

**State of Rhode Island Office of Housing and Community Development and
RIHousing**

**Statement of Policy on Affirmative Fair Housing for Subsidized
Low and Moderate Income Housing in Rhode Island**

June 25, 2009

The promotion and exercise of fair housing requires freedom from the impediments of discriminatory rental, sales, lending and insurance practices, exclusionary zoning and land use practices, and other forms of barriers to housing choice and residence in communities of opportunity. The effects of these barriers tend to perpetuate persistent patterns of racial and economic divisions across our state. Long-standing, divided settlement patterns tend to restrict access to employment, quality schools, and safe neighborhoods for those who are protected by the fair housing laws.

There is an extensive legal framework addressing these issues that creates obligations on the state, state and local housing agencies, municipalities, and on private entities involved in housing and community development activities. The legal framework establishes two distinct obligations: (1) to not discriminate, including a prohibition on creating a “disparate impact” on various protected groups; and (2) to affirmatively further fair housing.

Under federal law, individuals seeking housing may not be discriminated against based on their race, color, religion, sex, ancestral origin, familial status or disability. State fair housing laws further extend protections against housing discrimination on the basis of marital status, sexual orientation, age, gender identity or expression and status as a victim of domestic abuse, or by reason of association with members of any of these protected classes. ***RIHousing and the State of Rhode Island Office of Housing and Community Development are committed to achieving equitable access to affordable homes for all eligible Rhode Islanders.***

Housing discrimination can take various forms. The most obvious form of housing discrimination is the adoption of practices or policies which, on their face, treat members of protected classes differently than other persons. For example, a policy or practice of refusing to sell or rent housing to single women with children, delaying the processing of applications for rental homes submitted by members of particular racial groups, or applying different terms or standards depending on the national origin of the applicant are all examples of overt discrimination that is not permissible under fair housing laws.

In some circumstances, practices or policies that appear to be neutral on their face may nonetheless violate fair housing laws if statistical evidence demonstrates that the impact of the policy or practice falls disproportionately on members of a protected class. This “disparate impact” has been found to violate fair housing laws even where the discriminatory result was not purposeful or intentional. For example, a policy that gives

absolute preference in admission to rental housing to residents of a particular municipality may violate fair housing laws under the “disparate impact” theory if the population of the municipality is not as ethnically and racially diverse as the state as a whole.

The issue of potential disparate impact acquires even greater importance when public subsidies are used to assist development of affordable homes. Under federal law, states and municipalities not only have the general duty not to discriminate, but also have an obligation to affirmatively further fair housing. Avoiding overt discrimination, while important, is not enough. In administering their housing programs, these government entities should adopt policies that do not have the effect of perpetuating segregated housing patterns. The marketing of housing developed with public subsidies is a clear instance in which government can adopt policies designed to address historic housing patterns.

Government sponsored low- and moderate-income housing is a public good, and should be made available to qualified residents through an open and fair process that furthers affirmative fair housing. This obligation applies whether the housing is developed through a federal, state or municipal subsidy. Therefore, in order to ensure that all low and moderate income housing in Rhode Island is consistent with state and federal fair housing requirements and is generally available to the public, RIHousing and the State of Rhode Island Office of Housing and Community Development have adopted this statement of policy.

In order to receive assistance from the state or RIHousing or to qualify as Low and Moderate Income Housing and count toward a community’s 10% affordable housing goal, all subsidized units must be available to the general public and must be marketed pursuant to an approved affirmative fair marketing plan. At a minimum, such a plan must include an analysis of those populations less likely to apply for housing in the area in which the development is located and a targeted marketing program to reach those populations. Such a program could include marketing in print or broadcast media targeted to such populations, outreach to organizations that serve those populations, and the like.

In addition to the affirmative fair marketing plan, the housing must be distributed in accordance with an approved resident selection plan that is fair, open and transparent. The resident selection plan must specify the process and timetable under which applications will be accepted, local preferences for admission, if any, the policy for initial selection of residents if the number of qualified applicants exceeds the housing available, the waiting list policy, and the process for marketing of ownership units upon resale.

We recognize that many Rhode Island communities or organizations may experience a tension between the desire to accommodate their own localized or specific need for affordable housing while still fulfilling the obligation to affirmatively promote fair

housing. Municipalities or organizations that choose to address this challenge by requiring preferences for local residents or workers must balance these objectives with their responsibility to meet fair housing requirements and clearly demonstrate that the statewide need for affordable housing is considered in the design and implementation of their programs. There are a number of approaches that entities can take that will serve both goals, such as limiting the local preferences to a modest number of homes in the development, or treating members of protected classes as if they meet the preferred classes of applicants or residents during the application and resident selections process. For additional guidance on state and federal fair housing requirements, we encourage municipalities to review the Fair Housing Technical Assistance Guide which can be found on www.FairHousingRI.org.