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FAIR HOUSING AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

AN ACT RELATING TO REAL ESTATE; REVISING THE PROCEDURE FOR FILING AND
RESOLVING A FAIR HOUSING COMPLAINT; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

57-21-9, as last amended by Chapter 375, Laws of Utah 1997

57-21-10, as last amended by Chapter 375, Laws of Utah 1997

57-21-12, as enacted by Chapter 114, Laws of Utah 1993

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **57-21-9** is amended to read:

**57-21-9. Procedure for an aggrieved person to file a complaint -- Conciliation --
Investigation -- Determination.**

(1) Any [person] aggrieved [~~by a discriminatory housing practice~~] person may file a
written verified complaint with the division within 180 days after [~~the~~] an alleged discriminatory
housing practice occurs.

(2) (a) The commission shall adopt rules consistent with the provisions of 24 C.F.R. Sec.
115.3 (1990), relating to procedures under related federal law, to govern:

(i) the form of the complaint;
(ii) the form of any answer to the complaint;
(iii) procedures for filing or amending a complaint or answer; and
(iv) the form of notice to parties accused of the acts or omissions giving rise to the
complaint.

(b) The commission may, by rule, prescribe any other procedure pertaining to the division's
processing of the complaint.

(3) During the period beginning with the filing of the complaint and ending with the director's determination [and order], the division shall, to the extent feasible, engage in conciliation with respect to the complaint.

(4) The division shall commence proceedings to investigate and conciliate a complaint alleging a discriminatory housing practice within 30 days after the filing of the complaint.

(5) The division shall complete the investigation within 100 days after the filing of the complaint, unless it is impracticable to do so. If the division is unable to complete the investigation within 100 days after the filing of the complaint, the division shall notify the complainant and respondent in writing of the reasons for the delay.

(6) (a) If, as a result of the division's investigation, the [division] director determines that there is no reasonable cause to support the allegations in the complaint[; (a)], the director [or the director's designee] shall issue a written determination [and order for the dismissal of the complainant and respondent; and] dismissing the complaint.

~~[(b) the complainant, respondent, or an aggrieved party may submit a written request for a reconsideration of the director's or designee's determination and order within 20 days after the date of issuance of the director's determination and order pursuant to Section 63-46b-13. The decision of the Division of Adjudication may be appealed in accordance with Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.]~~

~~[(7) If the director or designee fails to receive a timely request for review under Subsection (6)(b), the determination and order become the final order of the commission.]~~

(b) If the director dismisses the complaint pursuant to Subsection (6)(a), the complainant may request that the director reconsider the dismissal pursuant to Section 63-46b-13.

(c) Notwithstanding the provisions of Title 63, Chapter 46b, Administrative Procedures Act, the director's determination to dismiss a complaint or, in the case of a request for reconsideration, the director's order denying reconsideration is not subject to further agency action or direct judicial review. However, the complainant may commence a private action pursuant to Section 57-21-12.

~~[(8)] (7) If [the division], as a result of the division's investigation of a complaint, the director determines that there is reasonable cause to support the allegations in the complaint, all of the following apply:~~

(a) The division shall informally endeavor to eliminate or correct the discriminatory

housing practice through a conciliation conference between the parties, presided over by the division. Nothing said or done in the course of the conciliation conference may be made public or admitted as evidence in a subsequent proceeding under this chapter without the written consent of the parties concerned.

(b) If the conciliation conference results in voluntary compliance with this chapter, a conciliation agreement setting forth the resolution of the issues shall be executed by the parties and approved by the division. The parties may enforce the conciliation agreement in an action filed in a court of competent jurisdiction.

(c) If the division is unable to obtain a conciliation agreement, the director shall issue a written determination ~~[and order to the complainant and respondent]~~ stating the director's findings ~~[of the division that the allegations of the complaint are supported by reasonable cause]~~ and ordering any appropriate relief under Section 57-21-11.

Section 2. Section **57-21-10** is amended to read:

57-21-10. Judicial election or formal adjudicative hearing.

(1) ~~If [the director's determination and order finds that there is], pursuant to Subsection 57-21-9(7)(c), the director issues a written determination finding~~ reasonable cause to believe that a discriminatory housing practice has occurred, or is about to occur, ~~[the complainant, respondent, or an aggrieved person on whose behalf a complaint has been filed may elect to have the findings of the division asserted in either a formal adjudicative hearing or in a civil action]~~ a respondent may obtain de novo review of the determination by submitting a written request for a formal adjudicative hearing to be conducted by the commission's Division of Adjudication in accordance with Title 34A, Chapter 1, Part 3, Adjudicative Proceedings, to the director within 30 days from the date of issuance of the determination. If the director does not receive a timely request for review, the director's determination becomes the final order of the commission and is not subject to further agency action or direct judicial review.

~~[(2) The election shall be submitted in writing to the director of the Division of Adjudication within 20 days from the date of issuance of the director's determination and order. If the director fails to receive a timely election, the director's determination and order become the final order of the commission.]~~

~~[(3) If the complainant, respondent, or an aggrieved person elects to have the claims asserted in a formal adjudicative hearing or in a civil action, the Division of Adjudication shall~~

give written notice to the complainant and respondent of that election.]

[(4) If an election is made, the director of the Division of Adjudication or the director's designee shall determine whether the allegations of the complaint are supported by substantial evidence.]

[(5) If the director of the Division of Adjudication or the director's designee determines that the allegations of the complaint are supported by substantial evidence, the director shall, pursuant to the election, refer the matter to the presiding officer to set a formal adjudicative hearing or commence a civil action in an appropriate district court within 30 days from the date the election is made. The Division of Adjudication shall provide legal representation on behalf of the aggrieved person.]

[(6) If the director of the Division of Adjudication or the director's designee determines that the allegations of the complaint are not supported by substantial evidence, the complainant may commence a private civil action under Subsection 57-21-12(1).]

(2) If a respondent files a timely request for review pursuant to Subsection (1):

(a) any respondent, complainant, or aggrieved party may elect to have the de novo review take place in a civil action in the district court rather than in a formal adjudicative hearing with the Division of Adjudication by filing an election with the commission in accordance with rules established by the commission pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, regarding the form and time period for the election;

(b) the complainant shall file a complaint for review in the forum selected pursuant to Subsection (1)(a) within 30 days after the completion of the forum selection process; and

(c) the commission shall determine whether the director's determination is supported by substantial evidence.

(3) If, pursuant to Subsection (2)(c), the commission determines that the director's determination is supported by substantial evidence, the commission shall provide legal representation on behalf of the aggrieved person, including the filing of a complaint for review as required by Subsection (2)(b), to support and enforce the director's determination in the de novo review proceeding. Notwithstanding any provisions of Title 63, Chapter 46b, Administrative Procedures Act, the commission's determination regarding the existence or nonexistence of substantial evidence to support the director's determination is not subject to further agency action or direct judicial review.

[~~(7)~~] (4) Upon timely application, an aggrieved person may intervene with respect to the issues to be determined in a formal adjudicative hearing or in a civil action brought under this section.

[~~(8)~~] (5) If a formal adjudicative hearing is elected, all of the following apply:

(a) The presiding officer shall commence the formal adjudicative hearing within [~~120~~] 150 days after the [complainant,] respondent[~~, or aggrieved person makes the election,~~] files a request for review of the director's determination unless it is impracticable to do so.

(b) The investigator who investigated the matter may not participate in the formal adjudicative hearing, except as a witness, nor may the investigator participate in the deliberations of the presiding officer.

(c) Any party to the complaint may file a written request to the Division of Adjudication for review of the presiding officer's order in accordance with Section 63-46b-12 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.

(d) A final order of the commission under this section is subject to judicial review as provided in Section 63-46b-16 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.

[~~(9)~~] (6) If a civil action is elected, the commission is barred from continuing or commencing any adjudicative proceeding in connection with the same claims under this chapter.

[~~(10)~~] (7) The commission shall make final administrative disposition of the complaint alleging a discriminatory housing practice within one year after the filing of the complaint, unless it is impracticable to do so. If the commission is unable to make final administrative disposition within one year, the commission shall notify the complainant, respondent, and any other interested party in writing of the reasons for the delay.

Section 3. Section **57-21-12** is amended to read:

57-21-12. Other rights of action.

(1) In addition to the procedure outlined in Subsection 57-21-9(1), a person aggrieved by a discriminatory housing practice may commence a private civil action in a court of competent jurisdiction within two years after an alleged discriminatory housing practice occurred, within two years after the termination of an alleged discriminatory housing practice, or within two years after a breach of a conciliation agreement. The division shall inform the aggrieved person in writing about this option within 30 days after the aggrieved person files a complaint under Section 57-21-9.

(2) (a) Except as provided in Subsection (2)(b), the computation of this two-year time period does not include any time during which an administrative proceeding under this chapter was pending with respect to a complaint filed under this chapter.

(b) The tolling of the two-year time period does not apply to actions arising from a breach of a conciliation agreement.

(3) An aggrieved person may commence a private civil action even though a complaint has been filed with the division, in which case the division is barred from continuing or commencing any adjudicative proceeding in connection with the same claims under this chapter after:

(a) the beginning of a civil action brought by a complainant or aggrieved person; or

(b) the parties have reached an agreement in settlement of claims arising from the complaint.

(4) An aggrieved person may not file a private civil action under this section if:

(a) the division has obtained a conciliation agreement, except for the purpose of enforcing the terms of the conciliation agreement; or

(b) ~~[the division has commenced]~~ a formal adjudicative hearing has been commenced under Section 57-21-10 regarding the same complaint.

(5) Upon written application by a person alleging a discriminatory housing practice prohibited under this chapter in a private civil action, or by a person against whom the violations are alleged, the court may:

(a) appoint an attorney for the applicant; and

(b) authorize the commencement or continuation of a private civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

(6) Upon timely application, the division may intervene in a private civil action brought under this subsection if the division certifies that the case is of general importance.

(7) In a private civil action, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may:

(a) order the respondent to cease any discriminatory housing practice;

(b) award to the plaintiff actual damages, punitive damages and reasonable attorneys' fees and costs; and

183 (c) grant, as the court considers appropriate, any permanent or temporary injunction,
184 temporary restraining order, or other order as may be appropriate, including civil penalties under
185 Section 57-21-11.

186 (8) This chapter does not preclude any private right of action by an aggrieved person based
187 on otherwise applicable law not included in this chapter.

Legislative Review Note
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A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel