

EXECUTIVE CABINET
Kentucky Commission on Human Rights
(Amendment)

104 KAR 1:080. Guidelines on fair housing.

RELATES TO: KRS 344.010, 344.360-344.385, 344.600-344.680

STATUTORY AUTHORITY: KRS 344.190(14), 24 C.F.R. 101.20, 101.25

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes standards and procedures for determining permissible conduct by persons engaged in real estate or real estate-related transactions.

Section 1. Definitions.

(1) "Conduct" means, in addition to practices prohibited by KRS 344.360, any action including statements, words, and utterances.

(2) "Real estate operator" is defined in KRS 344.010(8), and includes, subject to KRS 344.362 and 344.365, any person engaging in housing practices or any real estate or real estate-related transaction and is not limited to those persons regularly engaging in real estate as a business.

~~[(2)] ["Conduct" means in addition to practices prohibited by KRS 344.360 any action including statements, words, and utterances.]~~

Section 2. Discriminatory conduct, notice, statements and advertisements shall include:

(1) A written or oral notice or statement by a real estate operator; and

(2) Written notice or statement including an application, flyer, brochure, deed, sign, banner, poster, billboard, or a document used with respect to the sale or rental of housing accommodations; and

(3) Notices, statements and advertisements include the following:

(a) The use of words, phrases, photographs, illustrations, symbols or forms which convey that housing accommodations are available or not available to a particular group of persons because of race, color, religion, sex, disability, familial status, or national origin;

(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, disability, familial status, or national origin of such persons;

(c) Selecting media or locations for advertising the sale or rental of housing accommodations which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, disability, familial status, or national origin; and

(d) Refusing to publish advertising for the sale or rental of housing accommodations or requiring different charges or terms for such advertising because of race, color, religion, sex, disability, familial status, or national origin; and

(4) Discriminatory representations on the availability of dwellings shall include those specified in 24 C.F.R. 100.80(a) and (b). ~~["Prohibited words, phrases, symbols and visual aids" shall include those specified in 24 CFR 109.20(a) to (f).]~~

(5) Use of advertising media shall comply with the provisions of 24 C.F.R. 100.75, 61 Federal Register 5205, February 9, 1996 ~~[24 CFR 109.25(a) to (e)].~~

(6) Occupancy restrictions because of familial status.

(a) Real estate operators may enforce nondiscriminatory policies or standards involving reasonable occupancy restrictions on the basis of familial status.

(b) In reviewing occupancy restrictions, the Kentucky Commission on Human Rights shall consider the:

1. Size of bedrooms and unit;

2. Age of children;
3. Configuration of unit; and
4. Other special circumstances which may warrant occupancy restrictions.

~~[Section 3.] [Material Incorporated by Reference.]~~

~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] ["Use of words, phrases, symbols, and visual aids, 24 CFR 109.20(a) to (f)", (54 Federal Register 3308, January 23, 1989, as amended at 55 FR 53294, December 28, 1990).]~~

~~[(b)] ["Selective Use of Advertising Media or Content, 24 CFR 109.25(a) to (e)", (54 Federal Register 3308, January 23, 1989, as amended at 55 FR 53294, December 28, 1990).]~~

~~[(2)] [This material may be inspected, copied, or obtained:]~~

~~[(a)] [At the offices of the Kentucky Commission on Human Rights, the Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or]~~

~~[(b)]~~

~~[1.] [(502) 595-4024;]~~

~~[2.] [(800) 292-5566;]~~

~~[3.] [(502) 595-4084 (TDD), for the hearing impaired;]~~

~~[4.] [Kentucky Relay Service, (800) 648-6056 (TTD/TDD).]~~

This is to certify that the Commissioners of the Kentucky Commission on Human Rights have approved this administrative regulation as amended prior to its filing with the Legislative Research Commission, as required by KRS 344.190(14).

RAYMOND BURSE, Commission Chair

CYNTHIA FOX, Executive Director

APPROVED BY AGENCY: May 24, 2023

FILED WITH LRC: June 14, 2023 at 1:45 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10 a.m. Eastern Time at the office of the Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: L. Joe Dunman, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email joe.dunman@ky.gov; Colt Sells, Staff Attorney II, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email colt.sells@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:L. Joe Dunman

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes standards and procedures for real estate operators to provide equal housing opportunities and adopts federal regulations consistent with the text and purposes of KRS 344.010, 344.360-385, and KRS 344.600-680.

(b) The necessity of this administrative regulation:

Pursuant to KRS 344.190, this administrative regulation is necessary to establish fair housing standards and procedures as promulgated by the Department of Housing and Urban Development and enforced by the Kentucky Commission on Human Rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "to adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions" of KRS 344. KRS 344.020(1) states that the purpose of KRS 344 is to "provide for the execution within the state of policies embodied" in several federal anti-discrimination laws, upon which KRS 344 is modeled.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation currently assists in the administration of KRS 344 in a way that is consistent with its counterpart federal anti-discrimination statutes and regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment updates references to versions of federal regulations that have been superseded or revised and replaces them with references to the current versions of those same federal regulations.

(b) The necessity of the amendment to this administrative regulation:

The amendment to this administrative regulation is necessary to comply with KRS 344.190, which obligates the Kentucky Commission on Human Rights to cooperate with federal agencies in the administration of anti-discrimination policies. The amendment will replace references to obsolete versions of federal regulations with correct references to the current versions of those regulations.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "to adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions" of KRS 344, which include the mandate to cooperate with federal agencies such as the Department of Housing and Urban Development.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment provides accurate notice of all applicable regulations and rules to those subject to KRS 344 and allows the Kentucky Commission on Human Rights to

meet its obligation to cooperate with the Equal Employment Opportunity Commission under KRS 344.190(5).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation applies to all individuals, businesses, or state and local governments subject to KRS 344, which includes all "real estate operators" as defined by KRS 344.010(8).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

No action is required to comply with this amendment beyond the general requirement to comply with the anti-discrimination provisions of KRS 344.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No costs are imposed by this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Compliance with this regulation will ensure fair and equal treatment for all Kentuckians in employment, as already required by KRS 344.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The expected cost to implement this administrative regulation initially is nominal.

(b) On a continuing basis:

The expected cost to implement this administrative regulation on a continuing basis is nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Funds from the budget of the Kentucky Commission on Human Rights will be used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees or funding is not anticipated to be necessary by the change this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not used in this administrative regulation, as this regulation will apply to all those subject to KRS 344 throughout all of the counties of the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Any units, parts, or divisions of state or local governments that qualify as "real estate operators" as defined by KRS 344 will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

This regulation is authorized by KRS 344.190.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This regulation will not generate any revenue for any state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This regulation will not generate any revenue for any state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year?

This regulation will not impose any additional costs.

(d) How much will it cost to administer this program for subsequent years?

This regulation will not impose any additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):Not applicable.

Expenditures (+/-):Not applicable.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the regulated entities for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):Not applicable.

Expenditures (+/-):Not applicable.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS13A.010(13)]. This regulation will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

Not applicable. No federal statute or regulation mandates this state regulation.

(2) State compliance standards.

Not applicable.

(3) Minimum or uniform standards contained in the federal mandate.

Not applicable.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

Not applicable.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.