



Housing Discrimination

Prepared by: Ethan Lauer, Staff Attorney

Housing discrimination is prohibited under the federal Fair Housing Act and Wisconsin's Fair Housing Law, usually referred to as the "Open Housing Law." The Office of Fair Housing and Equal Opportunity within the federal Department of Housing and Urban Development (HUD) administers the federal Fair Housing Act and establishes national policies relating to fair housing. At the state level, the Equal Rights Division in the Department of Workforce Development (DWD) is primarily responsible for administering and enforcing Wisconsin's Open Housing Law. DWD also provides technical assistance regarding enforcement matters to local government, as well as private and nonprofit organizations in the state. At the local level, in some areas, organizations such as fair housing councils help individuals understand their rights with respect to fair housing.

FEDERAL FAIR HOUSING ACT

The federal Fair Housing Act was enacted as Title VIII of the Civil Rights Act of 1968. Traditional grounds for discrimination prohibited by the law are race or color, national origin, religion, and sex. Congress added disability and familial status in 1988. Each of these prohibited grounds for discrimination is a characteristic that defines a "protected class" of persons. The law protects individuals within a protected class from housing discrimination on the basis of the characteristic.

With respect to disability, the Fair Housing Act prohibits the refusal of reasonable modifications at the expense of the disabled person. The law also prohibits the refusal of reasonable accommodations in rules, policies, practices, or services when those accommodations may be necessary for persons with disabilities to have the equal opportunity to use and enjoy the dwelling. The law requires certain multi-family dwellings to be designed and constructed as accessible housing.

With respect to familial status, the Fair Housing Act prohibits discrimination based on characteristics such as being pregnant or having children under the age of 18 living with parents or legal custodians, with some exceptions.

Covered Housing

The Fair Housing Act covers most housing, but generally excludes single-family housing sold or rented without the use of a broker, as well as owner-occupied buildings with fewer than four units.

Accessibility Requirements

The Fair Housing Act also imposes accessibility requirements for persons with physical disabilities in multi-family housing, which include requirements related to sizing of passageways, placement of door handles and outlets, and access to existing common areas. The law applies to buildings with **four or more** dwelling units first ready for occupancy after March 13, 1991.¹

WISCONSIN OPEN HOUSING LAW

The state Open Housing Law was enacted in 1965 and was expanded by amendment over time. It is similar to its federal counterpart except that it prohibits discrimination based on a wider range of characteristics. State law currently prohibits housing discrimination against the protected classes specified in federal law plus the following: (1) sexual orientation; (2) marital status; (3) status as a victim of domestic abuse, sexual assault, or stalking; (4) lawful source of income; (5) age; and (6) ancestry. The Open Housing Law also expressly prohibits discrimination on the basis that a person with a disability keeps a service animal or an emotional support animal.²

Covered Housing

The Open Housing Law also differs from federal law in that it covers single-family residences that are owner-occupied. According to the governing statute: “The legislature finds that the sale and rental of single-family residences constitute a significant portion of the housing business in this state and should be regulated.”³

Accessibility Requirements

State law imposes accessibility requirements similar to federal law for persons with physical disabilities living in multi-family housing. State law applies to housing first ready for occupancy on or after October 1, 1993, consisting of either **three or more** dwelling units if the housing has **at least one** elevator or **three or more grade-level** dwelling units without elevators.⁴

ENFORCEMENT AND COMPLAINTS

The federal Fair Housing Act and the state Open Housing Law are enforced primarily in response to complaints initiated by individuals who feel that they have experienced discrimination in their search for or occupancy of housing.

Complaints Arising Under the Federal Fair Housing Act

A person alleging a violation of the federal Fair Housing Act has two general options for proceeding:

1. **HUD Complaint.** A person may file a [complaint](#) with HUD within one year after the alleged discrimination occurred. HUD will investigate the claim and determine whether it finds **reasonable cause** to believe that discrimination occurred. If HUD issues charges, the person who filed the complaint does not pay the costs of pursuing a legal remedy.
2. **Private Action.** A person may file a civil action at his or her expense within two years after the alleged discrimination occurred, provided that HUD administrative proceedings under the first option are not ongoing.

In addition to preventing a landlord from intentionally discriminating against a tenant based on a protected characteristic, the Fair Housing Act may create liability for a landlord who has actual notice of tenant-on-tenant harassment based on a protected characteristic and does not take reasonable steps within the landlord’s control to stop the harassment.⁵

Complaints Arising Under the Wisconsin Open Housing Law

A person alleging a violation of the state Open Housing Law may file a [complaint](#) with DWD’s Equal Rights Division within one year after the alleged discrimination occurred. The Equal Rights Division must find **probable cause** to believe that discrimination occurred before it may issue a charge.

In addition, a person alleging a violation of the Wisconsin Open Housing Law, including the Attorney General on behalf of an aggrieved person, may bring an action for enforcement in civil court.⁶

FAIR HOUSING COUNCILS

A fair housing council is an organization that helps an individual understand options for pursuing a fair housing complaint. For example, the [Metropolitan Milwaukee Fair Housing Council](#) maintains regional offices serving three locations in the state. The Milwaukee office also offers assistance statewide.

¹ 42 U.S.C. ss. 3601-3619.

² Section 106.50 (1m) (h) and (2r) (bg) and (br), Stats. Reasonable accommodation under the Fair Housing Act for a service animal or an emotional-support animal is addressed by HUD [guidance](#).

³ Section 106.50 (1), Stats.

⁴ Section 101.132, Stats.

⁵ *Wetzel v. Glen St. Andrew Living Community*, 901 F. 3d 856, 859 (7th Cir. 2018).

⁶ Section 106.50 (6) and (6m), Stats.