WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

RECEIVED
2001 AUG 27 PM 3:30

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Human Rights Commission TITLE NUMBER: 77

CITE AUTHORITY W. Va. Code §§ 5-11-3(h), 5-11A-8, 5-11A-9, 5-11A-20 and 29A-3-15(g)

AMENDMENT TO AN EXISTING RULE: YES___ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 77-7-1

TITLE OF RULE BEING PROPOSED: Rules Regarding Discrimination in Housing

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

QUEWANNCOII C. STEPHENS
EXECUTIVE DIRECTOR
WEST VIRGINIA HUMAN RIGHTS COMMISSION

MARIO J. PALUMBO
ATTORNEY GENERAL

RICHARD L. GOTTLIEB
CHIEF DEPUTY ATTORNEY GENERAL

812 Quarrier Street
L&S Building, Sixth Floor
Charleston, West Virginia 25301
Fax (304) 348-0184

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

RECEIVED
1992 AUG 27 PM 3:39

Antitrust & Consumer Protection Division
(304) 348-8986

Civil Rights Division
(304) 348-0546

Preneed Funeral Services
(304) 348-0303

Consumer Hotline
(800) 368-8808

August 27, 1992

HAND DELIVER

Judy Cooper, Director
Administrative Law Division
Office of the Secretary of State
Suite 157-K, State Capitol Complex
Charleston, West Virginia 25305

Re: Title 77, Series 7: Legislative Rules of the West Virginia Human Rights Commission Rules Regarding Discrimination in Housing

Dear Ms. Cooper:

Enclosed please find one copy of the following documents with regard to the above-numbered proposed legislative rules of the West Virginia Human Rights Commission:

1. Secretary of State Form #3 (Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee);
2. The proposed agency approved rule, as modified; and
3. A summary setting forth attendance at the public hearing, comments received (copy attached), amendments made to the proposed rule, and reasons for the amendments.

Since no changes were necessary in the Fiscal Note figures which were previously filed with these rules, no Fiscal Note is provided in this packet of materials.

Also enclosed is an additional copy of this set of documents which I would appreciate your causing to be marked as "stamped" or "received" by your office and returned to me at the above address.

If I have failed to provide any required information or documents, please contact me. Thank you for your assistance in this matter.

Sincerely,

Paul R. Sheridan

PAUL R. SHERIDAN
SENIOR ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

PRS/jm
Enclosures
cc: Quewanncoii C. Stephens
Executive Director

WEST VIRGINIA HUMAN RIGHTS COMMISSION
LEGISLATIVE RULES
TITLE 77, SERIES 7

RULES REGARDING DISCRIMINATION IN HOUSING

Promulgation History Abstract

Rule Proposed by West Virginia Human Rights Commission:	May 7, 1992
Proposed Rule and Supporting Documents Filed with Secretary of State:	May 29, 1992
Public Hearing on Proposed Rule:	June 30, 1992
Rule Approved and ADOPTED by West Virginia Human Rights Commission:	August 13, 1992
ADOPTED Rule Filed with Secretary of State:	August 27, 1992
Effective Date of Rule:	

RECEIVED
1992 AUG 27 PM 3:39
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

TITLE 77
LEGISLATIVE RULES
WEST VIRGINIA HUMAN RIGHTS COMMISSION

SERIES 7
RULES REGARDING DISCRIMINATION IN HOUSING

§ 77-7-1. General

1.1. Scope -- The following legislative regulations of the West Virginia Fair Housing Act (WVFHA), W. Va. Code § 5-11A-1 et seq., set forth guidelines for interpreting the Act. These regulations provide the West Virginia Human Rights Commission's interpretation of the coverage of the West Virginia Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions.

1.2. Authority -- These regulations are issued under authority of W. Va. Code §§ 5-11-8(h), 5-11A-8, 5-11A-9, 5-11A-13, 5-11A-20, and § 29A-3-1 et seq.

1.3. Filing date -- These regulations are promulgated on the _____ day of _____, 1992, and filed on the _____ day of _____, 1992, in the Office of the Secretary of State.

1.4. Effective date -- These regulations become effective on the _____ day of _____, 1992.

§ 77-7-2. Definitions

As used in this part:

2.1. "Aggrieved person" includes any person who

2.1.1. Claims to have been injured by a discriminatory housing practice; or

2.1.2. Believes that such person will be injured by a discriminatory housing practice that is about to occur.

2.2. "Broker" or "Agent" includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers. solicitations or contracts or any residential real estate-related transactions.

2.3. "Commission" means the West Virginia Human Rights Commission.

2.4. "Discriminatory housing practice" means an act that is unlawful under section the West Virginia Fair Housing Act, W. Va. Code §§ 5-11A-5, 5-11A-6, 5-11A-7, and 5-11A-16.

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

2.6. "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with:

2.6.1. A parent or another person having legal custody of such individual or individuals: or

2.6.2. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to 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.

2.7. "Handicap" is defined in § 77-7-5.1.

2.8. "Person in the business of selling or renting dwellings" means any person who:

2.8.1. Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

2.8.2. Within the preceding twelve months. has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein: or

2.8.3. The owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

§ 77-7-3. Discriminatory Housing Practices

3.1. Real estate practices prohibited

It shall be unlawful to:

3.1.1. Refuse to sell or rent a dwelling after a bona fide offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion,

sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.

3.1.2. Discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of race, color, religion, sex, handicap, familial status, or national origin.

3.1.3. Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

3.1.4. Make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

3.1.5. Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.

3.1.6. Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

3.1.7. Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions or membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

3.2. Unlawful refusal to sell or rent or to negotiate for the sale or rental

3.2.1. It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer. because of race, color, religion, sex, familial status, or national origin or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.

3.2.2. Prohibited actions under this section include, but are not limited to:

3.2.2.a. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin.

3.2.2.b. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.

3.2.2.c. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.

3.2.2.d. Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color,religion, sex, handicap, familial status, or national origin.

3.2.2.e. Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

3.3. Discrimination in terms, conditions and privileges and in services and facilities

3.3.1. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

3.3.2. Prohibited actions under this section include, but are not limited to:

3.3.2.a. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

3.3.2.b. Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

3.3.2.c. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

3.3.2.d. Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her.

3.3.2.e. Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

3.4. Other prohibited sale and rental conduct

3.4.1. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

3.4.2. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

3.4.3. Prohibited actions under this section, which are generally referred to as unlawful steering practices, include, but are not limited to:

3.4.3.a. Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.

3.4.3.b. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

3.4.3.c. Communicating to any prospective purchaser that he or she wold not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.

3.4.3.d. Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, color, religion, sex, handicap, familial status, or national origin.

3.4.4. Prohibited activities relating to dwellings under this section include, but are not limited to:

3.4.4.a. Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

3.4.4.b. Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex. handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

3.4.4.c. Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

3.4.4.d. Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.

3.5. Discriminatory advertisements, statements and notices

3.5.1. Except as provided below, ~~It~~ it shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

3.5.1.a. This section shall not be construed to prohibit advertisements, statements, and notices which accurately reflect that housing is handicap accessible.

3.5.1.b. Nothing in this section shall be construed to prohibit advertisements, statements, and notices which accurately reflect that housing meets the definition of "housing for older persons" under § 6.2.

3.5.2. The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.

3.5.3. Discriminatory notices, statements and advertisements include, but are not limited to:

3.5.3.a. Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin.

3.5.3.b. Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, or national origin of such persons.

3.5.3.c. Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.

3.5.3.d. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising <u>in a manner which discriminates</u> because of race, color, religion, sex, handicap, familial status, or national origin.

3.6. Discriminatory representations on the availability of dwellings

3.6.1. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

3.6.2. Prohibited actions under this section include, but are not limited to:

3.6.2.a. Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin.

3.6.2.b. Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale of rental of a dwelling to a person.

3.6.3.c. Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.

3.6.3.d. Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin.

3.6.3.e. Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, or national origin.

3.7. Blockbusting

3.7.1. It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

3.7.2. In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

3.7.3. Prohibited actions under this section include, but are not limited to:

3.7.3.a. Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.

3.7.3.b. Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of

property values, an increase in criminal or antisocial behavior. or a decline in the quality of schools or other services or facilities.

3.8. Discrimination in the provision of brokerage services

3.8.1. It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

3.8.2. Prohibited actions under this section include, but are not limited to:

3.8.2.a. Setting different fees for access to or membership in a multiple listing service because of race, color, religion, sex, handicap, familial status, or national origin.

3.8.2.b. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.

3.8.2.c. Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap. familial status, or national origin.

3.8.2.d. Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

§ 77-7-4. Discrimination in Residential Real Estate-Related Transactions

4.1. Discriminatory practices in residential real estate-related transactions

4.1.1. It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

4.1.2. The term residential "real estate-related transactions" means:

4.1.2.a. The making or purchasing of loans or providing other financial assistance--

4.1.2.a.1. For purchasing, constructing, improving, repairing or maintaining a dwelling or

4.1.2.a.2. Secured by residential real estate; or

4.1.3. The selling, brokering or appraising of residential real property.

4.2. Discrimination in the making of loans and in the provision of other financial assistance

4.2.1. It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, or national origin.

4.2.2. Prohibited practices under this section include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

4.3. Discrimination in the purchasing of loans

4.3.1. It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

4.3.2. Unlawful conduct under this section includes, but is not limited to:

4.3.2.a. Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities.

4.3.2.b. Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.

4.3.2.c. Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

4.3.3. This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national origin.

4.4. Discrimination in the terms and conditions for making available loans or other financial assistance

4.4.1. It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

4.4.2. Unlawful conduct under this section includes, but is not limited to:

4.4.2.a. Using different policies, practices or procedures in evaluating or in determining credit worthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

4.4.2.b. Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for

a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.

4.5. Unlawful practices in the selling, brokering, or appraising of residential real property

4.5.1. It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.

4.5.2. For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

4.5.3. Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

4.5.4. Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.

§ 77-7-5. Prohibition Against Discrimination Because of Handicap

5.1. Definitions

As used in this subpart:

5.1.1. "Accessible," when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate

requirements of ANSI A117.1 or a comparable standard is "accessible" within the meaning of this paragraph.

5.1.2. "Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1 or a comparable standard is an "accessible route."

5.1.3. "ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. Copies are available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

5.1.4. "Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

5.1.5. "Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 or a comparable standard complies with the requirement of this paragraph.

5.1.6. "Common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

5.1.7. "Controlled substance" means any drug or other substance, or immediate precursor included in the definition in § 102 of the Controlled Substances Act (21 U.S.C. § 802).

5.1.8. "Covered multifamily dwellings means buildings consisting of four (4) or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in all buildings consisting of four or more dwelling units.

5.1.9. "Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit

within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

5.1.10. "Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

5.1.11. "Exterior" means all areas of the premises outside of an individual dwelling unit.

5.1.12. "First occupancy" means a building that has never before been used for any purpose.

5.1.13. "Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

5.1.14. "Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

5.1.15. "Physical or mental impairment" includes:

5.1.15.a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular, reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

5.1.15.b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

5.1.16. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

5.1.17. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

5.1.18. "Is regarded as having an impairment" means:

5.1.18.a. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

5.1.18.b. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

5.1.18.c. Has none of the impairments defined in paragraph 5.1.15. of this definition but is treated by another person as having such an impairment.

5.1.19. "Interior" means the spaces, parts, components or elements of an individual dwelling unit.

5.1.20. "Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

5.1.21. "Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

5.1.22. "Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

5.1.23. "Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

5.2. General prohibitions against discrimination because of handicap

5.2.1. It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

5.1.2.a. That buyer or renter;

5.1.2.b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

5.1.2.c. Any person associated with that person.

5.2.2. It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

5.2.2.a. That buyer or renter;

5.2.2.b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

5.2.2.c. Any person associated with that person.

5.2.3. It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

5.2.3.a. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

5.2.3.b. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

5.2.3.c. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

5.2.3.d. Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

5.2.3.e. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

5.2.4. Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would

constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

5.3. Reasonable modification of existing premises

5.3.1. It shall be unlawful for any person to refuse to make reasonable modifications necessary for making housing accommodations or real property accessible to and usable by handicapped persons who rent, lease or sublease any such housing accommodations or real property. In determining whether a modification is reasonable, the following things shall be considered:

5.3.1.a. The nature of the housing accommodation or real property and the number of living units, if any, which comprise it.

5.3.1.b. The nature and cost of the housing modification needed (taking into account alternate sources of funding, such as the Division of Vocational Rehabilitation).

5.3.1.c. Whether or not the housing accommodation or real property was purchased or improved with public funds.

5.3.1.d. The requirements of the West Virginia Law on Handicapped Persons and Public Buildings and Facilities, W. Va. Code § 18-10F-1 et seq. Any changes or alterations required due to the failure of the owner or managing agent of the owner (or his lessee or predecessor in title) to conform to the requirements of said statute will be considered per se reasonable.

~~5.3.1.~~ 5.3.2. It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. For the purposes of this subsection, the cost of making such a modification shall not be a consideration for determining whether it is a reasonable modification. However, ~~In~~ in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow

account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

~~5.3.2.~~ 5.3.3. With regard to modifications made pursuant to § 5.3.2., ~~A~~ a landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

~~5.3.3. The application of paragraph 5.3.1. of this section may be illustrated by the following examples:~~

~~Example (1): A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the wall with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expenses from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.~~

~~Example (2): An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.~~

5.3.4. It shall be unlawful for any person to refuse to make reasonable modifications to existing facilities and structures constituting public or common use areas, when such modifications may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

5.4. Reasonable accommodations

5.4.1. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

5.4.2. The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants live in a dwelling unit with a seeing eye dog. The building has a no pets" policy. It is a violation of this section for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of this section for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefor is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

5.5. Design and construction requirements

5.5.1. Covered multifamily dwellings for first occupancy after September 5, 1994 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before September 5, 1994 if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a state, county or local government on or before March 5, 1993. The burden of establishing impracticality because of terrain or unusual site

characteristics is on the person or persons who designed or constructed the housing facility.

5.5.2. The application of paragraph 5.5.1. of this section may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six covered multifamily dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of two units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible, because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

5.5.3. All covered multifamily dwellings for first occupancy after September 5, 1994 with a building entrance on an accessible route shall be designed and constructed in such a manner that--

5.5.3.a. The public and common use areas are readily accessible to and usable by handicapped persons;

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

5.5.3.c. All premises within covered multifamily dwelling units contain the following features of adaptable design:

5.5.3.c.1. An accessible route into and through the covered dwelling unit;

5.5.3.c.2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

5.5.3.c.3. Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

5.5.3.c.4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

5.5.4. The application of paragraph 5.5.1. of this section may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. The building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of this section.

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the ground floor units are covered multifamily units. The "ground floor is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of this section and must have access to at least one of each type of public or common use area available for residents in the building.

5.5.5. Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of this section.

5.5.6. Compliance with a duly enacted law of a state or unit of general local government that includes the requirements of paragraphs 5.5.1. and 5.5.3. of this section satisfies the requirements of paragraphs 5.5.1. and 5.5.3. of this section.

§ 77-7-6. Exceptions

6.1. General exemptions

This part does not:

6.1.1. Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, or national origin.

6.1.2. Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

6.1.3. Limit the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

6.1.4. Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in § 102 of the Controlled Substances Act (21 U.S.C. § 802).

6.1.5. Nothing in these rules regarding discrimination based on familial status applies with respect to housing for older persons as defined in § 77-7-6.2.

6.1.6. Nothing in these rules <u>regarding discrimination based on familial status</u>, other than the prohibitions against discriminatory advertising, applies to:

6.1.6.a. The sale or rental of any single family house by an owner, provided the following conditions are met:

6.1.6.a.1. The owner does not own or have any interest in more than three single family houses at any one time.

6.1.6.a.2. The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent

resident of the house prior to such sale, the exemption in this herein applies to only one such sale in any twenty-four (24) month period.

6.1.6.a.3. Rooms or units in dwellings containing living quarter occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

6.2. Exceptions applicable to housing for older persons

6.2.1. The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§ 6.3., 6.4. and 6.5.

6.2.2. Nothing herein limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling

6.3. State and federal elderly housing programs

The provisions regarding familial status in this part shall not apply to housing provided under any federal or state program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.

6.4. Sixty-two (62) or older housing

6.4.1. The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons sixty-two (62) years of age or older. Housing may satisfy the requirements of this section even though:

6.4.1.a. There are persons residing in such housing on March 5, 1992 who are under sixty-two (62) years of age, provided that all new occupants are persons sixty-two (62) years of age or older.

6.4.2.b. There are unoccupied units, provided that such units are reserved for occupancy by persons sixty-two (62) years of age or older.

6.4.2.c. There are units occupied by employees of the housing (and family members residing in the same unit) who are under sixty-two (62) years of age, provided they perform substantial duties directly related to the management or maintenance of the housing.

6.5. Fifty-five (55) or older housing

6.5.1. The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit, provided that the housing satisfies the requirements of § 6.2.3. (b)(1) or (b)(2) and the requirements of § 6.2.3.

6.5.2. The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include, but are not limited to social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care of programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

6.5.3. It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this paragraph of this section the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this section:

6.5.3.a. Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.

6.5.3.b. The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.

6.5.3.c. The income range of the residents of the housing facility.

6.5.3.d. The demand for housing for older persons in the relevant geographic area.

6.5.3.e. The range of housing choices for older persons within the relevant geographic area.

6.5.3.f. The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities, and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of this section.

6.5.3.g. The vacancy rate of the housing facility.

6.5.4. At least eighty percent (80%) of the units in the housing facility are occupied by at least one person fifty-five (55) years of age or older per unit except that a newly constructed housing facility for first occupancy after September 5, 1991 need not comply with this paragraph of this section until twenty-five (25%) of the units in the facility are occupied; and

6.5.5. The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph of this section:

6.5.5.a. The manner in which the housing facility is described to prospective residents;

6.5.5.b. The nature of any advertising designed to attract prospective residents;

6.5.5.c. Age verification procedures;

6.5.5.d. Lease provisions;

6.5.5.e. Written rules and regulations;

6.5.5.f. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

6.5.6. Housing satisfies the requirements of this section even though:

6.5.6.1. On March 5, 1992 under eighty percent (80%) of the occupied units in the housing facility are occupied

by at least one person fifty-five (55) years of age or older per unit, provided that at least eighty percent (80%) of the units that are occupied by new occupants after March 5, 1992 are occupied by at least one person fifty-five (55) years of age or older.

6.5.6.2. There are unoccupied units, provided that at least eighty percent (80%) of such units are reserved for occupancy by at least one person fifty-five (55) years of age or older.

6.5.6.3. There are units occupied by employees of the housing (and family members residing in the same unit) who are under fifty-five (55) years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

§ 77-7-7. Prohibited Interference, Coercion or Intimidation

7.1. It is unlawful to coerce, intimidate, threaten. or interfere with any person in the exercise or enjoyment of or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this part.

7.2. Conduct made unlawful under this section includes, but is not limited to, the following:

7.2.1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

7.2.2. Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

7.2.3. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person.

7.2.4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by the West Virginia Fair Housing Act or these regulations.

7.2.5. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the West Virginia Fair Housing Act.

§ 77-7-8. Remedies

8.1. Upon a finding that a respondent has engaged, or is about to engage, in a discriminatory housing practice, the commission may order such relief as may be appropriate. The relief may include, but is not limited to, the following:

8.1.1. An order directing the respondent to pay damages to the aggrieved person for all damages proven to have resulted from the unlawful discriminatory practice. These may include damages caused by humiliation and embarrassment. Pursuant to the holding in Bishop Coal Co. v. Salyers, 380 S.E.2d 238 (W. Va. 1989), damages for humiliation and embarrassment may not exceed three thousand dollars ($3,000) for each unlawful discriminatory practice committed by each respondent against each aggrieved person. This cap is not a limit on the total amount of damages for humiliation and embarrassment which may be awarded in the action. The commission shall periodically adjust this limit based upon the consumer price index.

8.1.2. Injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge.

8.1.3. Civil penalties against the respondent, in an amount not to exceed:

8.1.3.a. Ten thousand dollars ($10,000), if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under the West Virginia Fair Housing Act, or any state, federal or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state or local governmental agency.

8.1.3.b. Twenty-five thousand dollars ($25,000), if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the West Virginia Fair Housing Act,

or any state, federal or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state or local governmental agency, and the adjudication was made during the five (5) year period preceding the date of filing of the charge.

8.1.3.c. Fifty thousand dollars ($50,000), if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearing or civil action permitted under the West Virginia Fair Housing Act, or any state, federal or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state or local governmental agency, and the adjudications were made during the seven (7) year period preceding the date of the filing of the charge.

8.2. If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods set forth in paragraphs 8.1.3.b. and 8.1.3.c. do not apply.

8.3. In a proceeding involving two or more respondents, civil penalties as provided above may be assessed against each respondent who has been engaged in or is about to engage in a discriminatory housing practice.

8.4. The reasonable attorney fees and costs of a prevailing complainant, aggrieved person, or intervenor.

8.4.1. The respondent may be held liable for the reasonable attorney fees of an aggrieved person for the services of such persons's counsel in the preparation or presentation of the case.

8.4.2. The respondent may be held liable for the reasonable attorney fees of the attorney general incurred in the preparation and presentation of the case.

8.4.3. To the extent that an intervenor is a prevailing party, the respondent may be held liable for reasonable attorney fees in vindication of the rights of such intervenor.

WEST VIRGINIA HUMAN RIGHTS COMMISSION
LEGISLATIVE RULES
TITLE 77, SERIES 7

RULES REGARDING DISCRIMINATION IN HOUSING

Documentation of Public Hearing

1. Date of Hearing: June 30, 1992 (9:30 a.m.)
West Virginia Human Rights Commission
1321 Plaza East, Room 104/106
Charleston, West Virginia 25301

2. Attendance at Hearing: No one attended the public hearing except for the agency staff responsible for drafting the rule. However, the written comments regarding the rules provided by William F. Childress, Executive Director of the West Virginia Press Association, are attached.

3. Amendments:

3.5.1.
3.5.3.d.
5.3.1.
5.3.2.
5.3.3.
5.3.4.
6.1.6.

4. Reason for Amendments:

3.5.1.a. & 3.5.1.b.: These should probably be treated separately. With regard to 3.5.1.a., this subsection was added in order to make it clear that it is permissible to advertise handicap accessible housing. With regard to 3.5.1.b., this subsection was added in order to make it clear that housing which meets the definition of "housing for older persons" may permissibly advertise this fact.

3.5.3.d.: This change was made to make it clear that the regulation could not be invoked to compel the publication of discriminatory advertisements.

5.3.1.: This modification was made in order to clarify the responsibilities of a landlord vis-a-vis a tenant with regard to reasonable modification of existing premises in order to make the premises usable by handicapped individuals.

5.3.2.: This modification was made in order to clarify the responsibilities of a landlord vis-a-vis a tenant with regard to reasonable modification of existing premises in order to make the premises usable by handicapped individuals.

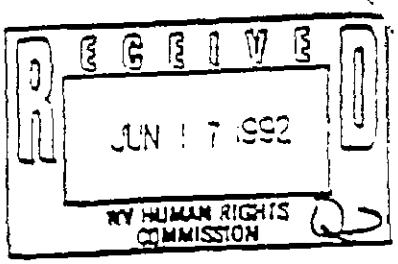
5.3.3.: This modification was made in order to clarify the responsibilities of a landlord vis-a-vis a tenant with regard to reasonable modification of existing premises in order to make the premises usable by handicapped individuals.

5.3.4.: This modification was made in order to clarify the responsibilities of a landlord vis-a-vis a tenant with regard to reasonable modification of existing premises in order to make the premises usable by handicapped individuals.

6.1.6.: This modification was made in order to make the regulations conform to the statute.

West Virginia Press Association

3422 Pennsylvania Avenue
Charleston, West Virginia 25302
Voice: (304) 342-1011 • FAX. (304) 343-5879



DATE: June 16, 1992

TO: Quewanncoii C. Stephens
Executive Director
West Virginia Human Rights Commission
1321 Plaza East • Room 104/106
Charleston, WV 25301

FROM: William F. Childress,
Executive Director
West Virginia Press Association
3422 Pennsylvania Avenue
Charleston, WV 25302

SUBJECT: Written comments on Proposed Rule 77-7-1
(Discrimination in Housing)

COMMENTS:

The West Virginia Press Association is a trade association representing the daily and weekly newspapers of West Virginia.

The West Virginia Press Association believes that the proposed regulations as drafted exceed the authority of the law, conflict with parallel federal regulations and contain provisions which are unconstitutional. As a whole, the proposed regulations are so poorly written as to have unjustified chilling effects on constitutional rights as well as on commerce and trade.

In particular, the Press Association that Paragraph 3.5 - 3.5.3.d would place an undue and unjustified enforcement burden on West Virginia newspapers.

Subparagraph 3.4.3.a is overly vague. Without clear and specific guidelines as to what types of "words, phrases, photographs, illustrations, symbols or forms" might convey discriminatory intent, this paragraph leaves such determinations up to the subjective judgment of individual enforcement officers. This situation invites an administrative nightmare, at best, and a possible constitutionality conflict with First Amendment rights.

Subparagraph 3.5.3.d is clearly unconstitutional. Refer to "Calhoun Publishing v. CASE," a 1989 State Supreme Court of Appeals decision in which Justice Neeley wrote, " . . . government cannot compel a newspaper to publish anything without violating its First Amendment rights. . ."

The Press Association strongly urges that the entire set of regulations be rewritten to bring them into compliance with both federal law and appropriate court decisions.

Sincerely,

William F. Childress, Executive Director