Chapter 25:
Fair Housing

An * in the left margin indicates a change in the statute, rule or text since the last publication of the manual.

I. Introduction

The following information is excerpted from the Federal Civil Rights Acts of 1866, 1870 and 1968 and the Fair Housing Amendments Act of 1988 as they apply to equal housing opportunity. The information is intended to be a broad overview of the fair housing provisions within the Federal Civil Rights Acts. A comprehensive listing of rules and interpretations of the 1968 and 1988 Acts can be obtained by contacting The Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity.

II. Federal Civil Rights Acts

A. Civil Rights Acts of 1866 and 1870 (42 U.S.C. 1981 and 1982)

The Civil Rights Acts of 1866 and 1870, passed shortly after the passage of the 13th amendment to the constitution, which eliminated slavery, are brief enough to be quoted in their entirety.

42 U.S.C. 1981 – Equal rights under the law. "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other." (May 1870)

42 U.S.C. 1982 – Property rights of citizens. "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." (April 1866)

Until 1987 it was assumed that the above two laws applied only to discrimination on the basis of race. The Supreme Court ruled then that they applied also to discrimination on the basis of ancestry or ethnicity (on its rationale that some ethnic or religious groups were considered different "races" when the law was enacted). However, neither can be used to make discrimination claims on other bases, such as sex, handicap or familial status, found in the Fair Housing Act (Title VIII), and discussed below.

The above two laws apply to both real and personal property, and to both commercial and residential property, unlike the 1968 Fair Housing Act, which applies only to housing and land intended for housing. Therefore, licensees must ensure that the conduct of their businesses affords equal opportunity in commercial as well as residential transactions.

B. Fair Housing Act 1968, Amended 1988 (42 U.S.C. 3601 to 3619)

Bases of Discrimination

Under the acts of 1866 and 1870, and the 1968 Fair Housing Act, real estate licensees must ensure that their residential real estate activities do not discriminate on the basis of **race, color, religion, sex** and **national origin**.

The **Fair Housing Amendments Act of 1988** expanded the prohibition against unlawful discrimination to include two additional protected classes: **handicap**, both mental and physical, and **familial status**.

Handicap is defined as: "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." The definition includes: alcoholism, HIV or the AIDS virus, certain physiological disorders and specified types of anatomical losses. Mental illness, retardation and psychological disorders are also considered handicaps. Further discussion of discrimination on the basis of handicap is contained in a separate section entitled "Handicap Discrimination", below, as well as under "Steering and Exclusionary Land Use".

Familial status is defined as children under 18 living with parents or others with legal custody, or with a designee of the parent with written permission, a person who is pregnant or a person who is seeking custody of a person under 18. The 1988 amendments made it illegal not only to refuse to rent or sell to families with children but also made it illegal to designate a residential building, mobile home park or even a section of a building as "adults only". There can be no rules, covenants, deed restrictions, by-laws or agreements that discriminate against families with children, although in limited circumstances a residential community may be able to adopt rules about families with children if they are based on safety considerations (not the convenience of adults.)

Charging per person rental fees can also be considered discrimination on the basis of familial status because such fees can be shown to have a discriminatory effect on families with children. One of the most difficult issues in familial status discrimination is the question of how many children may be allowed in a particular unit. HUD guidance has established that two persons per bedroom will be considered generally reasonable, but this is not absolute. If a charge is filed, consideration will be given to the overall size of the dwelling, size of the bedrooms, what other rooms might be used for sleeping areas and any local zoning or occupancy codes.

There are specific exemptions from the protection of familial status for retirement communities or housing for the elderly. See a further explanation of the exemption for senior communities under Exemptions below.

Exemptions to Property Covered:

1. A single-family home sold or rented [†]by the owner, if: a) the owner does not own over three single family homes, b) does not use the services or facilities of a licensee or anyone in the business of selling or renting buildings, and c) does not make, print or publish any discriminatory advertising or statement;

   ([†]Note: The home itself is not exempt. The transaction by the owner is exempt. Actions by non-owners, such as homeowners associations, real estate brokers, cities, lenders, neighbors etc. are not exempt. This is why an owner may be able to sell or rent a single-

family home without coming under the federal fair housing act, but a real estate broker may not.)

2. Rooms or units in dwellings occupied or intended to be occupied by no more than four families, if the owner lives in one of the units;

   (Note: Exemptions #1 and #2 are not found in Colorado law, except for familial status. See later explanation of the Colorado law.)

3. Religious organizations or societies which own and operate dwelling units for a non-commercial purpose, may give preference or limit occupancy to persons of the same religion, unless membership in the religion is restricted on the basis of race, color or national origin;

4. Private clubs that own or operate lodging for non-commercial purposes, may limit occupancy or give preference to members.

5. Housing for seniors, may be exempt only from familial status protections if it meets one of the following three requirements:

   a) Housing provided under a state or federal program that the secretary of HUD determines is designed and operated for elderly persons; or

   b) Housing in which 100% of the residents are 62 years of age or older; or

   c) Housing in which 80% of the occupied units have at least one person 55 years of age or older and the housing publishes and adheres to policies demonstrating the intent to house persons over 55.

After May 3, 2000, the only way a community can convert to "over-55" housing is if it has been "wholly unoccupied for at least 90 days." for the purpose of renovation or rehabilitation. The Fair Housing Amendments Act of 1988 originally required that over 55 housing also provide "significant facilities and services" for persons over 55. This requirement was repealed 4/2/99, and gave until May 3, 2000 to transition to over 55 housing. HUD strongly suggests advertising as "Senior Housing" or "55 and older community" or "retirement community" and warns that using the words "adult community" or "adult living" puts the community in danger of complaint, investigation or litigation. The housing community must verify ages and update its age surveys at least every two years.

WARNING: If a fair housing complaint is filed alleging that housing was refused to families with children without meeting one of the three exemptions described above, any licensees who listed the property or participated in the sale or rental as an exempt senior property have a "good faith" exemption from money damages only if the community's "authorized representatives" have certified "in writing and under oath" that it complies with the exemption.

III. Illegal Practices under Federal Law

- To refuse to show, rent, lease, sell or transfer housing.
- To represent that property is not available for sale or rental when in fact it is.
- To refuse to receive or transmit any bona fide offer to buy, sell or lease housing.
- To discriminate in the terms, conditions, or privileges of housing.

- To discriminate in the provision of services or facilities of housing.
- To discriminate in making loans available, or in their terms, conditions or privileges, for the purchase, construction or maintenance of housing, or for loans secured by housing.
- To advertise any discriminatory preferences or limitations.

  Licensees must be aware that an advertisement need not explicitly mention race, religion or other protected classes to be unlawful and should avoid making or using any statement that could reasonably be interpreted as conveying a prohibited preference or limitation. For example, using a terms such as "restricted" in an advertisement may violate the act unless it is clearly indicated that the restriction is not an unlawfully discriminatory one. Using models not in keeping with community race demographics has also been found to be discriminatory. Licensees are urged to consult the "Advertising Guidelines for Fair Housing" issued by the Secretary of HUD, which catalogue a number of phrases that are considered discriminatory. HUD regulations also prescribe the use of the equal housing logo and/or slogan in advertisements and require the posting of a HUD Equal Housing poster. Licensees are strongly encouraged to use the "Equal Housing Opportunity" logo or statement in anything that could possibly be considered an "advertisement," such as brochures, calling cards and signs.
- To deny any person access to membership or impose unequal terms in any multiple listing service or real estate broker's organization.
- To interfere with, coerce or intimidate persons exercising fair housing rights, or persons aiding or encouraging others to exercise fair housing rights.
- To discriminate or retaliate against someone for opposing unfair housing practices, or for testifying, assisting or participating in an investigation, proceeding or hearing.
- To discriminate in fire/title/homeowners insurance or in real estate appraisals.
  - **Blockbusting:** Blockbusting is the practice of inducing or attempting to induce a person to sell or rent a dwelling by representing that persons of a certain race, disability etc., are or may be moving into a neighborhood. Courts have ruled that this covers not only explicit representations about race but also statements by real estate agents such as "changing neighborhood", "falling property values", "bad schools", or "undesirable elements" if used to solicit listings and sales. In racially transitional neighborhoods, where residents tend to be aware of racial change even without its being mentioned, a racial representation may reasonably be inferred from unusually heavy solicitation of listings, even if no explicit statements are made relative to new residents of a particular race or national origin.
- To "otherwise make unavailable" housing. This phrase includes:
  - **Steering:** Steering is any action or difference in service or information provided that might influence persons to select their own ethnic-identity neighborhoods or discourage living in certain areas. In a landmark case, *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 99 (1979), the Supreme Court declared that the "otherwise make unavailable" prohibition in the fair housing act prohibited steering, which it defined as "directing prospective homebuyers interested in equivalent properties to different areas according to their race." HUD regulations issued after the passage of

the 1988 fair housing amendments act define steering as discouraging anyone from inspecting, purchasing or renting a dwelling, exaggerating drawbacks or failing to inform persons of the desirable features of a community, communicating that someone would not be welcome in a community or assigning any person to a particular building or floor based on a protected class. Steering includes such practices as renting or selling units only on the first floor to persons in wheelchairs, or renting or selling units to families with children only on certain floors, in designated buildings or areas of rental, town home and condominium communities.

- **Exclusionary Land Use:** Courts have also ruled that the term "otherwise make unavailable" includes zoning regulations and decisions of local government, or covenants or actions of homeowners associations, which have the effect of preventing housing choices for minorities, women, or persons with disabilities. Until the addition of the handicapped protected class to the Title VIII in 1988, most exclusionary land use resulted from denial of low-income housing or other actions by local government which had the effect of restricting minorities from living in certain areas. Since 1989, the major exclusionary land use litigation has been over placement in the community of group homes or other residential facilities for persons with mental or physical disabilities. Litigation on this issue is often also filed under the "refusal to make reasonable accommodations" section of the statute, discussed further under "Handicap Discrimination" below. When licensees encounter opposition to selling or listing a home intended for the use of a group home for persons with disabilities, they should contact HUD or the Colorado Civil Rights Division for advice on how to proceed. Also, because the disabled are a protected class, licensees do not have to disclose that there is a group home for persons with disabilities in the neighborhood. In fact, they should not make a voluntary disclosure of this fact, in the same way that they would not volunteer to a customer the information that there are minorities in the neighborhood.
- **Redlining:** Redlining is lender practice of refusing to grant loans or an insurance company refusing to issue policies in certain neighborhoods, usually characterized by a large number of persons in protected classes. It may also be considered redlining when loans or policies are not refused outright, but contain discriminatory terms or higher costs. Prior to the 1988 amendments, such practices or lack of services could be addressed only under the "otherwise make unavailable" section of the law, but discrimination in lending and other "real estate-related" services are now specifically listed as prohibitions in the fair housing act. Nevertheless, such discriminatory treatment does exist, and licensees who suspect that their protected class customers are not being treated equally should consult with either HUD or the Colorado Civil Rights Division about possible charges.
- **Handicap:** The 1988 fair housing amendments act extended protections afforded to other classes to persons with both mental and physical handicaps. Persons may not be refused housing or subjected to unequal terms or conditions because of their handicap. The statute excepts persons convicted of manufacturing or selling drugs and persons currently addicted to or using illegal drugs, as well as persons "whose tenancy would constitute a direct threat to the health or safety of other residents or whose tenancy would result in substantial physical damage to the property of others". Although alcoholism, for example, is considered impairment and is given protected

status, this does not mean that the behavior or rental history of an alcoholic must be ignored in determining whether an applicant for housing is qualified. While an alcoholic or mentally impaired person may not be rejected based solely on his or her impairment, a landlord may consider "behavioral manifestations" of the condition. In determining qualifications, a housing provider may consider past rental history, violation of rules and laws, or a history of disruptive, abusive or dangerous behavior. Housing providers may not presume however, that applicants with certain disabilities are less likely to be qualified or are more likely to be dangerous in the absence of specific proof. In the few cases that have been decided under the "direct threat" provisions, including one in this federal circuit, *Roe v. Housing Authority of the City of Boulder*, courts have ruled that housing providers must first make a reasonable effort and accommodation to lessen or mitigate any possible threat before they may deny housing.

The fair housing amendments act of 1988 also added three additional definitions of discrimination that apply **only to persons with disabilities**:

- **Refusal to permit reasonable modifications**, at the expense of a handicapped person, to existing premises to give that person full enjoyment. Under this section, landlords, owners and condominium associations must allow tenants or owners to make reasonable modifications to either the unit or to common areas, if necessary for the person's access or equal enjoyment of the housing. Further, landlords and homeowners associations may not increase the security deposit of a disabled tenant in anticipation of a request for future modifications. However, licensees should be cautious about suggesting that buyers or tenants make accessibility modifications at their own expense until determining whether the requested modification should have been designed into multifamily buildings constructed since March 13, 1991. (See the paragraph below on "a failure to design and construct multifamily housing" for further details). Under a different federal law, the 1973 Rehabilitation Act, the landlord may be responsible for the cost of modifications if housing was partially or fully funded with federal funds. Another situation where the owner or homeowners association, not the occupant, might be responsible for the cost of modification is when the modification requested is a part of housing considered a "public accommodation" under the Americans with disabilities act (ADA), such as sales/rental offices and common areas like pools and clubhouses rented out to the public. (See the subsequent section on ADA)

  In limited situations, such as when the modifications might not be usable by a subsequent non-disabled occupant, a landlord may require that a disabled tenant deposit a reasonable amount of money into an escrow account to cover the costs of restoration of the interior of the unit. Landlords or homeowners associations may not require restoration of modifications to the exterior of the unit, since exterior accessibility modifications may benefit many other persons with disabilities.

- **Refusal to make reasonable accommodations** in rules, policies, practices or services to accommodate the handicapped. Under this provision, housing providers, including homeowners associations, must waive or amend rules to accommodate persons with handicaps, such as providing assigned parking when parking is usually "first-come – first-served" or allowing guide, service and companion animals in buildings which usually prohibit animals. Courts have also ruled that the word "rules"

includes zoning regulations and covenants that preclude or put undue restrictions on group homes for persons with handicaps in residential neighborhoods. This means that cities and counties with zoning regulations limiting the number of unrelated people who may share a housing unit may have to make an exception to allow establishment of a group home for persons with handicaps. As another example of the wide-ranging interpretation of this provision of the law, one court has required covenants not allowing businesses to be waived so that a handicapped person could operate a business from home.

- **Failure to design and construct handicap-accessible multifamily** housing containing four or more units, put into first occupancy after **March 13, 1991**. Any housing with four or more units in a single structure must comply with seven specific accessibility requirements: 1) an accessible entrance on an accessible route; 2) accessible and usable common use areas; 3) usable doors; 4) accessible route into and through the unit; 5) light switches, electrical outlets, thermostats and other environmental controls in accessible locations; 6) reinforced walls for grab bars; and, 7) usable kitchens and bathrooms. Buildings with elevators must make all units accessible; buildings without elevators must make ground floor units accessible.

  There is only one exception to the "four-or-more" requirement. It is HUD's interpretation of the law that two-story townhomes in a building without an elevator are not required to be accessible, because there is no "ground floor unit." Other than this, all other buildings with four or more units have accessibility requirements. Single story units are considered "ground floor units" and must be accessible, as are single story units with an unfinished basement or single-story units with an open loft. If the building has an elevator, then all units, even if they are two-story townhome style, must comply with accessibility requirements.

  Anyone involved in the design or construction of multifamily housing subject to the act may be held liable. This includes owners, developers, architects, site and electrical engineers and construction companies. HUD considers that the usual one-year statute of limitations does not apply until the units have been brought into compliance and, so far, there has been no case ruling to the contrary. That means that there are thousands of non-compliant units in Colorado whose designers and builders may be subject to a complaint filed anytime in the future.

Licensees who list or sell residential property defined as "multifamily housing" need to be very familiar with accessibility requirements and when they apply. Property, including individual units or whole multifamily buildings, changes hands without new purchasers being aware whether the property is or is not in compliance. Although commercial brokers seem to be generally aware of the coverage of the ADA, there is less understanding of the fair housing act accessibility mandates. The civil rights division has investigated charges of "failure to design and construct" to fair housing standards and notes that sometimes contracts for the sale of apartment buildings refer to the ADA, even though this generally is the wrong law, except for rental offices in apartment buildings or common areas rented out to the public. Although licensees should not themselves certify whether multifamily buildings are in compliance, they are well advised to warn potential buyers to hire an architectural firm to make this assessment. (See further discussion of when the ADA applies versus when the fair housing act applies under the ADA section.)

Enforcement: The amended fair housing act of 1988 provides that persons who believe they have been subjected to a discriminatory housing practice may file a complaint with either HUD's office of fair housing and equal opportunity, or with the Colorado Civil Rights Division. HUD is mandated to refer housing discrimination complaints to any state or local public agency, if that agency has been certified as "substantially equivalent." Agencies receive this certification if the following are substantially equivalent to federal law: (a) substantive rights protected; (b) procedures followed by the agency; (c) remedies available to that agency; and (d) availability of judicial review of such agency's action.

The Colorado civil rights division has had a memorandum of understanding (MOU) with HUD for joint processing of charges since 1981. Under this MOU, the division accepts and investigates most state and federal charges at the same time, except for the following: (1) complaints which do not fall under both laws because of differences in the laws; (2) complaints against an agency of the federal government; (3) complaints where the property is federally subsidized and there is also a complaint under Title VI, Section 504 of the 1973 Rehabilitation Act or the Americans With Disabilities Act. HUD may also elect to investigate some cases it considers "systemic," such as those against companies with holdings both in and out of Colorado, issues of zoning laws and other local land use practices, or cases that raise a question of public importance.

Complaints must be filed **within one year** of the discriminatory action or termination of that discriminatory action. Complainants may bypass both HUD and the civil rights division and file directly in federal or state district court within two years of the alleged discrimination. Complainants may also decide, at any stage of the conciliation and investigation process, to pull the complaint from HUD or the civil rights division and file directly in court, unless a conciliation agreement has been reached with the consent of the complainant or unless a hearing before an ALJ has commenced. The HUD secretary and the attorney general of Colorado may also file a complaint upon their own initiative.

During the period beginning with the filing of a complaint and ending with a formal charge or dismissal, HUD or the civil rights division will attempt to conciliate the complaint in order to achieve an agreement satisfactory to all parties and in keeping with public policy and the purposes of the fair housing acts. The civil rights division calls this attempt to settle the case its "early resolution process," and uses the term "conciliation" only after the director has found "probable cause" that discrimination has occurred and a second attempt has been made to come to an agreement between the parties. The purpose of conciliation is to obtain assurances that the violation will be remedied and to protect the interest of the aggrieved person and other persons similarly situated.

If an agreement cannot be reached between the parties, then, after a full investigation, the agency carrying out the investigation issues a formal finding of "probable cause" or "no probable cause" (Colorado law) or "reasonable cause" or "no reasonable cause" (federal law), that discrimination has or has not occurred. "No cause" cases are dismissed unless appealed by the complainant. In "cause" cases, either the state or HUD will issue a formal complaint to be heard by an administrative law judge (ALJ), unless either party requests, within 20 days of service of the complaint, that the matter be moved to a federal or state district court. Further efforts at an agreement will continue until the matter is heard before the ALJ or court. Courts or an ALJ can issue a final decision and award actual damages, injunctive or other equitable relief and civil penalties. A court can also award punitive

damages. There is no statutory limit on the amount of punitive damages that a judge or jury may award.

Violation of fair housing laws may affect a broker's Colorado real estate license. If a respondent licensee is found to have committed a discriminatory housing practice, then HUD or the civil rights division will notify the Colorado Division of Real Estate. This notification will contain copies of the findings of fact, conclusions of law and the final decision against the licensee with recommendations of revocation or other disciplinary action. Pursuant to Colorado license law 12-61-113(l)(m.5), any violation by a real estate agent or the aiding and abetting in the violation of the Colorado or federal fair housing laws is cause for the revocation of a real estate license and a maximum fine of $2,500.

Fair housing acts do not prohibit only clear, obvious and intentional discrimination, but also make unlawful subtle forms of discriminatory treatment; as well as conduct which has discriminatory results, regardless of the motivation. Moreover, employing brokers may be liable for discriminatory acts by employed licensees. This is true even for a broker who has not personally violated the act, who has given perfunctory instructions to subagents to obey the law and who was not aware of the licensee's violations. The duty to comply with the law cannot be delegated, and even a "silent partner" can be found in violation of the act when employees discriminate. On the good side, licensees are also protected by court rulings that anyone who has been harmed by a discriminatory housing act has standing to file a housing discrimination complaint. A broker who has lost a commission because of a discriminatory practice may file a charge and claim damages.

IV. Equal Credit Opportunity Act (ECOA) (15 USC 1961 et seq.)

ECOA makes it unlawful to discriminate in the granting of credit on the basis of race, color, religion, national origin, sex, marital status, age, or because income comes from a public assistance program. Notice two classes here that are not found in the fair housing acts, "age" and "income from a public assistance program."

V. Americans with Disabilities Act

Real estate professionals need to be aware how the Americans with Disabilities Act (ADA) will affect their practices. Title III of the ADA, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, went into effect on January 26, 1992. The ADA does not generally apply to residential real estate except for on-site offices or common areas rented to the public. However, this section of the ADA may affect brokerage offices, licensees working with multifamily or commercial real estate, brokers who offer brokerage services, employ others and/or persons who teach real estate in four ways:

A. Licensee ADA Responsibilities in Conducting a Real Estate Practices

Real estate brokerages and licensees have four basic responsibilities in the conduct of their real estate practices, to:

1. Not discriminate against persons with disabilities.
2. Make reasonable modifications in their procedures and policies so as to make their services available to persons with disabilities.

3. Take steps to ensure that persons with disabilities are not excluded or treated differently because of the absence of auxiliary aids or services.

4. Remove architectural barriers.

Architectural barriers in existing facilities must be removed if removal is "readily achievable," i.e., able to be carried out without much difficulty or expense. Barrier removal includes such things as installing ramps, widening doors, removing high pile carpeting, rearranging furniture and installing raised markings on elevator controls. If these cannot be done all at once, department of justice regulations specify an order of priority. First, accomplish access to the facility, next, access to the places where services or goods are available, then restroom access, then anything else necessary. ADA regulations also contain complex provisions that take effect when alterations are made to a place of public accommodation. Alterations can, in some cases, trigger requirements for additional remodeling to achieve accessibility. Building owners should not proceed with plans for office upgrade before review of ADA regulations on "alterations", "alterations: plan of travel" and "alterations: elevator exemption."

"Auxiliary aids" include such things as deaf interpreters, large print materials and modification of equipment. Public accommodations should provide these unless doing so would fundamentally alter the nature of their services or result in an "undue burden", i.e., significant difficulty or expense.

The ADA specifies factors that will be considered in evaluating "readily achievable" and "undue burden." These include the cost of the provision of auxiliary aids or removal of barriers, in relation to the financial resources of the site or, in some cases, the parent corporation.

The ADA places these responsibilities on the "public accommodation", as distinguished from a "place of public accommodation." Since the definition of "public accommodation" is "a private entity that owns, leases (or leases to), or operates a place of public accommodation", both the owner and the lessee are subject to the act's requirements. After considerable controversy over whether the lessor or lessee would be responsible for the removal of barriers and provision of auxiliary aids, final ADA regulations specify: "allocation of responsibility for the obligations of this part may be determined by lease or other contract." Unfortunately, this means that persons who rent from or to other parties, must negotiate the details of ADA compliance in their leases. Although freely negotiable, the most common lease arrangements tend to hold the owner responsible for the common areas, and the lessee is made responsible within the leased portion.

B. Licensee ADA Responsibilities in Listing, Selling, Leasing or Managing Property

Although licensees are not responsible for ensuring that the buildings they sell, lease or manage are fully ADA accessible, they should be familiar with accessibility requirements in order to serve their clients. This would include a basic understanding of the requirements for buildings built both before and after the effective date of the act, and the lessor and lessee responsibilities briefly discussed above. Licensees would be unwise to claim that any building being leased or managed complies with ADA, but instead should recommend that the parties hire a licensed architect or engineer to analyze compliance and/or estimate the cost to bring a building up to ADA standards.

Licensees involved in the sale, lease or management of commercial or multi-family property must understand the differences between the accessibility requirements of the ADA and the fair housing act. (See also the section entitled **"failure to design"** in the previous coverage of the federal fair housing act.) Parts of housing which are also "public accommodations" are subject to the ADA retrofit obligations discussed above, whereas housing built before the 1991 effective date of fair housing act accessibility mandates, has no retrofit requirements.

A licensee who lists or sells apartment complexes should be aware that in ADA enforcement, the U.S. department of justice considers a rental or sales office in any housing facility to be a "public accommodation" subject to ADA requirements. Similarly, common areas, such as pools and clubhouses, are also "public accommodations" if they are rented out to the public, while common areas used only by residents and their guests are not. Some types of housing can be considered both "housing" under the fair housing act and a "public accommodation" under the ADA. These include nursing homes, dormitories, some kinds of assisted living facilities and time-shares. Apartment, townhome or condominium communities that are rented out on a short-term basis, like a hotel, may also be considered "public accommodations" with ADA responsibilities. Under ADA Title II, Nondiscrimination on the Basis of Disability in State and Local Governments, housing built by, on behalf of or for the use of state or local government is subject to the ADA.

Licensees who manage commercial buildings and public accommodations, act as the owner's representative and are responsible for the same level of non-discrimination and accommodation as in the management of their own real estate practices, (described above in paragraph 1), as well as the differences and overlap between the ADA and the fair housing act.

C. ADA Responsibilities in Real Estate Instruction

The ADA provides that any private entity that offers examinations or courses related to licensing for professional or trade purposes must do so in a place and manner accessible to persons with disabilities, or offer alternative accessible arrangements. Real estate schools have to provide auxiliary aids and services for persons with disabilities, (such as Braille or large print texts and deaf interpreters), unless they can prove this fundamentally alters the course or results in an undue burden. Exams for persons with disabilities must be offered as often as other examinations and in equally convenient locations, and the kind of exam must accommodate an individual's disability and accurately reflect that individual's aptitude.

D. ADA Responsibilities as Employers

One of the main provisions of the ADA is the section on the employment and treatment of persons with disabilities. Title I of the ADA, entitled Equal Employment Opportunity for Individuals with Disabilities, makes it illegal to discriminate against persons with physical or mental disabilities. It also places an affirmative duty on employers to provide reasonable accommodations for persons with disabilities, including such things as removing physical barriers, possibly restructuring jobs or schedules, modifying equipment and providing auxiliary aids. Although this Title I applies only to firms with 15 or more employees, and thus may not affect some real estate firms, a separate Colorado statute applies to firms with even one employee.

From this brief description of the ADA it is apparent that all licensees need to be aware of its provisions as they affect their facilities and practices. In addition, those selling or leasing commercial real estate of others need to make themselves aware of the requirements for new buildings or alterations, and about owner and lessee responsibilities in complying with the act. The above discussion is only a brief summary of pertinent portions of the ADA. Copies of the regulations may be obtained from the department of justice by calling (202) 514-0301 or the ADA InfoCenter at (719) 444-0252 or 1-800-949-4232.

VI. Colorado Fair Housing Act

A. Title 24, Article 34, C.R.S.

Colorado enacted prohibitions against housing discrimination in 1959, the first state in the nation to pass anti-discrimination laws pertaining to private property. The Colorado Act even preceded the federal fair housing act and prohibited discrimination based on **race, creed, color, national origin or ancestry** in the renting or purchasing of housing.

In 1969 **sex** was added as a protected class and in 1973 **marital status**[†] and **religion** were included. Eleven years before Congress added handicap to the federal fair housing act, Colorado included **physical handicap** in 1977 as a class to be protected from discrimination. After the federal fair housing amendments 1988 added handicap and familial status the Colorado act was amended to add **familial status** and to expand the definition of handicap to include both physical and mental. Subsequently, all Colorado statutes were amended to replace the word handicap with disability.

([†]Note: Discrimination is permitted on the basis of marital status if complying with local zoning ordinance.

All the actions listed above as "Illegal Practices Under Federal Law" are likewise illegal under the Colorado fair housing statute. In addition, Colorado law has additional prohibitions that, although probably illegal under federal law, are more clearly spelled out in the Colorado fair housing law. These include:

1. To honor, or attempt to honor, any discriminatory covenant.
2. To segregate or separate in housing.
3. To make any inquiry, reference or record which is discriminatory.
4. To discharge, demote, or discriminate in matters of compensation against an agent or employee for obeying the law.
5. To require any person accompanied by an assistance dog to pay a charge for that dog. (C.R.S. 24-34-803).

B. Major Differences between Federal and Colorado Fair Housing Acts

1. Colorado law covers commercial and residential property, Title VIII residential only.
2. Colorado law prohibits marital status discrimination, Title VIII does not.
3. Colorado law protects both ancestry and national origin where federal law lists national origin only. Colorado law makes it illegal to discriminate on the basis of both creed and religion whereas the federal law lists religion only.

4. Exemptions to property covered are different from the federal law. Except for familial status, Colorado law does not exempt single-family homes or owner-occupied dwellings of up to four units from coverage. Colorado law does exempt senior housing from the prohibition against discriminating on the basis of familial status. (See also "Exemptions" in the previous coverage of the federal fair housing act.) Colorado law exempts rooms for rent in a single-family home occupied by the owner or lessee and, like federal law, non-commercial housing operated by private clubs or religious organizations.
5. Under both Title VIII and Colorado law, ALJs can levy fines and award actual damages, and courts may award both actual and punitive damages. However, there is a difference between federal and state courts on the power to levy fines. Federal courts can only levy fines for pattern and practice cases and violations of conciliation agreements. Colorado courts may levy fines for any violation of the law.
6. Colorado law specifically states that it is not illegal to restrict the sale, rental or development of housing designed or intended for persons with disabilities.

Note: Although neither federal nor Colorado law make it illegal to discriminate on the basis of **sexual orientation**, local ordinances of Denver, Boulder, Aspen, Crested Butte and Telluride do make it illegal within their own cities. Likewise, although **age** is not a protected class under either federal or Colorado law, it is illegal to discriminate on the basis of age in Aspen, Crested Butte and Telluride.

The rest of this chapter presents Colorado housing discrimination law, as well as the law on "Discrimination in Places of Public Accommodation," "Discriminatory Advertising," and "Persons with Disabilities-Civil Rights," all of which affect the practice of real estate.

VII. Colorado Civil Rights Division—Commission—Procedures

Colorado Revised Statutes § 24-34-301. Definitions.

As used in parts 3 to 7 of this article, unless the context otherwise requires:

(1.5) "Commission" means the Colorado civil rights commission created by section 24- 34-303.

(1.6) "Commissioner" means a member of the Colorado civil rights commission.

(2) "Director" means the director of the Colorado civil rights division, which office is created by section 24-34-302.

(2.5) (a) "Disability" means a physical impairment which substantially limits one or more of a person's major life activities and includes a record of such an impairment and being regarded as having such an impairment.

(b) (I) On and after July 1, 1990, as to part 5 of this article, disability shall also include such a person who has a mental impairment, but such term does not include any person currently involved in the illegal use of or addiction to a controlled substance.

(II) On and after July 1, 1992, as to parts 4, 6, and 7 of this article, disability shall also include such a person who has a mental impairment.

(III) The term "mental impairment" as used in subparagraphs (I) and (U) of this paragraph (b) shall mean any mental or psychological disorder such as developmental disability, organic brain syndrome, mental illness, or specific learning disabilities.

(3) "Division" means the Colorado civil rights division, created by section 24-34-302.

(4) Deleted by amendment effective July 1,1993.

(5) "Person" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the state of Colorado, and all political subdivisions and agencies thereof.

(6) "Respondent" means any person, agency, organization, or other entity against whom a charge is filed pursuant to any of the provisions of parts 3 to 7 of this article.

VIII. Housing Practices

24-34-501. Definitions.

(1) "Aggrieved person" means any person who claims to have been injured by a discriminatory housing practice or believes that he will be injured by a discriminatory housing practice that is about to occur.

(1.5) "Discriminate" includes both segregate and separate.

(1.6) "Familial status" means one or more individuals, who have not attained eighteen years of age, being domiciled with a parent or another person having legal custody of or parental responsibilities for such individual or individuals or the designee of such parent or other persons having such custody or parental responsibilities with the written permission of such parent or other person. 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 eighteen years of age.

(2) "Housing" means any building, structure, vacant land, or part thereof offered for sale, lease, rent, or transfer of ownership; except that "housing" does not include any room offered for rent or lease in a single-family dwelling maintained and occupied in part by the owner or lessee of said dwelling as his household.

(3) "Person" has the meaning ascribed to such term in section 24-34-301 (5) and includes any owner, lessee, proprietor, manager, employee, or any agent of a person; but, for purposes of this part 5, "person" does not include any private club not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose unless such club has the purpose of promoting discrimination in the matter of housing against any person because of disability, race, creed, color, marital status, familial status, national origin, or ancestry.

(4) "Restrictive covenant" means any specification limiting the transfer, rental, or lease of any housing because of disability, race, creed, color, sex, marital status, familial status, national origin, or ancestry.

(5) "Transfer", as used in this part 5, shall not apply to transfer of property by will or by gift.

(6) "Unfair housing practices" means those practices specified in section 24-34-502.

24-34-502. Unfair housing practices prohibited.

(1) It shall be an unfair housing practice and unlawful and hereby prohibited:

(a) For any person to refuse to show, sell, transfer, rent, or lease, or to refuse to receive and transmit any bona fide offer to buy, sell, rent, or lease, or otherwise make unavailable or deny or withhold from any person such housing because of disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry; to discriminate against any person because of disability, race, creed, color, sex, marital status, familial status, religion national origin or ancestry in the terms, conditions, or privileges pertaining to any housing or the transfer, sale, rental, or lease thereof or in the furnishing of facilities or services in connection therewith; or to cause to be made any written or oral

inquiry or record concerning the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of a person seeking to purchase, rent, or lease any housing; however, nothing in this paragraph (a) shall be construed to require a dwelling to 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;

(b) For any person to whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing to make or cause to be made any written or oral inquiry concerning the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of a person seeking such financial assistance or concerning the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of prospective occupants to tenants of such housing, or to discriminate against any person because of the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of such person or prospective occupants or tenants in the terms, conditions, or privileges relating to the obtaining or use of any such financial assistance;

(c) (I) For any person to include in any transfer, sale, rental, or lease of housing any restrictive covenants, but shall not include any person who, in good faith and in the usual course of business, delivers any document or copy of a document regarding the transfer, sale, rental, or lease of housing which includes any restrictive covenants which are based upon race or religion, or reference thereto; or

(II) For any person to honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to housing;

(d) For any person to make, print or publish or cause to be made, printed or published any notice or advertisement relating to the sale, transfer, rental, or lease of any housing which indicates any preference, limitation, specification, or discrimination based on disability, race, creed, color, sex, marital status, familial status, national origin, or ancestry;

(e) For any person: To aid, abet, incite, compel, or coerce the doing of any act defined in this section as an unfair housing practice; to obstruct or prevent any person from complying with the provisions of this part 5 or any order issued with respect thereto; to attempt either directly or indirectly to commit any act defined in this section to be an unfair housing practice; or to discriminate against any person because such person has opposed any practice made an unfair housing practice by this part 5, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 5 of this article; or to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged, any other person in the exercise of any right granted or protected by parts 3 and 5 of this article;

(f) For any person to discharge, demote, or discriminate in matters of compensation against any employee or agent because of said employee's or agent's obedience to the provisions of this part 5;

(g) For any person whose business includes residential real estate-related transactions, which transactions involve the making or purchasing of loans secured by residential real estate or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling or the selling, brokering, or appraising of residential real property, to discriminate against any person in making available such a transaction or in fixing the terms or conditions of such a transaction because of race, creed, color, religion, sex, marital status, disability, familial status, or national origin or ancestry;

(h) For any person to deny another person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility related to the business of selling or renting dwellings or to discriminate against such person in the terms or conditions of such access, membership, or participation on account of race, creed, color, religion, sex, disability, marital status, familial status, or national origin or ancestry;

(i) For any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status, creed, national origin, or ancestry;

(j) For any person to represent to any other person that any dwelling is not available for inspection, sale, or rental, when such dwelling is in fact available, for the purpose of discriminating against another person on the basis of race, color, religion, sex, disability, familial status, creed, national origin, or ancestry.

(2) The provisions of this section shall not apply to or prohibit compliance with local zoning ordinance provisions concerning residential restrictions on marital status.

(3) Nothing contained in this part 5 shall be construed to bar any religious or denominational institution or organization which is operated or supervised or controlled by or is operated in connection with a religious or denominational organization from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin, nor shall anything in this part 5 prohibit a private club not in fact open to the public which, as an incident to its primary purpose or purposes provided 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.

(4) Deleted

(5) Nothing in this section shall be construed to prevent or restrict the sale, lease, rental, transfer, or development of housing designed or intended for the use of persons with disabilities.

(6) Nothing in this part 5 shall prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, creed, color, religion, sex, marital status, familial status, disability, religion, national origin, or ancestry.

(7) (a) Nothing in this section shall limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor shall any provision in this section regarding familial status apply with respect to housing for older persons.

(b) As used in this subsection (7), "housing for older persons" means housing provided under any state or federal program that the division determines is specifically designed and operated to assist older persons, or is intended for, and solely occupied by, persons sixty-two years of age or older, or is intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing intended and operated for occupancy by one person fifty-five years of age or older per unit qualifies as housing for older persons under this subsection (7), the division shall require the following:

(I) That the housing facility or community publish and adhere to policies and procedures that demonstrate the intent required under this paragraph (b);

(II) That at least eighty percent of the units be occupied by at least one person fifty-five years of age or older; and

(III) That the housing facility or community comply with rules promulgated by the commission for verification of occupancy. Such rules shall:

(A) Provide for verification by reliable surveys and affidavits; and

(B) Include examples of the types of policies and procedures relevant to a determination of such compliance with the requirements of subparagraph (H) of this paragraph (b). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of verification of occupancy in accordance with this section.

(c) Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in such housing as of March 12, 1989, who do not meet the age requirements of paragraph (b) of this subsection (7), provided that the new occupants of such housing meet the age requirements of paragraph (b) of this subsection (7) or by reason of unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of paragraph (b) of this subsection (7).

(d) (I) A person shall not be held personally liable for monetary damages for a violation of this part 5 if such person reasonably relied, in good faith, on the application of the exemption available under this part 5 relating to housing for older persons.

(II) For purposes of this paragraph (d), a person may only show good faith reliance on the application of an exemption by showing that:

(A) Such person has no actual knowledge that the facility or community is not or will not be eligible for the exemption claimed; and

(B) The owner, operator, or other official representative of the facility or community has stated, formally, in writing, that the facility or community complies with the requirements of the exemption claimed.

(8) (a) With respect to "familial status", nothing in this part 5 shall apply to the following:

(I) Any single-family house sold or rented by an owner if such private individual owner does not own more than three such single-family houses at any one time. In the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection (8) shall apply only with respect to one such sale within any twenty-four month period. Such bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be excepted from the application of this subsection (8) only if such house is sold or rented:

(A) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(B) Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this section; but nothing in this section shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title.

(II) Rooms or units in dwellings containing living quarters 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 residence.

(b) For the purposes of paragraph (a) of this subsection (8), a person shall be deemed to be in the business of selling or renting dwellings if:

(I) He has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(II) He has, within the preceding twelve months, participated as agent, other than in the sale of his 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

(III) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(9) Repealed.

24-34-502.2. Unfair or discriminatory housing practices against persons with disabilities prohibited.

(1) It shall be an unfair or discriminatory housing practice and unlawful and hereby prohibited:

(a) For any person to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter, or of any person who will reside in the dwelling after it is sold, rented, or made available, or of any person associated with such buyer or renter.

(b) For any person to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with such dwelling because of a disability of that person, of any person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or of any person associated with that person.

(2) For purposes of this section, "discrimination" includes, but is not limited to:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises; except that, 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;

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; and

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the federal "Fair Housing Amendments Act of 1988", a failure to design and construct those dwellings in such a manner that the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities. At least one building entrance shall be on an accessible route unless it is impractical to do so because of the terrain or the unusual characteristics of the site. All doors designed to allow passage into and within all premises within such dwellings shall be sufficiently wide to allow passage by persons with disabilities in wheelchairs, and all premises within such dwellings shall contain the following features of adaptive design:

(I) Accessible routes into and through the dwellings;

(II) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) Reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(3) Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for persons with physical disabilities (commonly cited as ANSI All7.1) suffices to satisfy the requirements of paragraph (c) of subsection (2) of this section.

(4) As used in this section, "covered multifamily dwellings" means:

(a) Buildings consisting of four or more units if such buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of four or more units.

24-34-503. Refusal to show housing.

If the charge alleging an unfair housing practice relates to the refusal to show the housing involved, the commission, after proper investigations as set forth in section 24-34-306, may issue its order that the housing involved be shown to the person filing such charge, and, if the respondent refuses without good reason to comply therewith within three days, then the commission or any commissioner may file a petition pursuant to section 24-34-509. The district court shall hear such matters at the earliest possible time, and the court may waive the requirement of security for a petition filed under this section. If the district court finds that the denial to show is based upon an unfair housing practice, it shall order the respondent to immediately show said housing involved and also to make full disclosure concerning the sale, lease, or rental price and any other information being then given to the public.

24-34-504. Time limits on filing of charges.

(1) Any charge alleging a violation of this part 5 shall be filed with the commission pursuant to section 24-34-306 within one year after the alleged unfair housing practice occurred, or it shall be barred.

(2) A civil action filed by the attorney general under this section shall be commenced not later than eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(3) The director, not later than ten days after filing or identifying additional respondents, shall serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this part 5, together with a copy of the original charge.

(4) The director shall commence an investigation of any charge filed pursuant to subsection (1) of this section within thirty days of such filing. Within one hundred days after the filing of the charge, the director shall determine, based on the facts, whether probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or the director has approved a conciliation agreement with respect to the charge. If the director is unable to complete the investigation within one hundred days after the filing of the charge, the director shall notify the parties of the reasons for not doing so.

(4.1) After a determination by the director that probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall issue a notice and complaint as provided in section 24-34-306(4). After such notice and complaint is issued by the commission, the complainant, respondent, or any aggrieved person on whose behalf the charge was filed may elect to have the claims asserted in the charge decided in a civil action in lieu of

an administrative hearing. Such election shall be made in writing within twenty days after receipt of the notice and complaint issued by the Commission. The Commission shall provide notice of the election to all other parties to whom the notice and complaint relates.

(4.2) If all parties agree to have the charges decided in an administrative hearing, the Commission shall hold a hearing as provided in section 24-34-306. If any party elects a civil action, the Commission shall authorize the attorney general to commence and maintain a civil action in the appropriate state district court to obtain relief with respect to the discriminatory housing practice or practices alleged in the notice and complaint.

(4.3) Final administrative disposition of a charge filed pursuant to this section shall be made within one year of the date the charge was filed, unless it is impractical to do so. If the Commission is unable to do so, the Commission shall notify the complainant and the respondent, in writing, of the reasons that such disposition is impractical.

(5) Repealed.

24-34-505. Charges by other persons.

Any person whose employees, agents, employers, or principals, or some of them, refuse or threaten to refuse to comply with the provisions of this part 5 may make, sign, and file with the commission a verified written charge in duplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

24-34-505.5. Enforcement by the attorney general.

(1) Upon timely application, the attorney general may intervene in any civil action filed as provided in section 24-34-505.6 if the attorney general certifies that the case is of general public importance. Upon such intervention, the attorney general may obtain such relief as would be available to the director under section 24-34-306 in a civil action to which such section applies.

(2) Whenever the attorney general has probable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the attorney general may commence a civil action in any appropriate district court.

(3) The attorney general may commence a civil action in any appropriate district court for appropriate relief with respect to:

(a) A discriminatory housing practice referred to the attorney general by the commission under section 24-34-306; or

(b) Breach of a conciliation agreement referred to the attorney general by the director under section 23-34-506.5.

(4) The attorney general, on behalf of the commission, division, or other party at whose request a subpoena is issued under this section, may enforce such subpoena in appropriate proceedings in the district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(5) Repealed.

24-34-505.6. Enforcement by private persons.

(1) Notwithstanding any provision of this article to the contrary, an aggrieved person may commence a civil action in an appropriate United States district court or state district court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(2) The computation of such two-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subsection (2) does not apply to actions arising from a breach of a conciliation agreement.

(3) Notwithstanding any provision of this article to the contrary, an aggrieved person may commence a civil action under this section whether or not a charge has been filed under section 24-34-306 and without regard to the status of any such charge, but if the director or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such charge except for the purpose of enforcing the terms of such an agreement.

(4) An aggrieved person may not commence a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a complaint issued by the Commission if an administrative law judge has commenced a hearing on the record under this title with respect to such complaint.

(5) At the request of the aggrieved person, the court may appoint an attorney in accordance with section 23-34-307 (9.5).

(6) In addition to the relief which may be granted in accordance with section 24-34-508, the following relief is available:

(a) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages or may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate.

(b) The court, in its discretion, may allow the prevailing party reasonable attorney fees and costs.

(c) Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a charge with the commission or a civil action under this section.

(7) Repealed.

24-34-506. Probable cause.

In making his determination on probable cause under the provisions of section 24-34-306 (2), the director shall find that probable cause exists if upon all the facts and circumstances a person of reasonable prudence and caution would be warranted in a belief that an unfair housing practice has been committed.

24-34-506.5. Conciliation agreements.

(1) A conciliation agreement arising out of a conciliation shall be an agreement between the respondent and the charging party, and shall be subject to approval by the director.

(2) A conciliation agreement may provide for binding arbitration of the dispute arising from the charge. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(3) Each conciliation agreement shall be made public unless the charging party and respondent otherwise agree and the director determines that disclosure is not required to further the purposes of this section.

(4) Whenever the director has reasonable cause to believe that a respondent has breached a conciliation agreement, the director shall refer the matter to the attorney general with a

recommendation that a civil action be filed under section 24-34-505.5 for the enforcement of such agreement.

(5) Repealed.

24-34-507. Injunctive relief.

(1) After the filing of a charge pursuant to section 24-34-306 (1), the commission or a commissioner designated by the commission for that purpose may file in the name of the people of the state of Colorado through the attorney general of the state a petition in the district court of the county in which the alleged unfair housing practice occurred, or of any county in which a respondent resides, seeking appropriate injunctive relief against such respondent, including orders or decrees restraining and enjoining him from selling, renting, or otherwise making unavailable to the complainant any housing with respect to which the complaint is made, pending the final determination of proceedings before the commission under this part 5.

(2) Any injunctive relief granted pursuant to this section shall expire by its terms within such time after entry, not to exceed sixty days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. An affidavit of notice of hearing shall forthwith be filed in the office of the clerk of the district court wherein said petition is filed. The procedure for seeking and granting said injunctive relief, including temporary restraining orders and preliminary injunctions, shall be the procedure provided in the rules of civil procedure for courts of record in Colorado pertaining to injunctions, and the district court has power to grant such temporary relief or restraining orders as it deems just and proper.

(3) The district court shall hear matters on the request for an injunction at the earliest possible time.

(4) If, upon all the evidence at a hearing, the commission finds that a respondent has not engaged in any such unfair housing practice, the district court which has granted temporary relief or restraining orders pursuant to the petition filed by the commission or commissioner shall dismiss such temporary relief or restraining orders. Any person filing a charge alleging an unfair housing practice with the commission, a commissioner, or the attorney general may not thereafter apply, by himself or by his attorney-at-law, directly to the district court for any further relief under this part 5, except as provided in sections 24-34-307.

24-34-508. Relief authorized.

(1) In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have engaged in an unfair housing practice:

(a) To rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 5;

(b) To take affirmative action regarding the granting of financial assistance as provided in section 24-34-502 (1) (b) or the showing, sale, transfer, rental, or lease of housing;

(c) To make reports as to the manner of compliance with the order of the commission;

(d) To reimburse any person who was discriminated against for any fee charged in violation of this part 5 and for any actual expenses incurred in obtaining comparable alternate housing, as well as any storage or moving charges associated with obtaining such housing.

(e) To award actual damages suffered by the aggrieved person and injunctive or other equitable relief;

(f) To assess a civil penalty against the respondent in the following amounts:

(I) Not to exceed ten thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(II) Not to exceed twenty-five thousand dollars if the respondent has been adjudged to have committed any other discriminatory housing practice during the five-year period ending on the date of the filing of the charge;

(III) Not to exceed fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.

24-34-509. Enforcement sought by commission.

Upon refusal by a person to comply with any order, order pursuant to section 24-34-503, or regulation of the commission, the commission has authority to immediately seek an order in the district court enforcing the order or regulation of the commission. Such proceedings shall be brought in the district court in the county in which the respondent resides or transacts business.

24-34-510. Repealed

IX. Discrimination in Places of Public Accommodation

24-34-601. Discrimination in places of public accommodation.

(1) As used in this part 6, "place of public accommodation" means any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public, including but not limited to any business offering wholesale or retail sales to the public; any place to eat, drink, sleep, or rest, or any combination thereof; any sporting or recreational area and facility; any public transportation facility; a barber shop, bathhouse, swimming pool, bath, steam or massage parlor, gymnasium, or other establishment conducted to serve the health, appearance, or physical condition of a person; a campsite or trailer camp; a dispensary, clinic, hospital, convalescent home, or other institution for the sick, ailing, aged, or infirm; a mortuary, undertaking parlor, or cemetery; an educational institution; or any public building, park, arena, theater, hall, auditorium, museum, library, exhibit, or public facility of any kind whether indoor or outdoor.

(2) It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability, race, creed, color, sex, marital status, national origin, or ancestry, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or, directly or indirectly, to publish, circulate, issue, display, post, or mail any written or printed communication, notice, or advertisement which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that his patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, creed, color, sex, marital status, national origin, or ancestry.

(2.5) It is a discriminatory practice and unlawful for any person to discriminate against any individual or group because such person or group has opposed any practice made a discriminatory practice by this part 6 or because such person or group has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to this part 6.

(3) Notwithstanding any other provisions of this section, it is not a discriminatory practice for a person to restrict admission to a place of public accommodation to individuals of one sex if such restriction has a bona fide relationship to the goods, services, facilities, privileges, advantages, or accommodations of such place of public accommodation.

24-34-602. Penalty and civil liability.

Any person who violates any of the provisions of section 24-34-601 by denying to any citizen, except for reasons applicable alike to all citizens of every disability, race, creed, color, sex, marital status, national origin, or ancestry, and regardless of disability, race, creed, color, sex, marital status, national origin, or ancestry, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated or by aiding or inciting such denial, for every such offense, shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars to the person aggrieved thereby to be recovered in any court of competent jurisdiction in the county where said offense was committed; and also for every such offense such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than three hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. A judgment in favor of the party aggrieved or punishment upon an indictment or information shall be a bar to either prosecution, respectively; but the relief provided by this section shall be an alternative to that authorized by section 24-34-306 (9), and a person who seeks redress under this section shall not be permitted to seek relief from the commission.

24-34-603. Jurisdiction of county court-trial.

The county court in the county where the offense is committed shall have jurisdiction in all civil actions brought under this part 6 to recover damages to the extent of the jurisdiction of the county court to recover a money demand in other actions. Either party shall have the right to have the cause tried by jury and to appeal from the judgment of the court in the same manner as in other civil suits.

24-34-604. Time limits on filing of charges.

Any charge filed with the commission alleging a violation of this part 6 shall be filed pursuant to section 24-34-306 within sixty days after the alleged discriminatory act occurred, and if not so filed, it shall be barred.

24-34-605. Relief authorized.

In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have engaged in a discriminatory practice as defined in this part 6 to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 6; to make reports as to the manner of compliance with the order of the commission; and to take affirmative action, including the posting of notices setting forth the substantive rights of the public under this part 6.

X. Discriminatory Advertising

24-34-701. Publishing of discriminative matter forbidden.

No person, being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, resort, or amusement, directly or indirectly, by himself or through another person shall publish, issue, circulate, send, distribute, give away, or display in any way, manner, or shape or by any means or method, except as provided in this section, any communication, paper, poster, folder, manuscript, book, pamphlet, writing, print, letter, notice, or advertisement of any kind, nature, or description which is intended or calculated to discriminate or actually discriminates against any disability, race, creed, color, sex, marital status, national origin or ancestry or against any of the members thereof in the matter of furnishing or neglecting or refusing to furnish to them or any one of them any lodging, housing, schooling, or tuition or any accommodation, right, privilege, advantage, or convenience offered to or enjoyed by the general public or which states that any of the accommodations, rights, privileges, advantages, or conveniences of any such place of public accommodation, resort, or amusement shall or will be refused, withheld from, or denied to any

person or class of persons on account of disability, race, creed, color, sex, marital status, national origin, or ancestry or that the patronage, custom, presence, frequenting, dwelling, staying, or lodging at such place by any person or class of persons belonging to or purporting to be of any particular disability, race, creed, color, sex, marital status, national origin, or ancestry is unwelcome or objectionable or not acceptable, desired, or solicited.

24-34-702. Presumptive evidence.

The production of any such communication, paper, poster, folder, manuscript, book, pamphlet, writing, print, letter, notice, or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, agent, superintendent, manager, or employee thereof, shall be presumptive evidence in any civil or criminal action or prosecution that the same was authorized by such person.

24-34-703. Places of public accommodation, resort, or amusement.

A place of public accommodation, resort, or amusement, within the meaning of this part 7, shall be deemed to include any inn, tavern, or hotel, whether conducted for the entertainment, housing, or lodging of transient guest or for the benefit, use, or accommodation of those seeking health, recreation, or rest, and any restaurant, eating house, public conveyance on land or water, bathhouse, barber shop, theater, and music hall.

24-34-704. Exceptions.

Nothing in this part 7 shall be construed to prohibit the mailing of a private communication in writing sent in response to specific written inquiry.

24-34-705. Penalty.

Any person who violates any of the provisions of this part 7 or who aids in, incites, causes, or brings about in whole or in part the violation of any such provisions, for each and every violation thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. The penalty provided by this section shall be an alternative to the relief authorized by section 24-34-306(9), and a person who seeks redress under this section shall not be permitted to seek relief from the commission.

24-34-706. Time limits on filing of charges.

Any charge filed with the commission alleging a violation of this part 7 shall be filed pursuant to section 24-34-306 within sixty days after the alleged discriminatory act occurred, and, if not so filed, it shall be barred.

24-34-707. Relief authorized.

In addition to the relief authorization by section 24-34-306(9), the commission may order a respondent who has been found to have violated any of the provisions of this part 7 to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 7; to make reports as to the manner of compliance with the order of the commission; and to take affirmative action, including the posting of notices setting forth the substantive rights of the public under this part 7.

XI. Persons with Disabilities – Civil Rights

24-34-801. Legislative declaration.

(1) The general assembly hereby declares that it is the policy of the state:

(a) To encourage and enable the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment;

(b) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied unless it is shown that the particular disability prevents the performance of the work involved;

(c) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places;

(d) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled are entitled to full and equal housing and full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation, hotels, motels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, including restaurants and grocery stores; and that the blind, the visually impaired, the deaf, the partially deaf, or the otherwise physically disabled person assume the liability for any injury that he or she might sustain which is attributable solely to causes originating with the nature of the particular disability involved and otherwise subject only to the conditions and limitations established by law and applicable alike to all persons.

(e) Repealed.

(f) Repealed.

(2) Repealed.

24-34-802. Violation – penalty.

Any person, firm, or corporation or the agent of any person, firm, or corporation that denies or interferes with the rights and the admittance to or enjoyment of the public facilities enumerated in section 24-34-801 (1) (b) to (1) (d) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

24-34-803. Rights of persons with assistance dogs.

(1) A person with a disability, including but not limited to a blind, visually impaired, deaf, hard of hearing, or otherwise physically disabled person, has the right to be accompanied by an assistance dog specially trained for that person without being required to pay an extra charge for the assistance dog in or on the following places and subject to the conditions and limitations established by law and applicable alike to all persons:

(a) Public streets, highways, walkways, public buildings, public facilities and services, and other public places;

(b) Any place of public accommodation or on public transportation services; and

(c) Any housing accommodation offered for rent, lease, or other compensation in the state.

(2) A trainer of an assistance dog has the right to be accompanied by an assistance dog that the trainer is in the process of training without being required to pay an extra charge for the assistance dog in or on the following places:

(a) Public streets, highways, walkways, public buildings, public facilities and services, and other public places; and

(b) Any place of public accommodation or on public transportation services.

(3) (a) An employer shall not refuse to permit an employee with a disability who is accompanied by an assistance dog to keep the employee's assistance dog with the employee at all times in the place of employment. An employer shall not fail or refuse to hire or discharge any person with a disability, or otherwise discriminate against any person with a disability, with respect to compensation, terms, conditions, or privileges of employment because that person with a disability is accompanied by an assistance dog specially trained for that person.

(b) An employer shall make reasonable accommodation to make the workplace accessible for an otherwise qualified person with a disability who is an applicant or employee and who is accompanied by an assistance dog specially trained for that person unless the employer can show that the accommodation would impose an undue hardship on the employer's business. For purposes of this paragraph (b), "undue hardship" means an action requiring significant difficulty or expense.

(4) The owner or the person having control or custody of an assistance dog or an assistance dog in training is liable for any damage to persons, premises, or facilities, including places of housing accommodation and places of employment, caused by that person's assistance dog or assistance dog in training. The person having control or custody of an assistance dog or an assistance dog in training shall be subject to the provisions of section 18-9-204.5, C.R.S.

(5) A person with a disability is exempt from any state or local licensing fees or charges that might otherwise apply in connection with owning an assistance dog.

(6) The mere presence of an assistance dog in a place of public accommodation shall not be grounds for any violation of a sanitary standard, rule, or regulation promulgated pursuant to section 25-4-1604, C.R.S.

(7) As used in this section, unless the context otherwise requires:

(a) "Assistance dog" means a dog that has been or is being trained as a guide dog, hearing dog, or service dog. Such terms are further defined as follows:

(I) "Guide dog" means a dog that has been or is being specially trained to aid a particular blind or visually impaired person.

(II) "Hearing dog" means a dog that has been or is being specially trained to aid a particular deaf or hearing-impaired person.

(III) "Service dog" means a dog that has been or is being specially trained to aid a particular physically disabled person with a physical disability other than sight or hearing impairment.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12102 (2), as amended.

(c) "Employer" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12111 (5), as amended.

(d) "Housing accommodations" means any real property or portion thereof that is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons but does not include any single

family residence, the occupants of which rent, lease, or furnish for compensation not more than one room in that residence.

(e) "Places of public accommodation" means the following categories of private entities:

(I) Inns, hotels, motels, or other places of lodging, except establishments located within buildings actually occupied by the proprietor as the proprietor's residence containing five or fewer rooms for rent or hire;

(II) Restaurants, bars, cafeterias, lunchrooms, lunch counters, soda fountains, casinos, or other establishments serving food or drink, including any such facility located on the premises of any retail establishment;

(III) Gasoline stations or garages;

(IV) Motion picture theaters, theaters, billiard or pool halls, concert halls, stadiums, sports arenas, amusement or recreation parks, or other places of exhibition or entertainment;

(V) Auditoriums, convention centers, lecture halls, or other places of public gathering;

(VI) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or retail establishments;

(VII) Laundromats, dry cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, offices of accountants or attorneys-at-law, pharmacies, insurance offices, professional offices of health care providers, hospitals, or other service establishments;

(VIII) Terminals, depots, or other stations used for specified purposes;

(IX) Museums, libraries, galleries, or other places of public display or collection;

(X) Parks, zoos, or other places of recreation;

(XI) Nursery, elementary, secondary, undergraduate, or graduate schools or other places of education;

(XII) Day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social service center establishments;

(XIII) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation;

(XIV) Any other establishment or place to which the public is invited; or

(XV) Any establishment physically containing or contained within any of the establishments described in this paragraph (e) that holds itself out as serving patrons of the described establishment.

(f) "Public transportation services" means common carriers of passengers or any other means of public conveyance or modes of transportation, including but not limited to airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or taxis.

(g) "Trainer of an assistance dog" means a person who is qualified to train dogs to serve as assistance dogs.

24-34-804. Violations – penalties.

(1) It is unlawful for any person, firm, corporation, or agent of any person, firm, or corporation to:

(a) Withhold, deny, deprive, or attempt to withhold, deny, or deprive any person with a disability or trainer of any of the rights or privileges secured in section 24-34-803;

(b) Threaten to interfere with any of the rights of persons with disabilities or trainers secured in section 24-34-803;

(c) Punish or attempt to punish any person with a disability or trainer for exercising or attempting to exercise any right or privilege secured by section 24-34-803; or

(d) Interfere with, injure, or harm, or cause another dog to interfere with, injure, or harm, an assistance dog.

(2) Any person who violates any provision of subsection (1) of this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(3) (a) Any person who violates any provision of subsection (1) of this section shall be liable to the person with a disability or trainer whose rights were affected for actual damages for economic loss, to be recovered in a civil action in a court in the county where the infringement of rights occurred or where the defendant resides.

(b) In any action commenced pursuant to this subsection (3), a court may award costs and reasonable attorney fees.

(4) Nothing in this section is intended to interfere with remedies or relief that any person might be entitled to pursuant to parts 3 to 7 of this article.