

June 11, 2018

### **SCHAC Administrative Interpretation 3**

**Subject:** Mobile Homes, Mobile Lots and Long-Term Vacation rentals qualify as “dwellings” under S.C. Code Ann. §31-21-30(5).

**Summary:** The Commission believes the plain language of the South Carolina Code and the Fair Housing Act’s definition of a dwelling, reinforced by the opinions in *U.S. v. Hughes Memorial Home* (396 F. Supp. 544 (1975)), *U.S. v. Columbus Country Club* (915 F.2d 877(1990)), and *Woods v. Foster* (884 F. Supp. 1169(1995)), establish that mobile home, lots, and long-term vacation rentals are subject to the same rules and regulations as traditional and permanent residential structures.

**Discussion:** “Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). Outside of the Fair Housing Law, other South Carolina statutes refer to **mobile homes** as “dwellings” (S.C. Code Ann. §23-37-10 (D)); a “dwelling unit” is defined as “a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household and includes landlord-owned **mobile homes**...” (S.C. Code Ann. §27-40-210 (3)). While only controlling for those particular chapters of the code, the Commission adopts the definition of a dwelling in §27-40-210 (3) as it specifically relates to mobile homes, and believes that such units are subject to the Fair Housing Law.

Mobile home lots are vacant parcels leased for the purpose of placing mobile homes thereon. As such, the Fair Housing Law's definition of "dwelling" extends to the vacant land upon which mobile home structures are placed. See S.C. Code Ann. §31-21-30(5).

Nearly identical to the definition of "dwelling" found in S.C. Code Ann. § 31-21-30(5), the Fair Housing Act of 1968 (FHA) defines a "dwelling" as any "building, structure or portion thereof which is occupied as, or 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 building, structure, or portion thereof." 42 USCA §3602(b). Pursuant to *Orr v. Clyburn*, federal case law is used in absence of state law cases on the matters of the South Carolina Human Affairs laws, to the point that they are "certainly persuasive, if not controlling." *Clyburn*, 277 S.C. 536, 540, 290 S.E.2d 804, 806 (1982). Federal courts have interpreted the FHA to include a much broader definition of the term "residence" to include "a temporary or permanent **dwelling place**, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit" *U.S. v. Hughes Memorial Home*, 396 F. Supp. 544(1975). Based upon this interpretation, children's homes can be residences, as can seasonally-used "bungalows", hospice care facilities, shelters for homeless individuals, and long-term vacation homes. It is the interpretation of the Commission that the purchase or leasing of mobile homes, lots, or long term vacation rentals would be subject to the South Carolina Fair Housing Law.

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