

Brown

**SAN JUAN COUNTY
ORDINANCE NO. 26**

-AS AMENDED-

**AN ORDINANCE PROVIDING FOR FAIR HOUSING WITHIN SAN JUAN COUNTY;
PROHIBITING HOUSING-RELATED DISCRIMINATION IN THE SALE AND
RENTAL OF HOUSING, IN RESIDENTIAL REAL ESTATE-RELATED
TRANSACTIONS, AND IN THE PROVISION OF BROKERAGE SERVICES;
PROVIDING FOR EXEMPTIONS, ADMINISTRATION AND ENFORCEMENT OF
THE FOREGOING.**

**BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN JUAN
COUNTY, NEW MEXICO:**

ORDINANCE NO. 26 ("FAIR HOUSING") IS HEREBY AMENDED, AS FOLLOWS:

SECTION 1. POLICY. --

It is the policy of the County of San Juan (hereinafter "the County") to provide, within constitutional limitations, for fair housing throughout the County.

SECTION 2. DEFINITIONS. --

A. "Aggrieved Person" includes any person who -

1. claims to have been injured by a discriminatory housing practice; or
2. believes that they will be injured by a discriminatory housing practice that is about to occur.

B. "Chief Elected Official" means the person who holds the highest elected position of the local unit of government and who is signatory to the Community Development Block Grant agreement with the Local Government Division, in this case, the Board of County Commissioners of San Juan County, New Mexico.

C. "Complainant" means a person (including the chief elected official) who files a complaint under Section 10.

D. "Discriminatory housing practice" means an act that is unlawful under Sections 4, 5, or 6 of this Ordinance.

E. "Dwelling" means any building, structure or portion thereof which is occupied as, designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

F. "Familial status" means one or more individuals (who have not attained the age of 18 years) domiciled with a parent or other person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant, or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

G. "Family" means a group of related persons, but also includes a single individual.

H. "Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of having such an impairment; or being regarded as having such an impairment, but such term does not include current illegal use or addiction to, a controlled substance (as defined in Section 102 of the Controlled Substances Act [21 U.S.C. § 802]).

I. "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

J. "Respondent" means a person or entity accused in a complaint of an unfair housing practice pursuant to this Ordinance; and any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under Section 10.

K. "To rent" means to lease, sublease, let or otherwise grant for consideration the right to occupy premises.

SECTION 3. UNLAWFUL PRACTICE. --

Subject to the provisions of subsection (B) and Section 7, the prohibitions against discrimination in the sale or rental of housing set forth in Section 3 shall apply to:

A. All dwellings which are located within the unincorporated areas of the County which are outside the exterior boundaries of the Navajo Nation Indian Reservation, except as otherwise exempted by subsection (B).

B. Nothing in this Ordinance shall apply to:

1. A single-family dwelling sold or rented to another person by the owner: provided, that such private individual owner does not own more than three such single-family dwellings at any one time: provided further, that in the case of the sale of any such single-family dwelling by a private individual owner not residing in such dwelling at the time of such sale, or who was not the most recent resident of such dwelling prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: provided further, that such owner does not own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than

three such single-family dwellings at any one time: provided further, that the sale or rental of any such single-family dwelling shall be excepted from the application of this Ordinance only if such dwelling is sold or rented without the use in any manner of sales or rental facilities or the sales or rental services of any real estate broker, agent or salesperson or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson or person, and without the publication, posting or mailing, after notice of any advertisement or written notice in violation of Section 4(C) of this Ordinance, but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or 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 the owner's residence.

C. For the purpose of subsection (B), a person shall be deemed to be in the business of selling or renting dwellings if:

1. they have, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

or

2. they have, within the preceding twelve months, participated as agent, other than in the sale of their own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

3. they are the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

SECTION 4. DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING. --

As made applicable by Section 3 and except as exempted by Sections 3(B) and 7, it shall be unlawful:

- A. To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, handicap, familial status or national origin.
- B. To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, handicap, familial status or national origin.
- C. To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination.
- D. To represent to any person because of race, color, religion, sex, handicap, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
- E. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status or national origin.

SECTION 5. DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS. --

A. IN GENERAL. -- 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 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. DEFINITION. -- As used in this Section, the term "residential real estate-related transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a dwelling; or secured by residential real estate.

2. The selling, brokering or appraising of residential real property.

C. APPRAISAL EXEMPTION. -- Nothing in this Ordinance shall prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, handicap, familial status or national origin.

SECTION 6. DISCRIMINATION IN BROKERAGE SERVICES. --

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing services, real estate brokers organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status or national origin.

SECTION 7. EXEMPTION. --

Nothing in this Ordinance shall prohibit a religious organization, association or society or any non-profit 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 person, unless membership in such religion is restricted on account of race, color, sex, handicap, familial status or national origin. Nor shall anything in this Ordinance prohibit a private club not in fact open to the public which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

SECTION 8. ADMINISTRATION. --

A. The authority and responsibility for administering this Ordinance shall be in the Board of County Commissioners or its designee of the County of San Juan.

B. The Board of County Commissioners or its designee may delegate any of these functions, duties and powers to employees of the County or to boards of such employees, including functions, duties and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter under this Ordinance. The Board of County Commissioners or its designee shall by rule prescribe such rights of appeal from the decisions of its hearing examiners to other hearing examiners or to other officers in the County, to boards of officers or to itself, as shall be appropriate and in accordance with law.

C. All executive departments and agencies shall administer their programs and activities relating to housing and community development in a manner affirmatively to further the purpose of this Ordinance and shall cooperate with the Board of County Commissioners or its designee to further such purposes.

SECTION 9. EDUCATION AND CONCILIATION. --

Immediately after the enactment of this Ordinance, the Board of County Commissioners or its designee shall commence such educational conciliatory activities as will further the purposes of this Ordinance. They shall call a conference of persons in the housing industry and other interested parties to acquaint them with the provisions of this Ordinance and the suggested means of implementing it and shall endeavor with their advice to work out programs of voluntary compliance and enforcement.

SECTION 10. ENFORCEMENT. --

A. Any person who claims to have been injured by a discriminatory housing practice or who believes that they will be irrevocably injured by a discriminatory housing practice that is about to occur (hereinafter "aggrieved person") may file a complaint with the Board of County Commissioners or its designee. Complaints shall be in writing and shall contain such information, and be in such form, as the Board of County Commissioners or its designee requires. Upon receipt of such a complaint, the Board of County Commissioners or its designee shall furnish a copy of the same to the person or persons who have committed, or are about to commit, the alleged discriminatory housing practice. Within thirty days after receiving a complaint or within thirty days after the expiration of any period referenced under subsection (C), the Board of County Commissioners or its designee shall investigate the

complaint and give notice in writing to the aggrieved person which also states whether the Board of County Commissioners or its designee intends to attempt to resolve the dispute. If the Board of County Commissioners or its designee decides to resolve the complaint, it shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this Ordinance without the written consent of the persons concerned. Any employee of the Board of County Commissioners or its designee who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$300 or imprisoned not more than ninety (90) days.

B. A complaint under subsection (A) shall be filed within one hundred and eighty days (180) after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and, with the leave of the Board of County Commissioners or its designee, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

C. If, within thirty days after a complaint is filed with the Board of County Commissioners or its designee, the Board of County Commissioners or its designee has been unable to obtain voluntary compliance with this Ordinance, the aggrieved person may, within

thirty days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The Board of County Commissioners or its designee will assist in this filing.

D. If the Board of County Commissioners or its designee has been unable to obtain voluntary compliance within thirty days of the complaint, the aggrieved person may, within thirty days thereafter, commence a civil action in any appropriate court against the respondent named in the complaint to enforce the rights granted or protected by this Ordinance, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or such affirmative action as may be appropriate.

E. In any proceeding brought pursuant to this Section, the burden of proof shall be on the complainant.

F. Whenever an action filed by an individual comes to trial, the Board of County Commissioners or its designee shall immediately terminate all efforts to obtain voluntary compliance.

SECTION 11. INVESTIGATIONS/SUBPOENAS/EVIDENCE. --

A. In conducting an investigation, the Board of County Commissioners or its designee shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such material and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation; provided, however, that the Board of

County Commissioners or its designee first complies with the provisions of the Fourth Amendment. The Board of County Commissioners or its designee may issue subpoenas to compel access to, or the production of, such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States District Court for the district in which the investigation is taking place. The Board of County Commissioners or its designee may administer oaths.

B. Upon written application to the Board of County Commissioners or its designee, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Board of County Commissioners or its designee to the same extent and subject to the same limitations as subpoenas issued by the Board of County Commissioners or its designee. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at respondent's request.

C. Witnesses summoned by subpoena of the Board of County Commissioners or its designee shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.

D. Within five (5) days after service of a subpoena upon any person, such person may petition the Board of County Commissioners or its designee to revoke or modify the subpoena. The Board of County Commissioners or its designee shall grant the petition if

they find that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

E. In case of contumacy or refusal to obey a subpoena, the Board of County Commissioners or its designee, or other person at whose request it was issued, may petition for its enforcement in the municipal or state court for the district in which the person to whom the subpoena was addressed resides, was served or transacts business.

F. Any person who willfully fails or neglects to attend and testify, or to answer any lawful inquiry, or to produce records, documents or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Board of County Commissioners or its designee, shall be fined not more than Three Hundred Dollars (\$300) or imprisoned not more than ninety (90) days, or both. Any person who, with intent thereby to mislead the Board of County Commissioners or its designee, shall make or cause to be made any false entry or statement of fact in any report, account, record or other document submitted to the Board of County Commissioners or its designee pursuant to its subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, shall be fined not more than Three Hundred Dollars (\$300) or imprisoned not more than ninety (90) days or both.

G. The County Attorney shall conduct all litigation in which the Board of County Commissioners or its designee participates as a party or as amicus pursuant to this Ordinance.

SECTION 12. ENFORCEMENT BY PRIVATE PERSONS. --

A. The rights granted by Sections 3, 4, 5 and 6 of this Ordinance may be enforced by civil actions in the appropriate United States district, state or local court. A civil action shall be commenced within one hundred and eighty (180) days after the alleged discriminatory housing practice occurred; provided, however, that the court may continue such civil case brought pursuant to this Section or Section 10(D) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Board of County Commissioners or its designee are likely to result in satisfactory settlement of the alleged discriminatory housing practice complained of in the complaint made to the Board of County Commissioners or its designee and which practice forms the basis for the action in court; and provided, however, that any sale, encumbrance or rental consummated prior to the issuance of any court order issued under the authority of this Ordinance and involving a bona fide purchaser, encumbrancer or tenant without actual notice of filing of a complaint or civil action under the provisions of this Ordinance shall not be affected.

B. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order or other order, damages as the Court deems appropriate, together with court costs and reasonable attorney fees in the case of

a prevailing plaintiff provided that said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

SECTION 13. INTERFERENCE, COERCION OR INTIMIDATION. --

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Section 3, 4, 5, or 6 of this Ordinance. This Section may be enforced by appropriate civil action.

SECTION 14. SEVERABILITY OF PROVISIONS. --

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

SECTION 15. PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES. --

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

A. any person because of their race, color, religion, sex, handicap, familial status, or national origin and because they are or have been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling, or applying for or participating in any service, organization or facility relating to the business of selling or renting dwellings; or

