

# CHAPTER 65

## South Carolina Human Affairs Commission

Statutory Authority: 1976 Code Chapter 13 of Title 31; Section 31-21-100(1)

### Subchapter 1

#### Human Affairs Law

#### **65-1. Definitions.**

A. All terms defined in the “Act”, Section 1-13-70, used herein shall have the same meanings as set forth in the definitions in the Act. These terms are:

- (1) Commission;
- (2) National Origin;
- (3) Age;
- (4) Person;
- (5) Employer;
- (6) Employment Agency;
- (7) Labor organization;
- (8) Employee;
- (9) Complainant;
- (10) Respondent;
- (11) Religion;
- (12) “Because of sex” and “on the basis of sex”.

B. Other terms used in these regulations:

(1) “Act” shall mean the “South Carolina Human Affairs Law” appearing as Chapter 13 of Title I of the 1976 Code, as amended.

(2) “Chairman” shall mean the Chairman of the South Carolina Human Affairs Commission.

(3) “Commissioner” shall mean the chief administrative officer of the Commission.

(4) “Complaint” shall mean a written charge alleging an unlawful employment practice that is either: (1) filed in compliance with Section 1-13-90(a) of the Act and R. 65-2 of these Regulations; or (2) filed with the Equal Employment Opportunity Commission and deferred to the Commission pursuant to Section 706(c) of Title VII of the Civil Rights Act of 1964, as amended.

(5) “Hearing Commissioners” shall mean the members of the Commission designated by the Chairman to conduct a hearing, as hereinafter provided.

(6) “Investigator” shall mean an employed member of the Commission staff designated and assigned by the Commissioner to investigate the allegations of the complaint and to make a recommendation to the Commissioner of whether there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring.

(7) “Unlawful employment practice” means those practices declared to be unlawful in Section 1-13-80 of the 1976 Code.

## **65–2. Complaint.**

### **A. Who may file.**

A complaint that any person has engaged in or is engaging in an unlawful employment practice may be made by an individual claiming to be aggrieved—said individual shall be hereinafter referred to as the “complainant”.

### **B. Complaint Form.**

The complaint shall be in writing on a form provided by the Commission for this purpose. The complaint must be signed and sworn before a notary public or other person duly authorized by law to administer oaths and take acknowledgements. Notarial service shall be furnished without charge by the Commission.

### **C. Required Contents of a Complaint. A complaint shall contain:**

(1) The full name, address, and telephone number (if any) of the complainant. (Note: The person claiming to be aggrieved has the responsibility to provide the Commission with notice of any change in address and with notice of any prolonged absence from the current address and telephone number so that he/she can be located as necessary during the Commission’s processing of the complaint.)

(2) The full name and address of the person against whom the complaint is made, if known (hereinafter referred to as the “respondent”).

(3) A short, clear, and concise statement of the facts showing that the complainant is entitled to relief under the Act. This shall include:

- (a) a clear statement of the harm alleged to be suffered by the complainant;
- (b) a statement of the alleged basis of the discrimination;
- (c) a statement of the complainant’s knowledge, if any, concerning the respondent’s reason for the alleged unlawful discrimination; and
- (d) a statement of any and all other information providing the factual basis for the complaint.

(4) The date or dates when the alleged unlawful employment practice occurred, if known; if the alleged unlawful employment practice is of a continuing nature, the dates between which the alleged continuing acts occurred shall be stated, if known.

(5) If known, the approximate number of employees of the respondent employer, or the approximate number of members of the respondent labor organization, as the case may be.

(6) A statement as to any other action or proceeding, judicial or administrative, civil or criminal, instituted by the same complainant or other in his/her behalf, in any other forum based upon the same operative facts or harm as is alleged in the complaint filed with the Commission, together with a statement of the status or disposition of such other action or proceeding.

### **D. Time of Filing.**

(1) A complaint alleging an unlawful employment practice must be filed with the Commission within one hundred eighty (180) calendar days after the alleged unlawful practice occurs, unless the practice is of a continuing nature. If the alleged practice is of a continuing nature, the date of the occurrence of said practice shall be deemed to be any date after commencement of the practice up to and including the date on which the practice shall have ceased, or the date on which the complaint is filed if the unlawful practice is continuing at the time the charge is filed.

(2) The timeliness of a complaint shall be determined for purposes of satisfying the filing requirements by the date on which the complaint is received by the Commission. All charges shall be dated and time stamped upon receipt by the Commission.

### **E. Place of Filing.**

A complaint shall be filed with the Commission at its office at 1026 Sumter Street, Suite 101, Columbia, South Carolina 29201, or by mail at Post Office Box 4490, Columbia, South Carolina 29240.

### **F. Manner of Filing.**

The complaint may be made in person to any member of the Commission’s staff or mailed to the Commission’s office in Columbia, South Carolina. A complaint may also be filed in the above manner

at any other Commission office subsequently established for the filing of complaints by the Commission at any other location in the State.

#### G. Service of the Complaint.

Within ten (10) days after the filing of a complaint in the Commission's office, the Commission shall serve the respondent with a copy of the complaint by mail or in person.

#### H. Amendment of Complaint.

(1) A complaint may be amended by the complainant to cure technical defects, including failure to verify the complaint, or to clarify allegations made therein. A complaint shall not be amended to include additional unlawful employment practices unless such additional unlawful employment practices are clearly related to the allegations contained in the original complaint. Any additional unlawful employment practices which are not clearly related to the allegations contained in the original complaint may, if timely, be made in a separate complaint.

(2) Amendments will relate back to the date the complaint was first received. If a complaint is amended, a copy of the amended complaint shall be served within ten (10) days of Commission receipt thereof on the respondent.

(3) A complaint may only be amended while the complaint is active, and a complaint may not be amended by a complainant after a letter of determination, final order, conciliation or dismissal of a complaint has been made by the Commission.

#### I. Withdrawal of Complaint.

A complaint or any part thereof may be withdrawn at any time upon Commission receipt of a written request of the complainant or his/her legal representative stating that the complainant requests that the complaint be withdrawn. Such withdrawal shall be without prejudice to the rights of the complainant; provided however, that should the complainant refile the complaint at a later time, timeliness shall be established on the basis of the latter filing. The respondent shall be notified within ten (10) days of the withdrawal of the complaint.

#### J. Dismissal of Complaint.

(1) Where a complaint, on its face, or as amended, fails to state a claim under the Act, the Commission shall dismiss the complaint.

(2) A complaint shall also be dismissed:

(a) When the complaint, and every portion thereof, is not timely filed.

(b) When the complaint does not contain required contents pursuant to Section 65-2C of these Regulations.

(c) In the event that the complainant fails to provide information necessary for the proper filing or processing of a complaint, fails or refuses to appear or to be available for scheduled interviews or conferences with Commission investigators, or otherwise refuses to cooperate with the Commission to the extent that the Commission is unable to resolve the complaint, and after due written notice, the complainant has had no less than fifteen (15) but no more than thirty (30) days in which to respond.

(d) When the complainant cannot be located the Commission shall dismiss the complaint, provided that reasonable efforts have been made to locate the complainant, and the complainant has not responded within thirty (30) days to a written notice sent by the Commission to the complainant's last known address.

(3) Where the Commission determines after investigation that there is not reasonable cause to believe that the Act has been violated, the Commission shall dismiss the complaint.

(4) In the event that a respondent has made a settlement offer, in writing and specific in its terms, the Commission shall dismiss the complaint if the complainant refuses to accept the offer; provided however, that the offer would afford full relief for the harm alleged by the person claiming to be aggrieved, and that the person claiming to be aggrieved fails to accept such an offer within thirty (30) days after actual notice of the said offer.

(5) Any complaint which has been brought as a court action alleging essentially the same facts and seeking relief for the same complainant shall be promptly dismissed.

(6) Any dismissal; pursuant to (a) through (d) above, shall constitute a final action by the Commission within the meaning of Section 706(c) of Title VII of the Civil Rights Act of 1964, as amended.

**HISTORY:** Amended by State Register Volume 40, Issue No. 9, eff September 23, 2016 (errata).

### **65-3. Investigation and Production of Evidence.**

#### **A. Investigation.**

(1) Investigator. The investigation of complaint shall be conducted by one or more investigators from the Commission's staff who shall be appointed by the Commissioner. If more than one investigator is appointed, one of the investigators shall be designated the "investigator in charge" and shall direct the investigation.

(2) Duties of the Investigator. Investigators shall do those things necessary and proper to thoroughly investigate a complaint, but shall limit their investigations to their proper scope as described in Subsection 65-3A(5) herein. Investigators assigned to investigate complaints filed pursuant to Section 1-13-90(c) of the Act (State agencies or departments and their local subdivisions) shall upon completion of their investigations submit to the supervisory commission member a statement of the facts disclosed by their investigations and recommend to the supervisory commission member that the complaint be dismissed or that a panel of commission members be designated to hear the complaint. In complaints arising under Section 1-13-90(d) of the Act (employers, employment agencies or labor organizations, including municipalities, counties, special purpose districts, school districts and local governments), investigators shall upon completion of their investigation submit to the Commissioner a statement of the facts disclosed by the investigation and recommend either that the complaint be dismissed or that the Commission endeavor to formally conciliate the matter.

(3) Supervisory Commission Members. If the complaint under investigation is brought pursuant to Section 1-13-90(c) of the Act, the Chairman of the Commission, or upon the request of the Chairman, the Commissioner shall designate a member of the Commission to supervise the processing of the complaint who shall be known as the supervisory commission member. The supervisory commission member shall review the results of the investigation conducted by the investigator and review the investigator's recommendations for dismissal or other action.

(4) Commencement of the Investigation. The investigation shall commence immediately upon service by the Commission of a copy of the complaint or notice of complaint upon the respondent.

(5) Scope of Investigation. Insofar as practicable, the investigation shall be limited to a determination of the facts relating to the unlawful employment practice or practices alleged in the complaint and to the individual harm alleged to have been suffered by the complaining party. The investigator's inquiry for relevant facts shall be restricted to the relevant immediate environment in which the complaining party allegedly suffered harm such as a department or similar organizational structure of a respondent employer which is within the decision-making authority of a single person.

#### **(6) Conduct of the Investigation.**

(a) The investigator shall make a prompt and complete investigation of the allegations in the complaint which meet the standards of R. 65-2.

(b) As part of each investigation the investigator:

(i) Will accept as evidence any statement of position and/or evidence concerning the allegations of the complaint which the complainant or respondent wishes to voluntarily submit.

(ii) Shall require the complainant to provide any evidence, including statements and documents, if any, in his/her possession which are relevant to the complaint, as well as, any information which is necessary to establish actual damages or to establish the date on which the alleged damages occurred.

(c) The investigator may require the complainant to provide a detailed statement which includes, but is not limited to:

(i) a statement of each specific harm that the complainant has allegedly suffered, and the date on which each alleged harm occurred;

(ii) for each alleged harm, a statement specifying the act, policy or practice of the respondent which is alleged to be unlawful; and

(iii) for each act, policy or practice alleged to have harmed the complainant a statement of the facts which lead the complainant to believe that the act, policy or practice is unlawfully discriminatory.

(d) During the investigation of a complaint, the investigator may conduct a fact-finding conference with the parties. The purpose of the conference shall be to clearly define the issues to determine which elements of the matter under investigation are undisputed, to resolve those issues that can be resolved and to determine whether there is any likelihood for a negotiated no-fault settlement of the complaint as described in Section 65-5A. Discussions during a fact-finding conference are confidential. Any conciliation efforts during the conference are also confidential and are considered conciliation attempts within the meaning of the Act.

## B. Production of Evidence.

(1) Investigator's Informal Request for Information. An investigator may, at any reasonable time after service of complaint, informally request access to records and documents in the possession of any person being investigated which are relevant to the complaint for purposes of inspection and copying.

(2) Investigator's Formal Request for Information. If any person refuses to comply with an investigator's informal request for access to documents and records, the investigator shall demand access to the documents in writing by certified mail, transmitted to the person being investigated. The written demand shall notify the person that the investigator may apply to the Commission for a subpoena if access to the documents and records is not permitted within thirty (30) days from the receipt of the investigator's written demand.

(3) Investigator's Application for Subpoena Duces Tecum. If any person fails to comply with an investigator's written demand for information within thirty (30) days after receipt of the written demand, the investigator may apply to the Commission for a subpoena duces tecum by presenting to the Commission the investigator's written demand and the response of the person to whom the demand was made denying access to the information requested or, if no response was made, the investigator's affidavit that no response was received from the party to whom the demand for information was sent.

(4) Issuance of Subpoena Duces Tecum. To effectuate the purpose of the Act, upon a showing by an investigator that a person has not complied with a written demand for information relevant to the complaint which was transmitted to the person by certified mail, the Chairman of the Commission and the Commissioner shall acting jointly have the authority to sign and issue a subpoena requiring:

- (a) the production of evidence including but not limited to books, papers, records, correspondence or documents in the possession or under the control of the person subpoenaed;
- (b) access to evidence for purposes of examination and the right to copy; and
- (c) under Section 1-13-90(c) of the Act, attendance at hearings or at prehearing depositions.

### (5) Form and Content of Subpoenas.

(a) A subpoena issued by the Commission shall:

- (i) state the name and address of its issuer;
- (ii) briefly and clearly state the cause of issuance;
- (iii) identify the person to whom and the place, date and time at which the subpoena is returnable;
- (iv) identify the person or evidence subpoenaed with reasonable clarity, specificity and particularity to readily enable the person receiving the subpoena to identify the named person or evidence;
- (v) state the date and time access is requested if a subpoena duces tecum is issued.

(b) A subpoena shall only be returnable to a duly authorized investigator of the Commission of the Commissioner.

(c) Neither the complainant nor the respondent shall have the right to demand that an investigative subpoena be issued.

(6) Petitions to Revoke Subpoena. Within thirty (30) days after a subpoena is issued, the person served with the subpoena may petition the Commission by mail to revoke or modify the subpoena and shall serve a copy of the petition upon the investigator who originally demanded the information. The petition shall separately identify the portion of the subpoena with which the petitioner does not intend to comply and shall state with respect to each portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition and shall be designated "Attachment A". Within ten (10) days after receipt of the petition or as soon thereafter as practicable, the Commission shall review the petition and make a written determination upon the petition stating in detail the reasons for the Commission's determination and shall serve a copy of the determination upon the petitioner and the investigator demanding the information. When a petition to revoke a subpoena is served upon the Commission, no enforcement of a subpoena shall be sought until the Commissioner has made a determination on the petition and served the petitioner with the determination.

(7) Applications For Enforcement.

(a) Failure to Comply and Enforcement. A person who receives a subpoena may refuse to comply by failing to respond to the subpoena or by affirmatively stating that he/she will not respond; it is not necessary for the person to serve a petition to revoke the subpoena. If a person fails to comply with a subpoena, the Commission may, after thirty (30) days, apply to any state court of competent jurisdiction for an order requiring the person to comply with the subpoena as provided by the Act.

(b) Notice of Hearing. Any person against whom an order is sought shall be given at least four (4) days notice (excluding Saturdays, Sundays, and state holidays) of the time and place of the hearing, and may oppose the granting of the order.

(c) Requests for Additional Time. Except in extraordinary circumstances the Commission will not oppose requests for additional time not to exceed ten (10) days, to prepare for the hearing, if the request is made to the court and served upon the Commission at least two days before the scheduled hearing.

(d) Motions to Quash. As provided by the Act, any person may move before a court of competent jurisdiction for an order quashing a subpoena after giving the Commission four (4) days notice (excluding Saturdays, Sundays and state holidays).

(8) Interrogatories and Depositions.

(a) A party or witness may be required to answer written interrogatories relevant to a complaint under investigation under Section 1-13-90(c) of the Act at any time after such complaint is served.

(b) At least ten (10) days written notice (excluding Saturdays, Sundays and state holidays) shall be furnished to any party or witness sought to be deposed.

(c) The scope of discovery shall be governed by the relevance to the content of the complaint under investigation as described in Subsection 65-3A(5) of these Regulations.

(9) Petitions to Revoke Interrogatories and Depositions. If a person refuses to have his/her deposition taken or refuses to answer interrogatories, the person may petition to revoke the notice to take deposition or revoke the interrogatories within five (5) days after receipt of the notice to take deposition or within thirty (30) days after receipt of interrogatories. The petition shall be mailed to the Commission and shall be served upon the investigator who originally demanded the information. The petition shall separately identify each portion of the interrogatories with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the notice to take deposition or the interrogatories, as the case may be, shall be attached to the petition and designated as "Attachment A". Within five (5) days after receipt of the petition or as soon thereafter as practicable, the Commission shall make a determination upon the petition stating in detail the reasons for its determination and shall serve a copy of its determination upon the petitioner. When a petition to revoke is served upon the Commission, no enforcement of a notice to take deposition or interrogatories shall be sought until the Commission has made its determination on the petition and served the petitioner.

(10) Applications for Enforcement.

(a) Failure to Comply and Enforcement. A person who receives interrogatories or a notice to take deposition may refuse to comply by failing to respond or by affirmatively stating that he/she will not respond; it is not necessary for the person to serve a petition to revoke. If a person fails to comply with the notice to take deposition, the Commission may after ten (10) days apply to any state court of competent jurisdiction for an order requiring the person to comply as required by the Act. If a person fails to answer interrogatories the Commission may after thirty (30) days apply to any state court of competent jurisdiction for an order requiring the person to answer the interrogatories as provided by the Act.

(b) Notice of Hearing. Any person against whom an order is sought shall be given at least four (4) days notice (excluding Saturdays, Sundays and state holidays) of the time and place of the hearing, and may oppose the granting of the order.

(c) Requests for Additional Time. Except in extraordinary circumstances, the Commission will not oppose requests for additional time not to exceed ten (10) days to prepare for the hearing if the requests are made to the court and served upon the Commission at least two days before the scheduled hearing.

(d) Motions to Quash. Any person may move before a court of competent jurisdiction for an order quashing a motion to take depositions or interrogatories after giving the Commission four (4) days notice (excluding Saturdays, Sundays and state holidays).

(11) Confidentiality.

(a) Public Access to Commission Files or Information Gathered During an Investigation. As provided in Sections 1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered during an investigation conducted under Section 1-13-90 of the Act, shall not be made public by the Commission, its officers or employees, unless and until that information is offered or received into evidence at a Commission hearing or court proceeding brought in accordance with the Act. In view of the prohibitions against making information public contained in Sections 1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered by the Commission during investigations and internal memoranda assessing evidence, discussing complaints or recommending action on complaints shall not be deemed "public records" within the meaning of the Code of Laws of South Carolina § 30-3-20. The provisions of this Subsection apply whether the Commission's investigative file is open for an ongoing investigation or closed after a matter is completely concluded.

(b) Public Access to Final Opinions and Orders and Determinations. The public shall have access to the Commission's final opinion and order concerning a complaint under Section 1-13-90(c) of the Act or the Commission's determination on whether to dismiss a complaint or sue in the state circuit court under Section 1-13-90(d) of the Act.

(c) Commission Requests for Information from Investigators. If the Commission requires reports on investigations or on the progress of investigations, the investigator's report shall be given to the Commission while the Commission sits in executive session with member of the public excluded.

(d) Access to Information by Complainant and Respondent.

(i) Information Provided by the Parties Themselves. The complainant may at all times have access to any information which the complainant has furnished the Commission. The respondent may at all times have access to any information which the respondent has furnished the Commission. However, neither the complainant nor the respondent shall have information furnished by the other party, except that this Subsection does not apply to disclosure to the parties or their attorneys where the disclosure is limited to matters necessary for determining appropriate relief and/or negotiating settlements or making conciliation offers and except that this Subsection does not apply to the respondent's access to Commission files after a complaint against the respondent has been served as provided in subitem (ii), following.

(ii) Information Available to a Respondent before a Hearing or Court Procedure. If an action is brought against a respondent in accordance with the Act, either before the Commission pursuant to Section 1-13-90(c) of the Act or in a court of competent jurisdiction pursuant to Sections 1-13-90(c) and (d) of the Act, the respondent shall from the time the complaint is served be granted access to the investigative file of the Commission which shall include access to

statements, affidavits or depositions of the complainant and complainant's witnesses, whether or not the complainant and the complainant's witnesses are employees of the respondent at the time the request for access is made. The respondent shall also have access to all other facts and data gathered by the Commission during its investigation, provided however that the respondent shall not have access to deliberative memoranda, working papers, drafts and other work products of the Commission relating to a complaint and further provided that deletions may be made where necessary to protect the personal privacy of an affiant or an individual named in a document to insure the anonymity of confidential sources or information, and to protect the confidentiality of trade secrets, confidential financial information and the like.

(iii) Copy of the Complaint. A copy of the complaint will be served in all cases upon the respondent unless a complaint received pursuant to a federal contract expressly requires that the original complaint not be served. In the event that a copy of the complaint is not provided, the respondent shall be served with a notice of the complaint within ten (10) days of receipt. The notice of complaint shall include the place, circumstances and identity of the person filing the complaint, a description of the violations of the Act alleged to have been committed by the respondent and the date of the alleged violation.

(e) Reports and Compilations. The Commission may publish abstracts of data derived from its closed investigative files in a form which does not reveal the identity of the parties, trade secrets, financial information or competitive commercial information or processes.

(f) Sharing Information Between Agencies. The Commission shall not provide information to any state or federal agency which does not have written regulations providing essentially the same protection against unauthorized disclosure as provided in these regulations.

#### **65-4. Preliminary or Temporary Relief.**

As provided by Section 1-13-70(s) of the Act, the Commission may determine on the basis of an investigation that there is good cause to believe that prompt judicial action is necessary to prevent substantial and irreparable harm prohibited by the Act. In such event, the Commissioner may institute appropriate action in a court of competent jurisdiction to obtain temporary or preliminary injunctive relief in accordance with the procedural rules and substantive laws applicable in the State courts of South Carolina.

#### **65-5. Conference, Conciliation and Persuasion.**

A. Negotiated (No-Fault) Settlement. Before a reasonable cause determination is made, the Commission may encourage the parties to settle the complaint on terms that are mutually agreeable to them. If the respondent makes any offer of settlement, the Commission will present the complainant with the offer. The complainant may accept the offer or decline it. In either case, the Commission will inform the respondent of the complainant's decision. If the respondent and charging party agree on a settlement, the Commission shall agree to accept the settlement and shall take no action on the complaint. During no-fault settlement negotiations, the Commission shall suspend investigative efforts and give the parties a reasonable time to reach a settlement. Negotiated settlements shall note that the Commission has made no judgment on the merits of the complaint. In the alternative, the Commission may facilitate a settlement between the complainant and the respondent by permitting withdrawal of the complaint pursuant to 65-21 above.

##### **B. Conciliation Prior to Issuance of a Determination.**

(1) Prior to the issuance of a determination as to reasonable cause, the Commission shall encourage the parties to settle the complaint on terms that are mutually agreeable to the parties involved. The Commission shall limit its undertaking in such settlements and note that the Commission has made no judgment on the merits of the complaint. Such an agreement shall not affect the processing of any other complaint, including, but not limited to, the allegations of a complaint filed by another complainant which are like or related to the individual allegations settled.

(2) In the alternative, the Commission may facilitate a settlement between the person claiming to be aggrieved and the respondent by permitting withdrawal of the complaint pursuant to Section 65-21 above.

##### **C. Conciliation After Issuance of a Determination.**



(1) Where the Commission determines that there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring, it shall endeavor to eliminate such practice by informal methods of conference, conciliation, and persuasion. In conciliating a case in which a determination of reasonable cause has been made, the Commission shall attempt to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide mutually acceptable relief. Where such conciliation attempts are successful, the terms of the conciliation agreement shall be reduced to writing and shall be signed by the Commission's designated representative and the parties. Such conciliation agreement may include a non-admissions clause wherein respondent denies that it has violated the Act. A copy of the signed agreement shall be sent to the respondent and the person claiming to be aggrieved who are signatories thereto.

(2) Proof of compliance with the terms of the conciliation agreement shall be obtained by the Commission before the case is closed.

(3) As provided in the Act, no conciliation agreement in which a state agency or department or local subdivision of a state agency or department is the respondent shall be an effective resolution of the complaint unless the supervisory commission member shall have reviewed and approved the terms thereof.

(4) Where the Commission is unable to obtain voluntary compliance as provided by the Act and it determines that further efforts to do so would be futile or non-productive, it shall so notify the parties in writing.

(5) Nothing that is said or done during and as part of the informal endeavors of the Commission to eliminate unlawful employment practices by informal methods of conference, conciliation, and persuasion may be made a matter of public information by the Commission, its officers or employees, or used as evidence in subsequent proceedings without the written consent of the persons concerned. This provision does not apply to such disclosures to the representatives of federal, state or local agencies as may be appropriate or necessary to the carrying out of the Commission's functions under the Act: provided, however, that the Commission may refuse to make disclosures to any such agency which does not maintain the confidentiality of such endeavors in accord with this Section or in any circumstances where the disclosures will not serve the purposes of the effective enforcement of the Act.

## **65-6. Reasonable Cause Determination: Procedure and Authority.**

A. Where a complaint has not been settled, conciliated, withdrawn or dismissed, the Commission shall, after making investigative efforts, determine whether reasonable cause exists to believe that the Act has been violated. The reasonable cause determination shall be based on, and limited to, evidence obtained by the Commission and shall not make any judgment on or address the merits of allegations not investigated by the Commission.

B. The Commission shall provide prompt notification of its determination under R. 65-6A to the complainant and the respondent.

## **65-7. Reconsideration of Order of Dismissal or Order to Initiate Suit.**

A. Within ten (10) days after receipt of the Commissioner's order to initiate suit or to dismiss the complaint made pursuant to Sections 1-13-90(c)(5) or 1-13-90(d)(4) of the Act, the complainant or respondent may file with the Commissioner an application for reconsideration of the order.

B. The application for reconsideration of dismissal shall be in writing, stating specifically the grounds on which it is based.

C. Upon receipt of an application for reconsideration, the Commissioner shall review the file with the staff legal counsel and determine whether there is adequate cause shown, under the standards of the S. C. Administrative Procedures Act, to reconsider the dismissal. If no adequate cause is shown, reconsideration shall be denied in writing. If adequate cause is shown, the Commissioner shall immediately notify both parties and designate a different staff member to conduct a new investigation. If the respondent is a State agency or department or local subdivision of a State agency or department, the Chairman of the Commission or upon his request the Commissioner shall designate a different member of the Commission to direct the new investigation.

D. The investigator shall within ten (10) days of his designation by the Commissioner make a new determination of whether there is reasonable cause to believe that the respondent has engaged in an unlawful practice.

E. Notice of a request for reconsideration and the resolution of such reconsideration shall be provided to all parties in the same manner as provided for notice of the filing and determination of complaints.

## **65–8. Procedure for Hearing as Provided by Section 1–13–90(c) of the Act.**

### A. Hearings.

(1) After a finding of reasonable cause to credit the allegations of the complaint and if attempts to eliminate or otherwise resolve the alleged unlawful employment practice fail, the results of the investigation shall be reported along with the recommendation on scheduling a hearing to the supervisory commission member.

(2) The Chairman shall thereafter appoint three (3) members of the Commission to serve as hearing commissioners. The Chairman shall appoint one of the three as chief hearing commissioner. No Commission member shall be appointed as a hearing commissioner for a case in which he/she served as the supervisory commission member.

### B. Notice of Hearing. The notice of hearing shall include:

- (1) a statement of the time, place and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular section of the statutes and rules involved;
- (4) a short and plain statement of the matters asserted; and

(5) a statement notifying the respondent of its right to be represented by an attorney and that failure to answer the complaint will result in default.

### C. Service of the Notice of Hearing.

(1) The supervisory commission member shall within ten (10) days after receiving the recommendation of the investigator serve the notice of hearing and the complaint by registered or certified mail or by personal delivery on the respondent at least thirty (30) days before the date of the hearing, and the complainant, hearing commissioners and Attorney General shall be furnished a copy of the notice of hearing and complaint, as amended.

(2) If the respondent is represented by an attorney, service of the notice of hearing and the complaint on the respondent's attorney will be deemed proper service on the respondent.

### D. Place of Hearing.

The place of hearing shall be at the Commission office at 1026 Sumter Street, Suite 101, Columbia South Carolina 29201, or such other place as the hearing commissioners may designate.

### E. Complaint.

(1) The Commission shall prepare a formal complaint that must accompany the notice of hearing. The formal complaint shall be prepared in a form that complies with the rules governing complaints in the courts of law in this State. All complainants filed under this section shall be verified by the complainant.

(2) Contents. The complaint shall state clearly and concisely each allegation asserted. The complaint must be in writing and signed by the supervisory commission member.

### F. Answer.

(1) The respondent shall answer the complaint or amended complaint that is served on it with the notice of hearing. The answer shall be in writing and signed by the respondent or its attorney.

(2) Contents. The answer shall state clearly and concisely the defenses to each claim asserted and shall admit or deny the allegations in the complaint. The answer shall contain the mailing address of the respondent or its attorney.

#### (3) Service of the Answer.

- (a) No later than twenty (20) days after service of the complaint, the respondent shall serve two
- (2) copies of the answer on the Commissioner at the Commission office at 1026 Sumter Street,

Suite 101 Columbia, South Carolina, 29201, and one (1) copy of the answer on the complainant. Extensions of time for filing the answer may be granted by the Commissioner upon good cause shown, provided that no request for an extension of time shall be granted unless such request is received by the Commission at least three (3) days prior to the date upon which the answer is otherwise due.

(b) The answer shall be served upon the Commissioner and the complaint by registered or certified mail or by personal delivery.

(4) Failure to Deny or Admit. Failure to deny or admit an allegation in the complaint, unless the respondent shall state in the answer that it is without knowledge or information sufficient to form a belief, shall be deemed an admission of such allegation.

(5) Defense and New Matter. Any allegation of new matter contained in the answer shall be deemed denied without the necessity of a reply.

(6) Amendment of Answer. The answer or any part thereof may be amended once as a matter of right at any time before the hearing and thereafter in the discretion of the chief hearing commissioner. The amended answer shall be served in the same manner as the original answer.

(7) Default. Upon application, the chief hearing commissioner may, for good cause shown, set aside the default of a respondent to answer a complaint in a timely manner. If a default is set aside pursuant to this subsection, the respondent shall file an answer within the time prescribed by the chief hearing commissioner, but in no case later than ten (10) days from the date on which the default is set aside.

#### G. Pre-Hearing Discovery.

(1) Either party may cause to be taken the depositions of witnesses within or without the State. Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas of this State; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

(2) The chief hearing commissioner shall on its own behalf or, upon request, on behalf of any other party to the case, issue in the name of the Commission subpoenas for the attendance and testimony of witnesses and the production and examination of books, papers and records.

(3) The court of common pleas shall, on application of the Commission, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall have the power to punish as for contempt of court, by a fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers and records as may have been required in any subpoena issued by the Commission. The Commission may issue to the sheriff of the county in which any hearing is held a warrant requiring him to produce at the hearing any witness who shall have ignored or failed to comply with any subpoena issued by the Commission and duly served upon such witness. Such a warrant shall authorize the sheriff to arrest and produce at the hearing such witness, and it shall be his duty to do so; but the failure of a witness to so appear in response to any such subpoena may be excused on the same grounds as provided by law in the courts of this State as to the attendance of witnesses and jurors.

#### H. Hearing Procedures.

(1) Powers and Duties of the Chief Hearing Commissioner. The chief hearing commissioner shall have full authority to control procedure of a hearing, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. The chief hearing commissioner shall make full inquiry into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. The chief hearing commissioner may call and examine witnesses, direct the production of papers or documents, and introduce the same into the record of the proceedings.

(2) Appearances. The complainant or the party on whose behalf the complaint was filed shall appear at the hearing, with or without counsel, and may submit testimony, examine and cross-examine witnesses and present evidence. If the complainant requests to be represented by his/her own attorney at the hearing, he/she may file a notice of appearance stating the wishes to be

represented by his/her own attorney and including the name and address of his/her attorney no later than five (5) days before the hearing. The respondent may appear at the hearing with or without counsel and if an answer has been filed may examine and cross-examine witnesses, submit testimony and present evidence. The Attorney General and, in the discretion of the chief hearing commissioner, any other person may intervene, examine and cross-examine witnesses, submit testimony and present evidence.

(3) Conduct of Hearing.

(a) The case in support of the complaint shall be presented before the hearing commissioners by a Commission attorney or by the complainant or his attorney.

(b) The case in support of the respondent shall be presented before the hearing commissioners by the respondent or its attorney.

(c) Evidentiary matters.

(i) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the court of common pleas shall be followed. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(ii) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare their copy with the original;

(iii) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material notice including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(iv) No testimony or evidence shall be given or received at any hearing concerning any offers or counter-offers made in an effort to conciliate any alleged unlawful employment practice.

(v) All testimony shall be given under oath or affirmation and records of the proceedings shall be made and kept.

(vi) Any party may conduct cross-examination.

(d) Joining Complaints. Two or more proceedings under the Act involving the same respondent may be joined by the hearing commissioners in their discretion if such joinder does not deprive any party of any right otherwise available under this section.

(e) Stipulations. The parties may file stipulations as to facts, in which event the same shall be numbered and used at the hearing. In addition, oral stipulations may be made at the hearing and shall be included in the record of the hearing. Such stipulations shall not preclude the offering of additional evidence by any party. However, a stipulation may be withdrawn by any party in the event evidence is presented at the hearing which is inconsistent with the stipulation.

(f) Motions and Objections. Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated in writing or orally and shall be included in the record of the hearing.

(g) Oral Arguments and Briefs. The chief hearing commissioner shall permit the parties or their attorneys to argue orally before the hearing commissioners and to file briefs within such time limits as the chief hearing commissioner may establish. Oral arguments shall not be included in the record unless the chief hearing commissioner shall so direct or unless requested by any party.

(h) Sequestration of Witnesses. Witnesses shall not be in the hearing room except when testifying.

(i) Public Hearings. All Commission hearings shall be open to the public unless the chief hearing commissioner for good cause directs a closed hearing.

(j) Waiver of Hearing. With the consent in writing of the respondent and notice to all parties, an order may be entered without holding any hearing or the making of any findings of fact or conclusions of law.

(k) Continuation and Adjournments. The hearing commissioners may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by appropriate notice to all parties.

(l) Improper Conduct. The chief commissioner may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct before the hearing commissioners.

(4) Record of the Hearing. The record of the hearing shall include:

- (a) all pleadings, motions, intermediate rulings and depositions;
- (b) all evidence received or considered;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections and rulings thereon;
- (e) proposed findings and exceptions; and
- (f) any decision, opinion or report by the presiding hearing commissioner.

#### I. Hearing Commissioner's Order.

(1) Issuance of Order.

(a) If upon all the evidence, the hearing commissioners shall find that a respondent had engaged in any unlawful employment practice, the hearing commissioners shall state their findings of fact, conclusions of law and shall make a recommendation on the basis of which the Commission may issue and cause to be delivered to respondent an order requiring such respondent to cease and desist from such unlawful employment practice and to take such affirmative action as in the judgment of the Commission will carry out the purposes of the Act. Affirmative action orders may include the remedies enumerated in the Act.

(b) If upon all the evidence, the hearing commissioners shall find that a respondent has not engaged in any unlawful employment practice, the hearing commissioners shall state their findings of fact and conclusions of law and make a recommendation on the basis of which the Commission may issue an order dismissing the complaint.

(2) Contents of Order. An order of the Commission shall be in writing or stated in the record and shall separately set forth the findings of fact and conclusions of law of the hearing commissioners, the Commission's final decision, and an opinion containing the reasons for said decision. Such decisions as to whether an unlawful employment practice occurred shall be reached by a majority vote of the hearing commissioners. Concurring and dissenting opinions of individual hearing commissioners shall be included in the order.

(3) Filing of Order.

(a) The parties shall be notified and provided a copy of the order either by personal delivery or by registered or certified mail.

(b) All orders shall be filed in the Commission office at 1026 Sumter Street, Suite 101, Columbia South Carolina 29201 and copy of all orders shall be provided to the Attorney General.

#### J. Reconsideration of Order.

(1) Request for Reconsideration. After a hearing and the issuance of a final order, the hearing commissioners may, upon their own motion or upon application of any party or intervenor for good cause shown or whenever justice so requires or where an order of determination or decision was made upon default of a party affected thereby, reconsider any closed proceeding upon notice to all parties, intervenors and the Attorney General, and take such action as it may deem necessary.

(2) Time Limitation for Filing Reconsideration Request. No application for reconsideration shall be considered unless filed within fourteen (14) days from the date the order of the Commission was rendered.

K. Transcript of the Record. The Commission's copy of the written transcript of the record shall be available during the regular office hours of the Commission to the complainant and respondent for

examination without cost, for the purpose of appeal to the circuit court from the order of the Commission. The Commission's copy of the testimony shall, in the discretion of the Commissioner or the Chairman, also be available to intervenors and other persons, for such purposes to such an extent and for such fee as the Commissioner or the Chairman may determine.

#### L. Judicial Review.

(1) Who May Apply. A complainant or respondent aggrieved by an order of the Commission may seek judicial review of the order.

(2) Forum. A proceeding for judicial review may be brought within thirty (30) days of issuance of the order of the Commission in the court of common pleas in the county in which the alleged unlawful practice which is the subject of the order occurs or the county in which the hearing was conducted.

#### (3) Procedures.

(a) A copy of the petition for review shall be served on the Commission and all parties of record.

(b) If, before the date set for the circuit court hearing of the petition, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Commission, the court may order that the additional evidence be taken before the Commission upon conditions determined by the court. The Commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(c) Within thirty (30) days of service of the petition for review, or, within further time allowed by the court, the Commission shall transmit to the reviewing court the original or a certified copy of the entire record of the case. By stipulation of all parties to the review proceedings, the Commission may submit to the court a verified list of all documents and other materials composing the official record in place of the record itself. In such cases, the Commission shall submit to the court those parts of the record designated by any party to the review.

(d) The review shall be conducted by the court without a jury and shall be confined to matters in the record. In cases of alleged irregularities in procedure before the Commission, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

#### M. Petitions for Enforcement.

(1) After thirty (30) days from the date the Commission order is issued, the Commission may file a petition for enforcement of its order in the court of common pleas of the county in which the hearing occurred or wherein any party subject to the order resides or transacts business if the Commission believes judicial enforcement is necessary to ensure compliance with its order.

(2) A petition for review filed pursuant to Section L above shall operate as a supersedeas for thirty (30) days only, unless otherwise ordered by the court, and thereafter the respondent shall be required to comply with the order of the Commission until the appeal is decided.

(3) If no request for review is filed, the Commission's petition for enforcement shall be granted upon a showing that a copy of the petition was served upon the party subject to the provisions of the Commission's order.

**HISTORY: Amended by State Register Volume 40, Issue No. 9, eff September 23, 2016 (errata).**

## **65-9. Procedure for the Institution of Civil Actions as Provided in Section 1-13-90(d) of the Act.**

#### A. Civil Actions by the Commission.

(1) If within thirty (30) days after issuance of a determination finding reasonable cause to believe that a respondent named in a complaint has violated the Act, the Commission is unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring an action in equity against the respondent in circuit courts, provided however, that the respondent named in the complaint is not a state agency or department or a local subdivision of a state agency or department; and provided, further, that the Commission may seek preliminary or temporary injunctive relief pursuant to Section 1-13070(s) of the Act according to the procedures set

forth in Section 65-4 of these Regulations and provided that reasonable cause has been shown as specified in Section 65-4.

(2) The Commission must bring an action in the circuit court within one year of the alleged violation, unless the time for bringing the action is extended by written consent of the respondent.

(3) If, after a thorough investigation, the Commission determines that the respondent has violated the terms of a conciliation agreement, the Commission may bring an action against the respondent in the circuit court within one year from the date of the alleged violation, except that the period may be extended by written consent of the respondent.

(4) No action may be brought by the Commission if the complainant or another party has filed an action in state or federal court which alleges essentially the same facts and seeks essentially the same relief for the same complainant. If the Commission brings a civil action against a respondent and later determines that another action in state or federal court has been filed, the Commission shall promptly dismiss its action.

#### B. Notice of Right to Sue: Procedure and Authority.

##### (1) Issuance of Right to Sue upon Request.

(a) When a complaint requests in writing that a notice of right to sue be issued and the complaint to which the request relates is filed against a respondent other than a state agency or department or local subdivision of a state agency or department, the Commission shall promptly issue such notice as described in (3) below and provide copies to all parties, at any time after the expiration of one hundred eighty (180) days from the date of the filing of the complaint with the Commission, unless otherwise provided in Section 65-2J hereof.

(b) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued, and the complaint to which the request relates is filed against a respondent other than a state agency or department or local subdivision of a state agency or department, the Commission may issue such notice as described in (3) below and shall provide copies to all parties, at any time before the expiration of one hundred eighty (180) days from the date of filing the complaint with the Commission provided that the Commissioner has determined that it is probable the Commission will be unable to complete its administrative processing of the complaint within one hundred eighty (180) days from the filing of the complaint and has attached a written certificate to that effect. No right to sue letter will be issued before the expiration of one hundred eighty (180) days from the date of filing of the complaint when it is probable that the Commission will be able to complete its administrative processing within the one hundred eighty (180) day period.

(c) Issuance of a notice of right to sue shall terminate further processing of the complaint.

##### (2) Issuance of Notice of Right to Sue Following Commission Disposition of a Complaint.

(a) Where the Commission has found reasonable cause to believe that the Act has been violated, has been unable to obtain voluntary compliance with the Act, and where the Commission has decided not to bring a civil action against the respondent, the Commission will issue a notice of right to sue on the complaint as described in (3) below to the person claiming to be aggrieved and provide a copy thereof to all parties.

(b) Where the Commission has entered into a conciliation agreement to which the person claiming to be aggrieved is not a party, the Commission shall issue a notice of right to sue on the complaint to the person claiming to be aggrieved.

(c) Where the Commission has dismissed a complaint pursuant to Section 65-2J, it shall issue a notice of right to sue as described in (3) below to the person claiming to be aggrieved and provide a copy thereof to all parties.

##### (3) Content of Notice of Right to Sue. The notice of right to sue shall include:

(a) authorization to the complainant to bring a civil action pursuant to Section 1-13-90(d) of the Act within ninety (90) days from issuance of such authorization by the Commission to the complainant, his/her attorney of record, or, in those instances covered by 65-2J(2)(d) hereof, from the date of mailing to the complainant's last known address;

(b) advice concerning the institution of such civil action by the complainant, where appropriate;

(c) a copy of the complaint;

(d) the Commission's decision, determination, or dismissal as appropriate.

### **65-10. Certification.**

The Chairman or the Commissioner is authorized and empowered to certify all documents or records which are a part of the files and records of the Commission.

### **65-11. Availability of Rules.**

The rules and regulations of the Commission and any amendments, additions, or modifications thereof, shall be available to the public at the office of the Commission in Columbia or at any other Commission office printed in the State Register as provided in Section 1-23-10 et seq. of the Act, as amended.

### **65-12. Construction of Rules and Pleadings.**

A. These rules and regulations shall be liberally constructed to effectuate the purpose and provisions of Chapter 13 of Title I of the 1976 Code and the policies of the South Carolina Human Affairs Commission.

B. All pleadings shall be liberally construed with a view to effecting justice between parties, and the Commission and hearing commissioners will, at every stage of any proceedings, disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of the parties.

### **65-13. General Investigations.**

The Commission may, in its discretion, conduct such general investigations into the problems of discrimination as it deems necessary or desirable and may study and report upon the problems of the effect of discrimination on any field of human relationships regarding discrimination due to race, religion, color, sex, age, or national origin.

### **65-20. Submission of Equal Employment Opportunity Reports.**

Each State Agency, to assure its practice of equal employment, shall submit an Equal Employment Opportunity Report to the State Human Affairs Commission. Supplementary reports pursuant to the said Report shall be submitted to the State Human Affairs Commission on a regular basis as and when requested by the State Human Affairs Commission.

### **65-21. Equal Employment Officer to be Designated.**

Each State Agency head shall designate an Equal Employment Officer. Said Equal Employment Officer shall be responsible for implementation and administration of the required Equal Employment Opportunity Report and shall be responsible for any and all reports due to the State Human Affairs Commission under said Report. The name of each State Agency's Equal Employment Opportunity Officer shall be submitted to the State Human Affairs Commission.

### **65-22. Employment Records to be Retained for Six Months.**

Each State Agency, department and local subdivision thereof shall preserve and retain any personnel or employment record made or kept by them, including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, for a period of six (6) months from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of six (6) months from the date of termination. However, in no event is the six-month record keeping requirement to be construed or interpreted as permitting the destruction of personnel records, after the expiration of the six-month period, whenever a charge of discrimination has been filed and currently pending against a State Agency, department or local subdivision thereof.

### **65-23. Preservation of Records in Event of Charge of Discrimination.**

When a charge of discrimination has been filed or an action brought by the Commission, the respondent State Agency, department or local subdivision, shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action.



## **65–24. Notices to be Posted.**

Each State Agency, or department of the State, and local subdivision thereof, shall post, keep posted, and maintained in conspicuous places upon their premises where notices to employees and applicants for employment are customarily posted a notice to be prepared and distributed by the Commission setting forth excerpts from and/or summaries of, pertinent provisions of the Human Affairs Law, and information pertinent to the filing of a complaint.

## **65–30. Guidelines Established.**

a. To deny a pregnant employee a leave of absence for maternity purposes shall be an unfair discriminatory practice within the meaning of § 1-13-80(a)(1) of the South Carolina Human Affairs Law.

b. All maternity leave benefits shall apply to both married and unmarried pregnant employees.

c. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or temporary disability insurance or sick leave plan, formal and informal, shall be applied to disability due to pregnancy, miscarriage, abortion, childbirth, and recovery therefrom on the same terms and conditions as they are applied to other temporary disabilities.

d. Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Human Affairs Law if it has a disparate impact on employees of one sex and is not justified by business necessity.

## **65–40. Minimum Requirements.**

Any local Community Relations Council wishing to be officially recognized by the State Human Affairs Commission must meet the following minimum requirements:

1) Each council must be composed of at least five (5) or more citizens organized for the purpose of promoting harmony, bettering human affairs, and encouraging fair treatment for, and fostering mutual understanding and respect among, all local citizens.

2) Each council should have the written endorsement of the mayor, city or county council, announcing support for the council's programs and objectives.

3) Any local council which is unable to obtain the express endorsement of its local government must have a membership of at least fifteen (15) or more local citizens.

4) Each council's membership should be representative of the community at large with a fair representation of all racial and ethnic groups, and a fair representation by sex.

5) Each council wishing to be recognized by the State Human Affairs Commission shall send to the Commission's Community Relations Division a copy of the council's bylaws or other documents creating the council, wherein the purpose of the council is clearly set forth; a copy of the written endorsement of the mayor, city or county council; a list of the council's executive officers; and a statement setting forth the racial and sexual composition of the council's membership.

# **Subchapter 2**

## **Fair Housing**

### **ARTICLE 1**

#### **DISCRIMINATORY CONDUCT**

## **65–210. General.**

A. Authority.

This regulation is issued under the authority of the South Carolina Human Affairs Commission to administer and enforce the South Carolina Fair Housing Law.

B. Scope.

(1) It is the policy of the State of South Carolina to provide, within constitutional limitations, for fair housing throughout the State of South Carolina. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate related transactions.

(2) This rule provides the Commission's interpretation of the coverage of the South Carolina Fair Housing Law regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate related transactions.

(3) Nothing in this rule relieves persons participating in a Federal or Federally assisted or State or State assisted program or activity from other requirements applicable to buildings and dwellings.

#### C. Exemptions.

(1) This rule does not:

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

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

(c) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or

(d) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined by law.

(2) Nothing in this rule regarding discrimination based on familial status applies with respect to housing for older persons as defined in the South Carolina Fair Housing Law.

(3) Nothing in this rule, other than the prohibitions against discriminatory advertising, applies to:

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

(i) The owner does not own or have any interest in more than three single family houses at any one time.

(ii) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this rule applies to only one such sale in any twenty-four month period.

(b) 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 or her residence.

#### D. Definitions.

(1) All terms defined in the "ACT" used herein have the same meanings as set forth in the definitions in the Act. These terms are:

(a) Commission

(b) Commissioner

(c) Covered multifamily dwellings

(d) Discriminatory housing practice

(e) Dwelling

(f) Familial status

- (g) Handicap
  - (h) Housing for older persons
  - (i) Person
  - (j) To rent
- (2) Other terms used in these regulations:
- (a) “Act” means the “South Carolina Fair Housing Law” appearing as Chapter 21 to Title 31 of the 1976 Code, as amended.
  - (b) “Chairman” means the Chairman of the South Carolina Human Affairs Commission.
  - (c) “Complaint” means a written charge alleging a discriminatory housing practice in compliance with the Act and R.65-220 of these Regulations, or with the Department of Housing and Urban Development and referred to the Commission pursuant to Section 810(f) of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 [42 U.S.C. 3600–3620].
  - (d) “Panel” means the members of the Commission designated by the Chairman to conduct a hearing.
  - (e) “Investigator” means an employed member of the Commission staff designated and assigned by the Commissioner to investigate the allegations of a complaint and to make a recommendation to the Commissioner of whether there is reasonable cause to believe that a discriminatory housing practice has occurred, is occurring, or is about to occur.
  - (f) Family” includes single individual.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

## **65–211. Discriminatory Housing Practices.**

### **A. Real Estate practices prohibited.**

(1) This rule provides the Commission’s interpretation of conduct that is unlawful housing discrimination under the South Carolina Fair Housing Law. In general, the prohibited actions are set forth under sections of this Rule which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under other sections in the Rule.

(2) Prohibited actions under this section include, but are not limited to:

- (a) Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin.
- (b) Refusing to sell or rent a dwelling to, or not negotiate for the sale or rental of a dwelling with any person because of race, color, religion, sex, handicap, familial status, or national origin.
- (c) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.
- (d) Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin.
- (e) Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant’s guest.
- (f) Using different provisions in leases or contracts of sale, terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, or national origin.
- (g) Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status or national origin.
- (h) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

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

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

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

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

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

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

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

(p) Employing codes or other devices to segregate or reject applicants, purchasers or renters or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular, race, color, religion, sex, handicap, familial status, or national origin.

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

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

#### B. Discriminatory advertisements, statements and notices.

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

(2) Discriminatory notices, statements and advertisements include, but are not limited to:

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

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

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

(d) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

#### C. Discriminatory representations on the availability of dwellings.

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

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

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

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

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

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

#### D. Blockbusting.

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

(2) Prohibited actions under this section include, but are not limited to:

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

(b) Encouraging for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

#### E. Discrimination in the provision of brokerage services.

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

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

(2) Denying or limiting benefits accruing to members in a real estate broker's organization because of race, color, religion, sex, handicap, familial status or national origin.

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

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

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

## **65–213. Discrimination in Residential Real Estate Related Transactions.**

#### A. Discriminatory practices in residential real estate related transactions.

(1) This rule provides the Commission's interpretation of the conduct that is unlawful housing discrimination under the South Carolina Fair Housing Law.

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

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

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

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

C. Discrimination in the purchasing of loans.

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

(2) Unlawful conduct under this section includes, but is not limited to:

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

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

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

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

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

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

(2) Unlawful conduct under this section includes, but is not limited to:

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

(b) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status or national origin.

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

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

(2) For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate related transaction, whether the appraisal is oral or written, or

transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

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

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

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

## **65–215. Prohibition Against Discrimination Because of Handicap.**

### A. Purpose.

The purpose of this Rule is to effectuate the South Carolina Fair Housing Law.

### B. Definitions.

As used in this Rule:

(1) “Accessible” when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase “readily accessible to and usable by” is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is “accessible” within the meaning of this paragraph.

(2) “Accessible route” means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is an “accessible route”.

(3) “ANSI A117.1-1986” means the 1986 edition of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. Copies may be inspected at the South Carolina Human Affairs Commission, Columbia, South Carolina.

(4) “Building” means a structure, facility or portion thereof that contains or serves one or more dwelling units.

(5) “Building entrance on an accessible route” means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1-1986 or a comparable standard complies with the requirements of this paragraph.

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

(7) “Controlled substance” means any drug or other substance, or immediate precursor included in the definitions in Chapter 53, Article 3, South Carolina Code of Laws of 1976, as amended.

(8) “Covered multifamily dwellings” means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units.

(9) “Dwelling unit” means a single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the

dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

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

(11) "Exterior" means all areas of the premises outside of an individual dwelling unit.

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

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

(14) "Handicap" means with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. As used in this definition:

(a) "Physical or mental impairment" includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(iii) The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, intellectual disability, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

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

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

(d) "Is regarded as having an impairment" means:

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

(ii) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

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

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

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

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

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

C. General prohibitions against discrimination because of handicap.

(1) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(a) That buyer or renter;



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

(c) Any person associated with that person.

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

(a) That buyer or renter;

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

(c) Any person associated with that person.

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

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

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

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

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

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

(4) Nothing in this Rule requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

#### D. Reasonable modification of existing premises.

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

(2) A landlord may condition permission for a modification on the renter's providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

#### E. Reasonable accommodations.

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

#### F. Design and construction requirements.

Covered multifamily dwellings for first occupancy after March 31, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so

because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 if it is occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwelling is issued by a State, County or local government on or before January 13, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

**Code Commissioner's Note**

Pursuant to 2011 Act No. 47, § 14(B), the Code Commissioner substituted "intellectual disability" for "mental retardation" and "person with intellectual dis-

ability" or "persons with intellectual disability" for "mentally retarded".

## **65-217. Housing for Older Persons.**

### **A. Purpose.**

The purpose of this Rule is to effectuate the exemption in the South Carolina Fair Housing Law that relates to housing for older persons.

### **B. Exemption.**

(1) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of 65-217(C) or 65-217(D).

(2) Nothing in this Rule limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

### **C. State and Federal elderly housing programs.**

The provisions regarding familial status in this Rule shall not apply to housing intended for, and solely occupied by, persons sixty two years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on May 9, 1989 who are under sixty-two years of age, provided that all new occupants are persons sixty-two years of age or older.

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons sixty-two years of age or over.

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

### **D. Fifty-five or over housing.**

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

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

(b) It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this subsection the owner or manager of the housing facility must demonstrate through credible and objective evidence that the providing of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic areas of needed and desired

housing. The following factors, among others, are relevant in meeting the requirements of this subsection:

- (i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.
  - (ii) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.
  - (iii) The income range of the residents of the housing facility.
  - (iv) The demand for housing for older persons in the relevant geographic area.
  - (v) The range of housing choices for older persons within the relevant geographic area.
  - (vi) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this subsection.
  - (vii) The vacancy rate of the housing facility.
- (c) At least eighty percent of the units in the housing facility are occupied by at least one person fifty-five years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this subsection until twenty-five percent of the units in the facility are occupied; and
- (d) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph of this section:
- (i) The manner in which the housing facility is described to prospective residents;
  - (ii) The nature of any advertising designed to attract prospective residents;
  - (iii) Age verification procedures;
  - (iv) Lease provisions;
  - (v) Written rules and regulations;
  - (vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.
- (2) Housing satisfies the requirements of this section if:
- (a) At least eighty percent of the units are occupied by at least one person fifty five years of age or older;
  - (b) There are unoccupied units, provided that at least eighty percent of such units are reserved for occupancy by at least one person fifty five years of age or over;
  - (c) There are units occupied by employees of the housing (and family members residing in the same unit) who are under fifty five years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

### **65–219. Interference, Coercion or Intimidation.**

- (1) This Section provides the Commission's interpretation of the conduct that is unlawful under the South Carolina Fair Housing Law.
- (2) It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged enjoyment of, any right granted or protected by this section.
- (3) Conduct made unlawful under this section includes, but is not limited to, the following:

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

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

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

(d) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this section.

(e) Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Law.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

## ARTICLE 2

### FAIR HOUSING COMPLAINT PROCESSING

#### **65-220. Complaints.**

##### A. Submission of information.

The Commission will receive information concerning alleged discriminatory housing practices from any person. Where the information constitutes a complaint within the meaning of the Fair Housing Law and is furnished by an aggrieved person, it will be considered to be filed under 65-220(E). Where additional information is required for purposes of perfecting a complaint under the Fair Housing Law, the Commission will advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.

##### B. Who may file complaints.

Any aggrieved person may file a complaint no later than 180 days after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

##### C. Persons against whom complaints may be filed.

(1) A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

(2) A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope of his or her authority as an employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

##### D. Where to file complaints.

(a) Aggrieved persons may file complaints in person with, or by mail to: South Carolina Human Affairs Commission, Post Office Drawer 4490, Columbia, South Carolina 29240.

(b) Aggrieved persons may provide information to be contained in a complaint by telephone to the South Carolina Human Affairs Commission. The South Carolina Human Affairs Commission will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and affirmed as provided in 65-220(E).

##### E. Form and content of complaint.

(1) Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint. The signature and affirmation may be made at any time during the investigation. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct."

(2) The Commission may require complaints to be made on prescribed forms. Notwithstanding any requirement for use of a prescribed form, the South Carolina Human Affairs Commission will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the Fair Housing Law, as a Fair Housing Law complaint.

(3) Each complaint must contain substantially the following information:

(a) The name and address of the aggrieved person.

(b) The name and address of the respondent.

(c) A description and the address of the dwelling which is involved, if appropriate.

(d) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

#### F. Date of filing of complaint.

(1) A complaint is filed when it is received by the South Carolina Human Affairs Commission.

(2) The Commission may determine that a complaint is filed for the purpose of the 180 day period for the filing of complaints, upon the submission of written information (including information provided by telephone and reduced to writing by an employee of the South Carolina Human Affairs Commission) identifying the parties and describing generally the alleged discriminatory housing practice.

(3) Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely filed within 180 days of the last alleged occurrence of that practice.

#### G. Amendment of complaint.

Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to: amendments to cure technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

#### H. Service of notice on aggrieved person.

Upon the filing of a complaint, the Commission will notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice will:

(1) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing.

(2) Include a copy of the complaint.

(3) Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person.

(4) Advise the aggrieved person of his or her right to commence a civil action in an appropriate court, not later than one year after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this one year period excludes any time during which a proceeding is pending under this Rule with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement is pending.

#### I. Notification of respondent; jointure or additional or substitute respondents.

(1) Within ten days of the filing of a complaint or the filing of an amended complaint the Commission will serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in the complaint, but who is identified in the course of the investigation as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an

additional or substitute respondent by service of a notice on the person under this section within ten days of the identification.

(2)(a) The notice will identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint.

(b) The notice will state the date that the complaint was accepted for filing.

(c) The notice will advise the respondent of the time limits applicable to complaint processing and of the procedural rights and obligations of the respondent, including the opportunity to submit an answer to the complaint within ten days of the receipt of the notice.

(d) The notice will advise the respondent of the aggrieved person's right to commence a civil action in an appropriate Court, not later than one year after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this one year period excludes any time during which a proceeding is pending with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement is pending.

(e) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice will explain the basis for the Commission's belief that the joined person is properly joined as a respondent.

(f) The notice will advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation is a discriminatory housing practice that is prohibited by the Fair Housing Law.

#### J. Answer to complaint.

(1) The respondent may file an answer not later than ten days after receipt of the notice described in 65-220(1). The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed by the respondent. The affirmation must state: "I declare under penalty of perjury the foregoing is true and correct."

(2) An answer may be reasonably and fairly amended at any time.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

### **65-221. Referral of Complaints to State and Local Agencies.**

#### A. Notification and referral to substantially equivalent local agencies.

(1) Whenever a complaint alleges a discriminatory housing practice that is within the jurisdiction of a substantially equivalent local agency and the agency is certified or may accept referrals with regard to the alleged discriminatory housing practice, the Commission will notify the agency of the filing of the complaint and refer the complaint to the agency for further processing before the South Carolina Human Affairs Commission takes any action with respect to the complaint. The Commission will notify the local agency of the referral by certified mail.

(2) The Commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the referral under paragraph (1) of this section. The notice will advise the aggrieved person of the right to commence a civil action under the Fair Housing Law in an appropriate court, not later than one year after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this one year period excludes any time during which a proceeding is pending under this rule, with respect to a complaint based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under the Fair Housing Law is pending.

#### B. Cessation of action on referred complaints.

After a complaint is referred the Commission will take no further action with respect to the complaint except as provided in the Act.

#### C. Notification upon reactivation.

(1) Whenever a complaint referred to a local fair housing agency is reactivated, the Commission will notify the local agency, the aggrieved person and the respondent of the Commission's reactivation. The notification will be made by certified mail or personal service.

(2) The notification to the respondent and the aggrieved person will:

(a) Advise the aggrieved person and the respondent of the time limits applicable to complaint processing and the procedural rights and obligations of the aggrieved person and the respondent.

(b) State that the Human Affairs Commission will process the complaint under the Fair Housing Law.

(c) Advise the aggrieved person and the respondent of the aggrieved person's right to commence a civil action under the Fair Housing Law, in an appropriate court, no later than one year after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this one year period excludes any time during which a proceeding is pending with respect to a complaint or charge based on the alleged discriminatory housing practice. The notices will also state that the time period includes the time during which an action arising from a breach of conciliation agreement under the Fair Housing Law is pending.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

## **65-223. Investigation Procedures.**

### **A. Investigations.**

(1) Upon the filing of a complaint under 65-220, the Commission will initiate an investigation.

(2) The purposes of an investigation are:

(a) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

(b) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

(c) To develop factual data necessary for the Commission to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided by the Fair Housing Law.

### **B. Conduct of Investigation.**

(1) In conducting investigations under this Rule, the Commission will seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

(2) The Commission and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding except that the Commission shall have the power to issue subpoenas in support of the investigation or at the request of the respondent. Subpoenas must be approved by the Legal Counsel as to their legality before issuance.

### **C. Cooperation of Federal, State or local agencies.**

The Commission, in processing Fair Housing Law complaints, may seek the cooperation and utilize the services of Federal, State or local agencies, including any agency having regulatory or supervisory authority over financial institutions.

### **D. Completion of investigation.**

The investigation will remain open until the reasonable cause determination is made or a conciliation agreement is executed and approved. Unless it is impracticable to do so, the Commission will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Commission reactivates the complaint, within 100 days after service of the notice of reactivation). If the Commission is unable to complete the investigation within the 100 day period, the Commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

### **E. Final investigative report.**

(1) At the end of each investigation under this Rule, the Commission will prepare a final investigative report. The investigative report will contain:

(a) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses who request anonymity. The Commission, however, may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action under the Fair Housing Law.

(b) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent.

(c) A summary description of other pertinent records.

(d) A summary of witness statements; and

(e) Answers to interrogatories.

(2) A final investigative report may be amended at any time, if additional evidence is discovered.

(3) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in 65-225.F., the Commission will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of investigation, the Commission shall notify the aggrieved person and the respondent that the final investigation report is completed and will be provided upon request.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

## **65-225. Conciliation Procedures.**

### **A. Conciliation.**

(1) During the period beginning with the initial filing of a complaint and ending with the filing of complaint for hearing or dismissal, the Commission will, to the extent feasible, attempt to conciliate the complaint.

(2) In conciliating a complaint, the Commission will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence in the future.

(3) Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information can be observed, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.

### **B. Conciliation agreement.**

(1) The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in 65-225.C. The provisions that may be sought for the vindication of the public interest are described in 65-225.D.

(2) The agreement must be executed by the respondent and complainant. The agreement is subject to the approval of the Commissioner who will indicate approval by signing the agreement. The Commissioner will approve an agreement and will execute the agreement only if:

(a) The complainant and the respondent agree to the relief accorded the aggrieved person;

(b) The provisions of the agreement will adequately vindicate the public interest.

### **C. Relief sought for aggrieved persons.**

(1) The following types of relief may be sought for aggrieved persons in conciliation:

(a) Monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney fees;

(b) Other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or

(c) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.



(2) The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in paragraph (1) of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

D. Provisions sought for the public interest.

The following are types of provisions that may be sought for the vindication of the public interest:

- (1) Elimination of discriminatory housing practices.
- (2) Prevention of future discriminatory housing practices.
- (3) Remedial affirmative activities to overcome discriminatory housing practices.
- (4) Reporting requirements.
- (5) Monitoring and enforcement activities.

E. Termination of conciliation efforts.

(1) The Commission may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with the Commission; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or the Commission finds, for any reason, that voluntary agreement is not likely to result.

(2) Where the aggrieved person has commenced a civil action under an Act of Congress or state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, the Commission will terminate conciliation unless the court specifically requests assistance from the Commission.

F. Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

(1) Except as provided in paragraph (2) of this section and 65-223.E, nothing that is said or done in the course of conciliation under this Rule may be made public or used as evidence in a subsequent administrative hearing under Article 3 or in civil actions under the Fair Housing Law without the written consent of the persons concerned.

(2) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Commissioner determines that disclosure is not required to further the purposes of the Fair Housing Law. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Commissioner may publish tabulated descriptions of the results of all conciliation efforts.

G. Review of compliance with conciliation agreements.

The Commission may, from time to time, review compliance with the terms of any conciliation agreement. Whenever the Commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the Commission may refer the matter to the Attorney General with a recommendation for the filing of a civil action for the enforcement of the terms of the conciliation agreement.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

## **65-227. Issuance of Complaint.**

A. Reasonable cause determination.

(1) If a conciliation agreement has not been executed by the complainant and the respondent, and approved by the Commissioner, within the time limits set forth in paragraph (3)(a) of this section, the Commission shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination will be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise, disclosed during the investigation.

(a) In all cases

(i) If the Commission determines that reasonable cause exists the Commission will immediately issue a complaint on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.

(ii) If the Commission determines that no reasonable cause exists, the Commission shall: issue a short and plain written statement of the facts upon which the Commission has based the no reasonable cause determination; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal. Public disclosure of the dismissal may be by issuance of a press release except that the respondent may request that no release be made. Notwithstanding a respondent's request that no press release be issued, the fact of the dismissal, including the names of the parties, shall be public information available on request.

(2) The Commission may not issue a complaint under paragraph (1) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a complaint may not be issued because of the commencement of such a trial, the Commission will so notify the aggrieved person and the respondent by certified mail or personal service.

(3)(a) The Commission shall make a reasonable cause determination within 100 days after filing of the original complaint (or where the Commission has reactivated a complaint, within 100 days after service of the notice of reactivation), unless it is impracticable to do so.

(b) If the Commission is unable to make the determination within the 100 day period specified in paragraph (3)(a) of this section, the Commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

#### B. Issuance of Complaint.

(1) A complaint:

(a) Shall consist of a short and plain written statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(b) Shall be based on the final investigative report; and

(c) Need not be limited to facts or grounds that are alleged in the original complaint if the record of the investigation demonstrated that the respondent has been given notice and an opportunity to respond to the allegation.

(2) Within three business days after the issuance of the complaint the Commission shall:

(a) Set a time and place for hearing;

(b) File the complaint along with the required notifications, with the Chairman; and

(c) Serve the complaint and notifications in accordance with the Act.

#### C. Election of civil action or provision of administrative proceeding.

(1) If a complaint is issued under 65-227.B., a complainant, a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding, to have the claims asserted in the complaint decided in a civil action.

(2) The election must be made no later than twenty days after the receipt of service of the complaint. The notice of the election must be filed with the Commission, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification will be filed and served in accordance with the procedures established under Article 3.

(3) If an election is not made under this section, the Commission will maintain an administrative proceeding based on the complaint in accordance with the procedures under Article 3.

(4) If an election is made under this section, the Commission shall cause to be commenced and maintained a civil action seeking relief as provided by the Fair Housing Law on behalf of the aggrieved person in the appropriate Court of Common Pleas.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

### **65-229. Other Action.**

A. Other action by the Commission.

Inform any Federal, State or local agency with an interest in the enforcement of respondent's obligations with respect to nondiscrimination in housing.

B. Action by other agencies.

In accordance with the Act, other agencies, including any agency having regulatory or supervisory authority over financial institutions, are responsible for ensuring that their programs and activities relating to housing and urban development are administered in an affirmative manner to further the goal of fair housing, and for cooperating with the Commission in furthering the purposes of the Fair Housing Law.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

**ARTICLE 3**  
**ADMINISTRATIVE PROCEEDINGS**

**65-230. General Information.**

(A) This regulation contains the rules of practice and procedure established by the Commission for administrative proceedings before a panel adjudicating the claims asserted in a complaint where no party (the complainant, the respondent, or an aggrieved party) elects to have the claims decided in a civil action.

(B) Hearings under this regulation will be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(C) The Commission will reasonably accommodate persons with disabilities who are participants in the hearing process or interested members of the general public.

(D) Parties shall file all documents with the Commission with a copy to all other parties of record. Service of documents upon any party may be made by personal service or by mailing a copy to the last known address. When a party is represented by an attorney, service shall be made upon the attorney. The person serving the document shall certify to the manner and date of service.

(E) The Commission shall serve all notices, orders, decisions and all other documents by mail to the last known address.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

**65-231. Hearing Panel.**

A. Designation.

Proceedings under this part shall be presided over by three members of the Commission appointed by the Chairman. The Chairman shall appoint one of the three as Chief Hearing Commissioner.

B. Authority.

The Chief Hearing Commissioner shall have all powers necessary to the conduct of fair and impartial hearings including, but not limited to, the power:

- (1) To conduct hearings in accordance with this Rule.
- (2) To administer oaths and affirmations and examine witnesses.
- (3) To issue subpoenas.
- (4) To rule on offers of proof and receive evidence.
- (5) To take depositions or have depositions taken when the ends of justice would be served.
- (6) To regulate the course of the hearing and the conduct of parties and their counsel.
- (7) To hold conferences for the settlement or simplification of the issues by consent of the parties.
- (8) To dispose of motions, procedural requests, and similar matters.

C. Disqualification.

(1) If any Commissioner serving on a panel finds that there is a basis for his or her disqualification in a proceeding, he or she shall withdraw from the proceeding. Withdrawal is accomplished by entering a notice in the record and by providing a copy of the notice to the Chief Hearing Commissioner.

(2) If a party believes that a panel member should be disqualified in a proceeding for any reason, the party may file a motion to recuse with the Chief Hearing Commissioner. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Chief Hearing Commissioner shall rule on the motion. If the Chief Hearing Commissioner denies the motion, the Chief Hearing Commissioner shall incorporate a written statement of the reasons for the denial in the record.

(3) If a hearing Commissioner withdraws or is disqualified, the Chairman shall designate another Commissioner to serve.

**D. Ex parte communications.**

(1) An ex parte communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to a Commissioner assigned to the proceeding and which was neither on the record nor on reasonable prior notice to all parties. Ex parte communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, or requesting information on the status of cases.

(2) Ex parte communications are prohibited.

(3) If a Commissioner receives an ex parte communication that he or she knows or has reason to believe is prohibited, he or she shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited ex parte communication may be subject to sanctions including, but not limited to, exclusion from the proceeding, and adverse ruling on the issue that is the subject of the prohibited communication.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

## **65-232. Parties.**

**A. Parties to the proceeding include:**

(1) Complainant. South Carolina Human Affairs Commission files the complaint under 65-227 seeking appropriate relief for an aggrieved party and vindication of the public interest.

(2) Respondent. A respondent is a person named in the complaint issued under 65-227 against whom relief is sought.

(3) Intervenors. Any aggrieved person may file a request for intervention under 65-233.

(4) Rights of parties. Each party may appear in person, be represented by counsel, examine or cross-examine witnesses, introduce documentary or other relevant evidence into the record, and request the issuance of subpoenas.

(5) Amicus Curiae. Briefs of amicus curiae may be permitted at the discretion of the panel. Such participants are not parties to the proceeding.

**B. Representation.**

(1) Representation of Commission. The Commission is represented by its legal counsel.

(2) Representation of other parties. Other parties may be represented as follows:

(a) Individuals may appear on their own behalf.

(b) A member of a partnership may represent the partnership.

(c) An officer of a corporation, trust or association may represent the corporation, trust or association.

(d) An officer or employee of any governmental unit, agency or authority may represent that unit, agency or authority.

(e) An attorney admitted to practice in the State of South Carolina. The attorney's representation that he or she is in good standing is sufficient evidence of the attorney's qualifications under this section, unless otherwise ordered by the panel.

(3) Notice of appearance. Each attorney or other representative of a party shall file a notice of appearance. The notice must indicate the party on whose behalf the appearance is made. Any

individual acting in a representative capacity may be required to demonstrate authority to act in that capacity.

(4) Withdrawal. An attorney or other representative of a party must file a written notice of intent before withdrawing from participation in the proceeding.

C. Standards of conduct.

(1) All persons appearing in proceedings under this part shall act with integrity and in an ethical manner.

(2) The Chief Hearing Commissioner may exclude parties or their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violations of the prohibitions against ex parte communications. If an attorney is suspended or barred from participation in a proceeding, that fact shall be included in the record and the reasons for the action. An attorney that is suspended or barred from participation may appeal to the Chairman. The proceeding will not be delayed or suspended pending disposition on the appeal, except that the Chief Hearing Commissioner shall suspend the proceeding for a reasonable time to enable the party to obtain another attorney.

D. Intervention shall be permitted if the request is timely and:

(a) The intervenor is the aggrieved person on whose behalf the complaint is issued; or

(b) The intervenor is an aggrieved person who claims an interest in the property or transaction that is the subject of the complaint and the disposition of the complaint may as a practical matter impair or impede the aggrieved persons's ability to protect that interest, unless the aggrieved person is adequately represented by the existing parties.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

## **65–233. Pleadings, Motions and Discoveries.**

A. Every pleading, motion, brief or other document shall contain a caption setting forth the title of the proceeding, the docket number assigned, if any, and the designation of the type of document (e.g. complaint, answer or motion to dismiss).

B. Every pleading, motion, brief, or other document filed by a party shall be signed by the party, the party's representative, or the attorney representing the party, and must include the signer's address and telephone number. The signature constitutes a certification that the signer has read the document; that to the best of the signer's knowledge, information, and belief there is good ground to support the document; and that it is not interposed for delay.

C. Timely filing. The Chief Hearing Commissioner may refuse to consider any motion or other pleading that is not filed in a timely fashion and in compliance with this rule.

D. The Commission shall prepare a formal complaint in a form that complies with these rules. All complaints filed under this section shall be verified by the aggrieved person.

E. Within three days after the issuance of a complaint, the Commission shall file the charge with the Chairman and serve copies (with the additional information required under paragraph F. of this section) on the respondent and the aggrieved person on whose behalf the complaint was filed.

F. The complaint shall consist of a short and plain written statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The following notifications shall be served with the complaint:

(1) The notice shall state that a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the complaint decided in a civil action in lieu of an administrative proceeding. This notice shall state that the election must be made no later than twenty days after the receipt of the service of the complaint. The notice shall state that the notification of the election must be served on the Commission, the respondent, and the aggrieved party of whose behalf the complaint was filed.

(2) The notice shall state that if no person timely elects to have the claims asserted in the complaint decided in a civil action, an administrative proceeding will be conducted. The notice shall state that if an administrative hearing is conducted:

(a) The parties will have an opportunity for a hearing at a date and place specified in the notice.

(b) The respondent will have an opportunity to file an answer to the complaint within thirty days of the date of service of the complaint.

(c) The aggrieved person may participate as a party to the administrative proceeding by filing a timely request for intervention.

(d) All discovery must be concluded 15 days before the date set for hearing.

(3) The notice shall state that if at any time following the service of the complaint on the respondent, the respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of the complaint the respondent must provide a copy of the complaint to the person before the respondent and the person enter into the contract, sale, encumbrance or lease.

G. Within 30 days after the service of the complaint, a respondent contesting material facts alleged in a complaint shall file an answer.

H. Request for intervention.

Upon timely application, any aggrieved person may file a request for intervention to participate as a party to the proceeding. Requests for intervention submitted within thirty days after the filing of the complaint shall be considered to be timely filed.

I.(1) The Commission may amend its complaint once as a matter of right prior to filing of the answer.

(2) Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the Chief Hearing Commissioner may allow amendments to pleadings upon motion of the party.

(3) When issues not raised by the pleadings are reasonably within the scope of the original complaint and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings and amendments may be made as necessary to make the pleading conform to evidence.

(4) The Chief Hearing Commissioner may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

J.(1) Any application for an order or other requests shall be made by a motion which, unless made during an appearance before the panel, shall be made in writing. Motions or requests made during an appearance before the panel shall be stated orally and made part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

(2) Within five days after a written motion is served, any party to the proceeding may file an answer in support of, or in opposition to, the motion. Unless otherwise ordered by the Chief Hearing Commissioner, no further responsive documents may be filed.

(3) The Chief Hearing Commissioner may order oral argument on any motion.

#### **Discovery.**

A. Either party may cause to be taken the depositions of witnesses within or without the State. Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas of this State; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

B. The Chief Hearing Commissioner shall on its own behalf, or, upon request, on behalf of any other party to the case, issue in the name of the Commission subpoenas for the attendance and testimony of witnesses and the production and examination of books, papers and records.

C. The Court of Common Pleas shall, on application of the Commission, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall have the power to punish as for contempt of court, by a fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers and records as may have been required in any subpoena issued by the Commission.

D. If a party fails to comply with discovery, the hearing panel may:

- (1) Draw an inference in favor of the requesting party with regard to the information sought;
- (2) Prohibit the party failing to comply from introducing evidence or otherwise relying upon, testimony relating to the information sought;
- (3) Permit the requesting party to introduce secondary evidence concerning the information sought;
- (4) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or
- (5) Take such other action as may be appropriate.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

### **65-234. Dismissal and Decisions.**

A. If a timely election is filed to have the claims asserted in the complaint decided in a civil action, the Chief Hearing Commissioner shall dismiss the administrative proceeding.

B. A Chief Hearing Commissioner may not continue an administrative proceeding under this Rule regarding an alleged discriminatory housing practice after the beginning of the trial of civil action commenced by the aggrieved person under an act of Congress or a state law seeking relief with respect to that discriminatory housing practice. If such a trial is commenced, the Chief Hearing Commissioner shall dismiss the administrative proceeding. The commencement and maintenance of a civil action for appropriate temporary or preliminary relief under the Act does not affect administrative proceedings under this Rule.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

### **65-235. Hearing Procedures (Review and Enforcement).**

A. Date and place of hearing.

(1) The hearing shall commence not later than 120 days following the issuance of the complaint unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the Commissioner shall notify in writing all parties of the reason for the delay.

(2) The hearing will be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or about to occur.

(3) The complaint issued will specify the time, date and place for the hearing. The Chief Hearing Commissioner may change the time, date or place of the hearing, or may temporarily adjourn or continue a hearing for good cause shown. If such a change is made or the hearing is temporarily adjourned, the Chief Hearing Commissioner shall give the parties at least five days notice of the revised time, date and place for the hearing, unless otherwise agreed by the parties.

B. Conduct of Hearing.

(1) The case in support of the complaint shall be presented before the panel by a commission attorney or by the aggrieved person or his attorney.

(2) The case in support of the respondent shall be presented before the hearing commissioners by the respondent or its attorney.

(3) Evidentiary matters.

(a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the court of common pleas shall be followed. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare their copy with the original.

(c) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge.

Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(d) No testimony or evidence shall be given or received at any hearing concerning any offers or counter offers made in an effort to conciliate any alleged unlawful housing practice.

(e) All testimony shall be given under oath or affirmation and records of the proceedings shall be made and kept.

(f) Any party may conduct cross examination.

(4) Stipulations. The parties may file stipulations as to facts, in which event the same shall be numbered and used at the hearing. In addition, oral stipulations may be made at the hearing and shall be included in the record of the hearing. Such stipulations shall not preclude the offering of additional evidence by any party. However, a stipulation may be withdrawn by any party in the event evidence is presented at the hearing which is inconsistent with the stipulation.

(5) Motions and objections. Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated in writing or orally and shall be included in the record of the hearing.

(6) Oral arguments and briefs. The Chief Hearing Commissioner shall permit the parties or their attorneys to argue orally before the panel and to file briefs within such time limits as the Chief Hearing Commissioner may establish. Oral arguments shall not be included in the record unless the Chief Hearing Commissioner shall so direct or unless requested by any party.

(7) Public hearings. All Commission hearings shall be open to the public unless the Chief Hearing Commissioner for good cause directs a closed hearing.

(8) Waiver of hearing. With the consent in writing of the respondent and notice to all parties, an order may be entered without holding any hearing or the making of any findings of fact or conclusions of law.

#### C. Record of hearing.

The record of the hearing shall include:

- (1) All pleadings, motions, intermediate rulings and depositions;
- (2) All evidence received or considered;
- (3) A statement of matters officially noticed;
- (4) Questions and offers of proof, objections and rulings thereon;
- (5) Proposed findings and exceptions; and
- (6) Any decision, opinion or report by the presiding hearing commissioner.

#### D. Contents of Order.

(1) An Order of the Panel shall be in writing or stated in the record and shall separately set forth the findings of fact and conclusions of law of the panel, the Commission's final decision, and an opinion containing the reasons for said decision. Such decisions as to whether an unlawful housing practice occurred shall be reached by a majority vote of the panel. Concurring and dissenting opinions of individual hearing commissioners shall be included in the Order.

(2) If the panel finds that a respondent has engaged or is about to engage, in a discriminatory housing practice, the panel shall order such relief as may be appropriate, which may include, but is not limited to:

(a) Damages to the aggrieved person (including damages caused by humiliation and embarrassment);

(b) Injunctive or such other equitable relief as may be appropriate, which Order may not affect any contract, sale, encumbrance or lease consummated before the issuance of the decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the issuance of a complaint.

(c) To vindicate the public interest assessment of a civil penalty against the respondent, not to exceed civil penalties permitted by the Federal Fair Housing Act, as amended.



#### E. Filing of Order.

(1) The parties shall be notified and provided a copy of the Order either by personal delivery or by registered or certified mail.

(2) All Orders shall be filed in the Commission office, Columbia, South Carolina, and a copy of all Orders shall be provided to the Attorney General.

#### F. Reconsideration of Order.

(1) Request for Reconsideration. After a hearing and the issuance of a final Order, the panel may, upon its own motion or upon application of any party or intervenor for good cause or whenever justice so requires or where an Order of determination or decision was made upon default of a party affected thereby, reconsider any closed proceeding upon notice to all parties, intervenors and the Attorney General, and take such action as it may deem necessary.

(2) Time Limitation for Filing Reconsideration Request. No application for reconsideration shall be considered unless filed within fourteen days from the date the Order of the Commission was rendered.

#### G. Transcript of Record.

The Commission's copy of the written transcript of the record shall be available during the regular office hours of the Commission to the complainant and respondent for examination without cost, for the purpose of appeal to the circuit court from the order of the Commission. The Commission's copy of the testimony shall, in the discretion of the Commissioner or the Chairman, also be available to intervenors and other persons, for such purposes, to such an extent and for such fee as the Commissioner or the Chairman may determine.

### **Judicial Review and Enforcement of Final Decision.**

#### A. Judicial Review.

(1) Who May Apply. A complainant or respondent aggrieved by an Order of the Commission may seek judicial review of the Order.

(2) Forum. A proceeding for judicial review may be brought within thirty days of issuance of the Order of the Commission in the Court of Common Pleas in the county in which the alleged unlawful practice which is the subject of the Order occurs or the county in which the hearing was conducted.

#### B. Procedures.

(1) A copy of the petition for review shall be served on the Commission and all parties of record.

(2) If, before the date set for the circuit court hearing of the petition, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Commission, the court may order that the additional evidence be taken before the Commission upon conditions determined by the court. The Commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(3) Within thirty days of service of the petition for review, or, within further time allowed by the court, the Commission shall transmit to the reviewing court the original or a certified copy of the entire record of the case. By stipulation of all parties to the review proceedings, the Commission may submit to the court a verified list of all documents and other materials composing the official record in place of the record itself. In such cases, the Commission shall submit to the court those parts of the records designated by any party to the review.

(4) The review shall be conducted by the court without a jury and shall be confined to matters in the record. In cases of alleged irregularities in procedure before the Commission, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

#### C. Petitions for Enforcement.

(1) After 30 days from the date the Commission Order is issued, the Commission may file a petition for enforcement of its Order in the court of common pleas of the county in which the hearing occurred or wherein any party subject to the Order resides or transacts business if the Commission believes judicial enforcement is necessary to ensure compliance with its Order.

(2) A petition for review filed pursuant to Section A above shall operate as a supersedeas for 30 days only, unless otherwise ordered by the court, and thereafter the respondent shall be required to comply with the Order of the Commission until the appeal is decided.

(3) If no request for review is filed, the Commission's petition for enforcement shall be granted upon a showing that a copy of the petition was served upon the party subject to the provisions of the Commission's Order.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

### **65-236. Certification.**

The Chairman or the Commissioner is authorized and empowered to certify all documents or records which are a part of the files and records of the Commission.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

### **65-237. Availability and Construction of Rules.**

The rules and regulations of the Commission and any amendments, additions, or modifications thereof, shall be available to the public at the office of the Commission in Columbia, South Carolina.

#### **Construction of Rules and Pleadings.**

(a) These rules and regulations shall be liberally constructed to effectuate the purpose and provisions of the Act and the policies of the South Carolina Human Affairs Commission.

(b) All pleadings shall be liberally construed with a view to effecting justice between the parties, and the Commission; the panel will, at every stage of the proceedings, disregard errors in the pleadings or proceedings which do not affect the substantial rights of the parties.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

## **ARTICLE 4**

### **FAIR HOUSING ADVERTISING**

### **65-240. Purpose.**

The purpose of this rule is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print or publish, or cause to be made, printed, or published advertisements with respect to the sale, rental, or financing of dwellings which are in compliance with the requirements of the Act. These regulations also describe matters the Commission will review in evaluating compliance with the Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

### **65-242. Scope.**

A. The Commission will review in evaluating compliance with the Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising, the following criteria in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur:

(1) Advertising media. This rule provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the Commission in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(2) Persons placing advertisements. A failure by persons placing advertisements to use the criteria contained in this part when found in connection with the investigation of a complaint alleging the making or use of discriminatory advertisements, will be considered by the Commission in making a determination of reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

B. Affirmative advertising efforts. Nothing in this rule shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when

such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

### **65-244. Use of Words, Phrases, Symbols, and Visual Aids.**

A. The following words, phrases, symbols and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the Fair Housing Law, the Commission will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the act and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the Act is likely to result.

(1) Words descriptive of dwelling, landlord, and tenants: White private home, Colored home, Jewish home, Hispanic residence, Adult building.

(2) Words indicative of race, color, religion, sex, handicap, familial status or national origin:

(a) Race—Negro, Black, Caucasian, Oriental, American Indian.

(b) Color—White, Black, Colored.

(c) Religion—Protestant, Christian, Catholic, Jew.

(d) National origin—Mexican American, Puerto Rican, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(e) Sex—The exclusive use of words in advertisements including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this section restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(f) Handicap—Crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this section restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

(g) Familial status—Adults, children, singles, mature persons. Nothing in this part restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute “housing for older persons” as defined in 65-217.

(h) Catch words—Words and phrases used in a discriminatory context should be avoided, e.g. “restricted”, “exclusive”, “private”, “integrated”, “traditional”, “board approval” or “membership approval”.

(3) Symbols or logotypes: Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(4) Colloquialisms. Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(5) Directions to real estate for sale or rent (use of maps or written instructions). Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference. References to a synagogue, congregation or parish may also indicate a religious preference.

(6) Area (location) description. Names of facilities which cater to a particular racial, national origin or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.

### **65-246. Selective Use of Advertising Media or Content.**

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and

may indicate a violation of the Act. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

(1) Selective geographic advertisements. Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

(2) Selective use of equal opportunity slogan or logo. When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

(3) Selective use of human models when conducting an advertising campaign. Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed to other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others.

(4) Similar care must be exercised in advertising in publications or other media directed at one particular sex, or a person without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992.**