thousands of affordable units have since been developed either through litigation or negotiation. Unfortunately, the Affordable Housing Appeals Procedure continues to be controversial. Each year since its passage, lawmakers from suburban towns have sought to repeal or weaken the statute.

*(From the [CT Housing Coalition](#))*

▫ ***Intimidation and coercion***

Fair Housing law also prohibits private parties from using intimidation or coercion or from otherwise interfering with housing plans for any illegal reasons.

- *Example:* Racial graffiti and threats to "burn the place down" are scrawled on the fence surrounding the construction area for affordable housing or an unfounded lawsuit is filed to try to stop development because of the national origin of the proposed residents.

● **How to challenge illegal discrimination – and should you?**

Filing a lawsuit is never a quick proposition or a cheap one.

Sometimes, however, it's a good way to convey a message that your group will not easily be deterred from your stated goal. Although it doesn't occur often, a carefully timed legal complaint can result in a change in policy without going to court.

If you do decide to take legal action, you may have several options available that may include filing an administrative complaint, filing a federal and state lawsuit, and using CT Statute 8-30G.

Call the [Connecticut Fair Housing Center, Inc.](#), 221 Main Street Hartford, CT 06106 860-247-4400 for more information

In most cases, however, using the law to overcome community opposition will not be feasible due to the time constraints imposed by the legal system. So, when faced with a choice of litigating a civil rights claim or getting a development built, most developers will choose the latter – and that may mean trying to work around, rather than directly against, the barriers.

Fortunately, most planning and zoning professionals are generally well informed about their obligations under the Fair Housing Act and take care to abide by the law.

*See also "[A Fair Housing Toolkit](#)" developed by the Housing Alliance of Pennsylvania, 2004*