

## CHAPTER 2020-164

### Senate Bill No. 374

An act relating to housing discrimination; creating s. 712.065, F.S.; defining the term “discriminatory restriction”; providing that discriminatory restrictions are unlawful, unenforceable, and declared null and void; providing that certain discriminatory restrictions are extinguished and severed from recorded title transactions; specifying that the recording of certain notices does not reimpose or preserve a discriminatory restriction; providing requirements for a parcel owner to remove a discriminatory restriction from a covenant or restriction; providing a directive to the Division of Law Revision; amending s. 760.07, F.S.; removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; amending s. 760.34, F.S.; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; providing that the aggrieved person does not need to pursue certain other remedies before commencing a civil action; making technical changes; amending s. 760.35, F.S.; authorizing, rather than requiring, a civil action to commence within a specified period after an alleged discriminatory housing practice; authorizing an aggrieved person to commence a civil action regardless of certain circumstances; prohibiting an aggrieved person from filing a specified action in certain circumstances; providing an exception; prohibiting an aggrieved person from commencing a specified civil action if an administrative law judge has commenced a hearing on the record on the allegation; making technical changes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 712.065, Florida Statutes, is created to read:

712.065 Extinguishment of discriminatory restrictions.—

(1) As used in this section, the term “discriminatory restriction” means a provision in a title transaction recorded in this state which restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic that has been held, or is held after the effective date of this act, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability.

(2) A discriminatory restriction is not enforceable in this state, and all discriminatory restrictions contained in any title transaction recorded in this state are unlawful, are unenforceable, and are declared null and void.

Any discriminatory restriction contained in a previously recorded title transaction is extinguished and severed from the recorded title transaction and the remainder of the title transaction remains enforceable and effective. The recording of any notice preserving or protecting interests or rights pursuant to s. 712.06 does not reimpose or preserve any discriminatory restriction that is extinguished under this section.

(3) Upon request of a parcel owner, a discriminatory restriction appearing in a covenant or restriction affecting the parcel may be removed from the covenant or restriction by an amendment approved by a majority vote of the board of directors of the respective property owners' association or an owners' association in which all owners may voluntarily join, notwithstanding any other requirements for approval of an amendment of the covenant or restriction. Unless the amendment also changes other provisions of the covenant or restriction, the recording of an amendment removing a discriminatory restriction does not constitute a title transaction occurring after the root of title for purposes of s. 712.03(4).

Section 2. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 3. Section 760.07, Florida Statutes, is amended to read:

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute ~~that makes~~ making unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, ~~housing~~, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 4. Section 760.34, Florida Statutes, is amended to read:

760.34 Enforcement.—

(1) Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur may file a complaint with the commission. Complaints shall be in writing and ~~shall~~ contain such information and be in such form as the commission requires. Upon receipt of such a complaint, the commission shall furnish a copy to the person or persons who allegedly committed the discriminatory housing practice or are

about to commit the alleged discriminatory housing practice. Within 100 days after receiving a complaint, or within 100 days after the expiration of any period of reference under subsection (3), the commission shall investigate the complaint and give notice in writing to the aggrieved person ~~aggrieved~~ whether it intends to resolve it. If the commission 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. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the persons concerned. Any employee of the commission who makes public any information in violation of this provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who files a complaint under subsection (1) must do so be filed within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both the complaint and the answer must shall be verified.

(3) If ~~Wherever~~ a local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in ss. 760.20-760.37, the commission shall notify the appropriate local agency of any complaint filed under ss. 760.20-760.37 which appears to constitute a violation of the local fair housing law, and the commission shall take no further action with respect to such complaint if the local law enforcement official has, within 30 days after ~~from~~ the date the alleged offense was brought to his or her attention, commenced proceedings in the matter. In no event shall the commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(4) ~~If, within 180 days after a complaint is filed with the commission or within 180 days after expiration of any period of reference under subsection (3), the commission has been unable to obtain voluntary compliance with ss. 760.20-760.37,~~ The aggrieved person ~~aggrieved~~ may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination under pursuant to s. 760.35 to enforce the rights granted or protected by ss. 760.20-760.37 and is not required to petition for an administrative hearing or exhaust administrative remedies before commencing such action. If, as a result of its investigation under subsection (1), the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of

the ~~aggrieved~~ person ~~aggrieved~~, the Attorney General may bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of ss. 760.20-760.37.

(5) In any proceeding brought ~~under~~ pursuant to this section or s. 760.35, the burden of proof is on the complainant.

(6) ~~If Whenever~~ an action filed in court ~~under~~ pursuant to this section or s. 760.35 comes to trial, the commission shall immediately terminate all efforts to obtain voluntary compliance.

(7)(a) The commission may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with ss. 760.20-760.37. The commission ~~does~~ need not have to ~~petition~~ petitioned for an administrative hearing or ~~exhaust~~ exhausted its administrative remedies ~~before~~ prior to bringing a civil action.

(b) The court may impose the following fines for each violation of ss. 760.20-760.37:

1. Up to \$10,000, if the respondent has not previously been found guilty of a violation of ss. 760.20-760.37.

2. Up to \$25,000, if the respondent has been found guilty of one prior violation of ss. 760.20-760.37 within the preceding 5 years.

3. Up to \$50,000, if the respondent has been found guilty of two or more violations of ss. 760.20-760.37 within the preceding 7 years.

In imposing a fine under this paragraph, the court shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of ss. 760.20-760.37, the financial circumstances of the respondent, and the goal of deterring future violations of ss. 760.20-760.37.

(c) The court shall award reasonable ~~attorney~~ attorney's fees and costs to the commission in any action in which the commission prevails.

(8) Any local agency certified as substantially equivalent may institute a civil action in any appropriate court, including circuit court, if it is unable to obtain voluntary compliance with the local fair housing law. The agency ~~does~~ need not have to ~~petition~~ petitioned for an administrative hearing or ~~exhaust~~ exhausted its administrative remedies ~~before~~ prior to bringing a civil action. The court may impose fines as provided in the local fair housing law.

Section 5. Section 760.35, Florida Statutes, is amended to read:

760.35 Civil actions and relief; administrative procedures.—

(1) ~~An aggrieved person may commence~~ a civil action shall be commenced no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought

~~under pursuant to this section or s. 760.34 from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated before prior to the issuance of any court order issued under the authority of ss. 760.20-760.37 and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of ss. 760.20-760.37 is shall not be affected.~~

(2) An aggrieved person may commence a civil action under this section regardless of whether a complaint has been filed under s. 760.34(1) and regardless of the status of any such complaint. If the commission has obtained a conciliation agreement with the consent of an aggrieved person under s. 760.36, the aggrieved person may not file any action under this section regarding the alleged discriminatory housing practice that forms the basis for the complaint except for the purpose of enforcing the terms of the conciliation agreement.

(3) An aggrieved person may not commence a civil action under this section regarding an alleged discriminatory housing practice if an administrative law judge has commenced a hearing on the record on the allegation.

~~(4)(2)~~ If the court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney attorney's fees and costs.

~~(5)(a)(3)(a)~~ If the commission is unable to obtain voluntary compliance with ss. 760.20-760.37 or has reasonable cause to believe that a discriminatory practice has occurred:

1. The commission may institute an administrative proceeding under chapter 120; or

2. The aggrieved person aggrieved may request administrative relief under chapter 120 within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34.

(b) Administrative hearings shall be conducted under pursuant to ss. 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney attorney's fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs

assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(c) The district courts of appeal may, upon the filing of appropriate notices of appeal, review final orders of the commission under ~~pursuant to~~ s. 120.68. Costs or fees may not be assessed against the commission in any appeal from a final order issued by the commission under this subsection. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the commission.

(d) This subsection does not prevent any other legal or administrative action provided by law.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor September 4, 2020.

Filed in Office Secretary of State September 4, 2020.