

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 14-15, 2017

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income.

REPORT

The American Bar Association has a long tradition of actively opposing discrimination on the basis of classifications including race, gender, national origin, disability, age, sexual orientation, and gender identity and expression. The Association has adopted policies calling upon local, state, and federal lawmakers to prohibit such discrimination in housing, as well as in public accommodations, credit, education, and public funding and has sought to eliminate such discrimination in all aspects of the legal profession.¹ The ABA's fundamental position condemning such discrimination is based on its underlying commitment to the ideal of equal opportunity and advancement of human rights.² These two principles united in August 2013, when the ABA adopted policy to urge governments to "promote the human right to adequate housing for all" and to "prevent infringement of that right."³

A common form of discrimination in housing is the denial of housing based on a housing applicant's lawful source of income. As a threshold matter, lawful source of income includes income from: 1) a lawful profession, occupation or job; 2) any government or private assistance, grant, loan or rental assistance program, including low-income housing assistance certificates and vouchers issued under the United States Housing Act of 1937; 3) a gift, an inheritance, a pension, an annuity, alimony, child support, or other consideration or benefit; or 4) the sale or pledge of property or an interest in property. Lawful source of income does not prevent a property owner from determining, in a commercially reasonable and non-discriminatory manner, the ability of a housing applicant to afford to purchase or rent the property.

Every year, families are rejected from housing of their choice because their income, albeit lawful and sufficient in amount, is not accepted by a property owner. Often the denial of housing will serve as a pretext for a prohibited form of discrimination. For example, a property owner who does not want to rent to elderly persons will simply deny a housing application claiming that retirement benefits are not a sufficient source of income. A property owner who does not wish to rent to persons with disabilities will tell an applicant on Supplemental Security Income (SSI) that government benefits are not an acceptable source of income.

The most common form of source of income discrimination is the denial of housing to families who rely on government-funded rental assistance, such as the federally-funded Housing Choice Voucher Program.

¹ See, e.g., resolutions adopted 8/65 (addressing race, color, creed, national origin); 8/78 (race); 8/72, 2/74, 2/78, 8/74, 8/75, 8/80, 8/84 (gender); 8/86 (race and gender); 2/72 (sex, religion, race, national origin); 8/77 ("handicap"); 8/87 (condemning hate crimes related to race, religion, sexual orientation, or minority status); 8/89 (urging prohibition of sexual orientation discrimination in employment, housing and public accommodation); 9/91 (urging study and elimination of judicial bias based on race, ethnicity, gender, age, sexual orientation and disability); 2/92 (opposing penalization of schools that prohibit on-campus recruiting by employers discriminating on the basis of sexual orientation); 8/94 (requiring law schools to provide equal educational and employment opportunities regardless of race, color, religion, national origin, sex or sexual orientation); 8/06 (addressing gender identity and expression).

² Am. Bar Ass'n, *ABA Mission and Goals*, available at http://www.americanbar.org/utility/about_the_aba/aba-mission-goals.html (last visited April 10, 2017).

³ Resolution adopted 8/2013.

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The Housing Choice Voucher Program

The Housing Choice Voucher Program (HCVP), also known as “Section 8,” is the largest subsidized housing program in the United States.⁴ The HCVP provides participating low-income families with a housing subsidy that covers a percentage of private market housing costs.⁵ The HCVP serves elderly persons, persons with disabilities, veterans,⁶ families and other vulnerable populations through eight population-specific sub-programs⁷ and is administered locally by Public Housing Agencies (PHA). In 2015, the Program served approximately 2.2 million families comprised of 5 million people.⁸

Low-income households wait years to receive HCVP vouchers,⁹ but not every voucher household succeeds in finding a housing unit.¹⁰ Those who receive vouchers typically must find a housing unit and a landlord willing to accept the voucher within two months.¹¹ This search can prove to be prohibitive for many households.

Discrimination against Voucher Holders

A 2001 national study on voucher usage found that households had less than a 50% chance to use their vouchers in some jurisdictions.¹² Furthermore, despite the HCVP’s stated goal to enable low-income families to relocate to communities of lower poverty or minority concentration,¹³ a recent study of voucher holders found that 41% are more likely to live in more impoverished and more racially segregated neighborhoods than non-voucher renters.¹⁴ This segregation of voucher holders restrains positive health outcomes for low-income women,¹⁵ educational progress for

⁴ U.S. Department of Housing and Urban Development, Housing Choice Voucher Fact Sheet, available at https://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8.

⁵ Regulations governing the Housing Choice Voucher Program at found at 24 C.F.R. Part 982.

⁶ HCVs for veterans are known as HUD-VASH (Veterans Affairs Supportive Housing). The HUD-VASH program has provided vouchers and supportive services to 79,000 veterans since 2008 and is the primary reason that the United States has reduced veteran homelessness to just over 47,000 veterans, a 35% decline since 2009. See National Alliance to End Homelessness, Veterans – Overview, available at http://www.endhomelessness.org/pages/veterans_overview (last visited Apr. 10, 2017)

⁷ U.S. Department of Housing and Urban Development, Housing Choice Vouchers List, available at https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/list.

⁸ Center on Budget & Policy Priorities, Policy Basics: The Housing Choice Voucher Program. Washington, DC (2015).

⁹ E.g. Wick, J., The Waiting List For Section 8 Vouchers In L.A. Is 11 Years Long, available at http://laist.com/2017/04/04/section_8_waiting_list.php.

¹⁰ Office of Policy Development and Research, U.S. Dep’t of Housing and Urban Development, 1 Study on Section 8 Voucher Success Rates i (Nov. 2001), available at <https://www.huduser.gov/publications/pdf/sec8success.pdf>.

¹¹ U.S. Department of Housing and Urban Development, HUD-VASH Vouchers, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/vash.

¹² *Supra* Note 10, at C-6.

¹³ U.S. Department of Housing and Urban Development, Housing Choice Voucher Guidebook, Ch. 2, available at https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook

¹⁴ Molly W. Metzger, The Re-concentration of Poverty: Patterns of Housing Voucher Use 2000-2008, Housing Policy Debate 24:3 at 552 (2014), available at <https://rampages.us/aliciagarcia/wp-content/uploads/sites/14178/2016/03/The-Reconcentration-of-Poverty-Patterns-of-Housing-Voucher-Use-2000-to-2008.pdf>.

¹⁵ Jens Ludwig, Ph.D, et al., Neighborhoods, Obesity, and Diabetes – A Randomized Social Experiment, The New England Journal of Medicine (Oct. 20, 2011) (finding that female heads of voucher households able to relocate to lower poverty communities reduced their risk for extreme obesity by 19% and reduced their risk of diabetes by 21%).

children, and employment achievements that come from relocation to lower poverty and racially segregated communities.¹⁶

A primary cause of this segregation is landlord discrimination against voucher holders. A 2002 Chicago study found that voucher holders were denied access to 70% of the rental housing in the City because of landlord refusal or equivocation to accept households with vouchers.¹⁷ A recent HCVP participant summarized her experience as follows, “They [the owners] had the stigma about everybody that’s on Section 8 are nasty, the children tear up the house, that type of thing. So I ran into a lot of issues with that.”¹⁸ For veterans utilizing the Veterans Affairs Supportive Housing (VASH) vouchers, a sub-set of HCVP vouchers, the U.S. Department of Housing and Urban Development reports that landlord unwillingness to accept vouchers is a “primary challenge” in the administration of the program.¹⁹ In 2017, a veteran of the U.S. Coast Guard testified before the Maryland General Assembly about difficulties using her VASH voucher because of landlord discrimination. “I was only able to use my voucher after a housing specialist from the VA told me about properties in [a particular area] that take Section 8. Let me be clear, this is not where I want to live. But . . . I was at the point where my voucher was about to expire. I am a U.S. veteran – I signed on the line to protect my fellow citizens and I did so honorably. I have no Criminal Record. Yet . . . the same landlords that wanted me to sacrifice my life to protect them won’t even let me live in their buildings.”²⁰

Source of Income Non-discrimination Laws

To address discrimination against voucher holders and other persons with lawful source of income, state and local governments have enacted laws prohibiting discrimination based on lawful source of income. Currently, 12 states and the District of Columbia, including Utah, Oklahoma, and nearly 40 cities and counties including New York City, Chicago, Philadelphia, Boston, and Seattle, prohibit discrimination based on source of income.²¹

Laws prohibiting discrimination based on source of income have increased the ability of voucher holders to use vouchers and decreased concentrations of voucher holders.^{22/23} Indeed, source of income laws increase the number of voucher holders moving from high to low-poverty areas.²⁴

¹⁶ Chetty, R., & Hendren, N., The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates. Cambridge, M.A.: Harvard University and National Bureau of Economic Research (2015), available at http://www.equality-of-opportunity.org/images/nbhds_paper.pdf.

¹⁷ Lawyers’ Committee for Better Housing, Locked Out: Barriers to Choice for Housing Voucher Holders, 2002 at 11, available at <http://lcbh.org/sites/default/files/resources/2002-lcbh-housing-voucher-barriers-report.pdf>.

¹⁸ Wood, M., et al, Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation, Housing Policy Debate 2008, p. 392.

¹⁹ U.S. Department of Housing and Urban Development, HUD-VASH Best Practices – Version 1.0, Apr. 2012, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=VASH-BestPractices.pdf>.

²⁰ Testimony of Jill Williams before Maryland House Environment and Transportation Committee, Feb. 7, 2017.

²¹ Poverty & Race Research Action Council, Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B (March 2017).

²² *Supra* Note 10 at 3-17 (“enrollees in programs that are in jurisdictions with laws that bar discrimination based on source of income (with or without Section 8) had a statistically significantly higher probability of success of over 12 percentage points”).

²³ *Supra* Note 14 at 556.

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Laws Prohibiting Housing Discrimination are supported by International Human Rights Principles

The international community has long recognized the United States' failure to adequately fight against tenant discrimination. The U.S. has also already ratified the International Covenant on Civil and Political Rights and the International Covenant on the Elimination of All Forms of Racial Discrimination (both with endorsement from the ABA), both of which recognize the right to be free from discrimination, including in housing.²⁵

In 2006, the UN Human Rights Committee expressed concern about the disparate racial impact of homelessness in the U.S. and called for “adequate and adequately implemented policies, to ensure the cessation of this form of racial discrimination.”²⁶ In 2008, the UN Committee on the Elimination of Racial Discrimination again recognized racial disparities in housing and ongoing segregation in the U.S.²⁷

Conclusion

This policy will reaffirm the ABA's commitment to ensuring that decisions about housing are made on the basis of *bona fide* qualification rather than stereotypes or prejudices. By adopting this Resolution, the ABA can assist the work of housing advocates, lawmakers, and litigators that have tirelessly worked to end the cycle of poverty and right the long effects of racial and economic housing segregation in the United States.

²⁴ Freeman, Lance, and Yunjing Li, Do Source of Income Antidiscrimination Laws Facilitate Access to Less Disadvantaged Neighborhoods?, *Housing Studies* 29:88–107 (2014).

²⁵ U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992); International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 (Article 2(1)); U.S. reservations, declarations, and understandings, International Convention on the Elimination of All Forms of Racial Discrimination, 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994); International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969 (Article 5(e)(i)). *See also*, ABA House Report 700 MY 1979; ABA House Report 921 AM 1978.

²⁶ Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, CCPR/C/USA/CO/3 (2006), at para. 22.

²⁷ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by State Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, CERD/C/USA/CO/6 (2008), at para. 9.

Respectfully submitted,

Kirke Kickingbird
Chair, Section of Civil Rights and Social Justice
August 2017

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GENERAL INFORMATION FORM

Submitting Entity: Section of Civil Rights and Social Justice

Submitted By: Kirke Kickingbird, Chair, Section of Civil Rights and Social Justice

1. Summary of Resolution(s). The resolution urges federal, state, local, and territorial governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income.
2. Approval by Submitting Entity. The Council of the Section of Civil Rights and Social Justice approved sponsorship of the Resolution during its Spring Meeting on Saturday, April 29, 2017.

The Council of the Section of State and Local Government Law approved co-sponsorship of the Resolution during its Spring Meeting on Sunday, April 30, 2017.

The Commission on Veterans Legal Services approved co-sponsorship of the Resolution on May 30, 2017.

3. Has this or a similar resolution been submitted to the House or Board previously? No.
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? The American Bar Association has a long tradition of actively opposing discrimination on the basis of classifications including race, gender, national origin, disability, age, sexual orientation, and gender identity and expression. The Association has adopted policies calling upon local, state, and federal lawmakers to prohibit such discrimination in housing, as well as in public accommodations, credit, education, and public funding and has sought to eliminate such discrimination in all aspects of the legal profession. The ABA's fundamental position condemning such discrimination is based on its underlying commitment to the ideal of equal opportunity and advancement of human rights. These two principles united in August 2013, when the ABA adopted policy to urge governments to "promote the human right to adequate housing for all" and to "prevent infringement of that right."
5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A
6. Status of Legislation. (If applicable) Currently, 12 states and the District of Columbia, including Utah, Oklahoma, and nearly 40 cities and counties including New York City, Chicago, Philadelphia, Boston, and Seattle, prohibit discrimination based on lawful source of income. This Resolution will allow the ABA to encourage other jurisdictions to adopt similar laws.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. We will work with relevant stakeholders within and outside of the American Bar Association and the Governmental Affairs Office to implement the policy.
8. Cost to the Association. (Both direct and indirect costs) Adoption of this proposed resolution would result in only minor indirect costs associated with Section staff time devoted to the policy subject matter as part of the staff members' overall substantive responsibilities.
9. Disclosure of Interest. (If applicable) There are no known conflicts of interest.
10. Referrals. The Report with Recommendation will be referred to the following entities in the month of June:
 - Section of Administrative Law and Regulatory Practice
 - Criminal Justice Section
 - General Practice, Solo and Small Firm Section
 - Section of Business Law
 - Section of Family Law
 - Section of Real Property, Trust, and Estate Law
 - Section of International Law
 - Section of Labor and Employment Law
 - Section of Litigation
 - Section of State and Local Government Law
 - Section of Taxation
 - Judicial Division
 - Forum on Affordable Housing
 - Law Student Division
 - Senior Lawyers Division
 - Young Lawyers Division
 - Center for Racial and Ethnic Diversity
 - Commission on Law and Aging
 - Commission on Homelessness and Poverty
 - Commission on Mental and Physical Disability Law
 - Commission on Racial and Ethnic Diversity in the Profession
 - Council on Racial and Ethnic Justice
 - Commission on Disability Rights
 - Commission on Youth at Risk
 - Commission on Women in the Profession
 - Commission on Domestic and Sexual Violence
 - Hispanic National Bar Association
 - National Asian Pacific American Bar Association
 - National Association of Women Judges
 - National Association of Women Lawyers
 - National Bar Association Inc.
 - National Conference of Women's Bar Associations
 - National Lesbian and Gay Law Association (National LGBT Bar Association)
 - Veterans Commission
 - National Native American Bar Association

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11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges federal, state, local, and territorial governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income.

2. Summary of the Issue that the Resolution Addresses

A common form of discrimination in housing is the denial of housing based on a housing applicant's lawful source of income. As a threshold matter, lawful source of income includes income from: 1) a lawful profession, occupation or job; 2) any government or private assistance, grant, loan or rental assistance program, including low-income housing assistance certificates and vouchers issued under the United States Housing Act of 1937; 3) a gift, an inheritance, a pension, an annuity, alimony, child support, or other consideration or benefit; or 4) the sale or pledge of property or an interest in property. Lawful source of income does not prevent a property owner from determining, in a commercially reasonable and non-discriminatory manner, the ability of a housing applicant to afford to purchase or rent the property.

Every year, families are rejected from housing of their choice because their income, albeit lawful and sufficient in amount, is not accepted by a property owner. Often the denial of housing will serve as a pretext for a prohibited form of discrimination. For example, a property owner who does not want to rent to elderly persons will simply deny a housing application claiming that retirement benefits are not a sufficient source of income. A property owner who does not wish to rent to persons with disabilities will tell an applicant on Supplemental Security Income (SSI) that government benefits are not an acceptable source of income.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This policy will reaffirm the ABA's commitment to ensuring that decisions about housing are made on the basis of *bona fide* qualification rather than stereotypes or prejudices. By adopting this Resolution, the ABA can assist the work of housing advocates, lawmakers and litigators that have tirelessly worked to end the cycle of poverty and right the long effects of racial and economic housing segregation in the United States.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No minority views or opposition have been identified.