

Vermont's Fair Housing Law Prohibits Land Use and Permitting Decisions Based on Income

What is this law?

Before adjournment in spring of 2012, Vermont's General Assembly approved legislation which added a category to the state's fair housing law that is of particular significance to municipalities or any other entity authorized to make land use decisions in the state. In an omnibus bill (Act 137) passed in the 2012 legislative session, a new word was added to Vermont's fair housing statute: (*Emphasis added below*)

9 V.S.A. CHAPTER 139. DISCRIMINATION; ...

§ 4503. Unfair housing practices

(a) *It shall be unlawful for any person:*

...

(12) *To discriminate in land use decisions or in the permitting of housing because of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, disability, the presence of one or more minor children, income, or because of the receipt of public assistance, except as otherwise provided by law.*

The new protected class added to state fair housing law in 2012 is "income". (Note: This "income" category was put in the law in addition to the "receipt of public assistance" category which was already in Vermont fair housing law.) With the addition of "income" to the above section, it is now explicitly prohibited for planners or land use permitting entities to discriminate based on consideration of the income level of prospective households who would reside, or may reside in proposed housing, or in planned development zones of a municipality.

What is the purpose of the amendment?

The purpose of the statutory change was to create more inclusionary housing opportunities for households of lower income. For this reason, consideration of the income level of prospective households is not now allowed at any level of land use planning and land use decision making by any planning or regulatory entity in Vermont except for plans or actions intended to create, or that would tend to create, more housing opportunities for households at lower income levels; for example, inclusionary zoning ordinances are acceptable under the law.

What does it mean for land use decisions?

At a most basic level and on the face of it this law is self-explanatory. Following is an example of its application: At a hearing before a planning commission (a board of adjustment, or a development review board) that is considering a permit for a proposed housing development containing units affordable to low and moderate income people, one or more persons attending declares that in their opinion there is already enough - or perhaps too much - low income housing in the town. That person has a right (assuming we are speaking here of a member of the public and not an official panel member) to make such statements but the public panel officially deciding on granting or refusing the permit cannot deny it based on consideration of the income of prospective residents. Ideally for the sake of clarity the official chairing the meeting should inform the individual or individuals presenting such an opinion that a permit denial decision cannot be made based on an income factor.

In the example above could the requested permit be denied on other legitimate grounds? Yes. If for instance the proposed housing fell below standards set by a town's legal zoning or minimum housing construction standards that would be legitimate grounds for denial of a development permit.

What are some possible consequences of violation of this law?

If there is a violation of the statute or grounds to believe that the statute has been violated a number of different things can happen and any one of these things does not necessarily exclude another. The Vermont Human Rights has jurisdiction over complaints filed under this section and could accept such an allegation for further investigation. The noncompliant entity could also face court action initiated by plaintiffs such as the Human Rights Commission and/or by any combination of persons or organizations harmed by the permit rejection based on failure to comply with this law, including a request for injunctive relief in some situations. Plaintiffs could potentially include lower income owners or tenants of the proposed housing, developers or funders of the housing or any other entity which could establish its legal standing in the case.

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