

Human Rights in Condominiums



INFORMATION SHEET

The Alberta Human Rights Act (the *Act*) protects Albertans from discrimination in certain areas based on specific personal characteristics (also known as protected grounds). Goods, services, accommodation or facilities are areas where people are protected from discrimination regardless of race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation. Everyone has a right to treatment free of discrimination when obtaining goods, services, accommodation or facilities customarily available to the public in Alberta.

Tip: For a detailed discussion of protected grounds, see the Commission's information sheet *Protected areas and grounds under the Alberta Human Rights Act*.

What is discrimination?

Discrimination is treating a person differently based on protected grounds under the *Act*. As explained by the Supreme Court of Canada in *Andrews v. Law Society of British Columbia*,¹ discrimination imposes burdens, obligations or disadvantages on individuals or limits their access to benefits or opportunities. A policy or practice resulting in negative treatment based on any of the protected grounds is discriminatory even if it appears to treat everyone equally (*Ont. Human Rights Comm. v. Simpsons-Sears*).²

Tip: Accommodation under the *Act* includes occupancy of a condominium unit, a cooperative housing unit or a mobile home site.³ The courts have also interpreted accommodation as covering any type of accommodation such as hotels and motels.⁴ Accommodation (in the context of the duty to accommodate) means making changes to certain rules, standards, policies and physical environments to ensure that they do not have a negative effect on the person making the request for accommodation. For more information on the duty to accommodate, refer to the resources at the end of this publication.

¹ *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143, 1989 CanLII 2 (SCC).

² *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 SCR 536, 1985 CanLII 18 (SCC).

³ Alberta Human Rights Act, RSA 2000, c A-25.5 s. 44(1.1) [Act].

⁴ *University of British Columbia v. Berg*, [1993] 2 SCR 353, 1993 CanLII 89 (SCC).

The courts have also interpreted section 4 of the *Act* as covering condominium corporations.⁵ Condominium corporations are responsible for ensuring that their services, facilities and bylaws do not discriminate against residents based on any of the protected grounds. For more information on human rights in condominiums, see the Commission's webpage: www.albertahumanrights.ab.ca/services/condos/pages/what_to_know.aspx

What is a condominium corporation?

A condominium corporation is created when a condominium plan is registered with a land titles office. A condominium corporation consists of all the individuals who own units in the condominium complex and is run by a board of directors. For more information on condominium terminology, visit the condominium law resources at the end of this information sheet.

Tip: Section 5 of the *Act* prohibits discrimination in commercial and residential tenancy. For more information on discrimination related to tenancy, refer to the Commission's information sheet *Human Rights in Tenancy*.

Age as a protected ground

Under the *Act*, age is a ground that is protected from discrimination. The *Act* defines age as **18 years of age or older**, which means that individuals 18 and older are protected from age discrimination. It is a contravention of the *Act* to discriminate against individuals based on their age (18 or older) in the protected areas listed above, with specified exceptions in the areas of services and tenancy.

⁵ *Condominium Corporation No. 052 0580 v. Alberta (Human Rights Commission)*, 2016 ABQB 183 (CanLII).

Are people under 18 protected from discrimination?

People under 18 are protected from discrimination based on all of the protected grounds except for age. This means that they can make a discrimination complaint based on grounds such as race and gender, but not based on their age.

On January 1, 2018, age became a protected ground in the area of goods, services, accommodation or facilities. This means that people 18 years old or older cannot be discriminated against based on age in this area. However, age restrictions are allowed in age-restricted condominiums, cooperative housing units and mobile home sites where age restrictions were in place before January 1, 2018.

Seniors-only housing is also allowed under the *Act* so that older Albertans can choose to live together in a community of people at a similar life stage. The minimum age cut-off for seniors-only housing is 55 years of age. This applies to housing where each unit is reserved for one or more people, at least one of whom is 55. Seniors-only housing communities can also set age restrictions that are older than 55.

Existing age-restricted condominiums, cooperative housing units and mobile home sites have a 15-year transition period, which ends on December 31, 2032. By January 1, 2033, these types of housing must convert to all-ages housing or to seniors-only housing.

For example: A condominium complex is "adults only" and is restricted to people over the age of 21 and up. The age restriction was put in place in June 2008. The *Act* allows for a 15-year transition period for existing age-restricted condominiums, cooperative housing units and mobile home sites. The condominium complex's age restriction is allowed but will no longer be allowed after December 31, 2032 (the 15-year transition period).

The *Alberta Human Rights Act Human Rights (Minimum Age for Occupancy) Regulation* allows for individuals who do not meet the minimum age to occupy a unit or site with an occupant who does meet the minimum age if:

- They provide home-based personal or health care services to an occupant of the unit or site;
For example: a tenant's live-in caregiver.
- They are a minor related to an occupant by blood, adoption or marriage, or by virtue of an adult interdependent partnership to an occupant, they are also allowed to reside in seniors-only housing, where due to an unforeseen event, the occupant becomes the primary caregiver to the minor after occupancy has commenced; and
For example: a tenant's 16-year old grandchild who is now under their primary care.
- They are the surviving spouse or adult interdependent partner of a deceased former occupant of the unit or site who lived with the occupant at the time of death.
For example: a tenant who meets the minimum age restriction dies, leaving their younger spouse. The younger spouse would not meet the minimum age restriction but under the legislation could stay in the unit.

Any other individual whose occupancy is reasonable and appropriate in the circumstances may be permitted to live in the unit or site.

Section 4.2(4) of the *Act* also allows for "grandfathering" of existing occupants if a condominium, co-operative housing unit or mobile home site adopts a "seniors only" minimum age restriction. This means that people under the minimum age restriction who occupied the premises before the change can continue to occupy the premises.

Discrimination in condominiums

Discrimination can occur with respect to rules or bylaws in condominiums. Even if the rules or bylaws appear to treat everyone equally, they can still have a negative impact on some individuals based on protected grounds.

For example: in *Ganser v. Rosewood Estates Condominium Corporation*,⁶ the disabled, elderly owner of a condominium unit relied on the help of her caregivers and family members for transportation to medical appointments, tests and treatment. She was assigned an indoor parking stall when she purchased the condominium unit. Even though she did not use the stall herself, her various caregivers and family members used the stall when assisting her. The condominium board passed new bylaws that resulted in her losing the use of her assigned parking spot because she did not drive or own a car. The Alberta Human Rights Panel found that the condominium discriminated against the owner. While the bylaw did not appear to be discriminatory, its impact was discriminatory because someone with the owner's physical disability could not meet the bylaw conditions.

In *Syndicat Northcrest v. Amselem*,⁷ condominium owners were restricted from setting up religious alterations or constructions such as succahs (temporary huts) on balconies. Several owners set up succahs on their balconies for the purpose of the religious festival of Succot, despite signing a contract of co-ownership which did not allow any alterations or construction to be built on balconies. The condominium corporation ordered the owners to remove the succahs

⁶ *Ganser v. Rosewood Estates Condominium Corporation*, 2002 AHRC 2 (CanLII) [Ganser].

⁷ *Syndicat Northcrest v. Amselem*, [2004] 2 SCR 551, 2004 SCC 47 (CanLII).

and offered to set up communal succahs. The Supreme Court of Canada determined that the condominium corporation's restrictions violated the owners' rights to freedom of religion and celebrating in a communal succah would be contrary to the owners' religious beliefs.

Other examples of discrimination in condominiums include:

- Failing to accommodate owners with physical and mental disabilities when applying and enforcing condominium bylaws.
- Implementing excessive restrictions or rules in condominium facilities (e.g. a swimming pool), which limits access for those with mobility issues and families with children.
- Modifying a condominium's security system, which restricts the ability of residents with physical disabilities to admit visitors (including emergency medical services).
- Prohibiting guide and service dogs.

Duty to accommodate in condominiums

The duty to accommodate applies to condominium corporations. Accommodation means making changes to certain rules, standards, policies, and physical environments to ensure that they don't have a negative effect on a person because of the person's mental or physical disability, religion, gender or any other protected ground.⁸

To accommodate a person, a condominium corporation may need to make adjustments or provide alternative arrangements to ensure that there is no negative effect on individuals based on protected grounds. The condominium corporation must accommodate to the point of undue hardship. Undue hardship occurs if

⁸ *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 SCR 868, 1999 CanLII 646 (SCC).

accommodation would create onerous conditions for a condominium corporation, for example, intolerable financial costs or serious disruption. Factors that may be considered in determining undue hardship include:⁹

- financial cost
- safety
- disruption
- significant interference with the rights of others

A person who requires accommodation based on a protected ground should let the condominium corporation know of their needs. This gives the condominium corporation the opportunity to make any changes necessary to accommodate the individual requesting the accommodation.

For example: In *Ganser*,¹⁰ where a disabled condominium owner's loss of a parking stall was at issue, the Alberta Human Rights Panel found that the condominium corporation did not do enough to accommodate the owner. The Panel found that the condominium corporation could have:

- Done a cost analysis of alternative indoor parking for displaced owners and compensated them for being moved to the visitor parking area.
- Offered to assign a temporary visitor stall to the owner until an indoor parking stall became available.
- Placed and prioritized the owner on a waiting list for the first available indoor stall.
- Changed the bylaws so that the parking stalls could be reassigned.

The courts have found that accommodation in condominiums can also include:

- Installing a wheelchair ramp to make a building more accessible to a physically disabled condominium owner.

⁹ *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, [2008] 2 SCR 561, 2008 SCC 43 (CanLII).

¹⁰ *Ganser*, supra note 6.

- Allowing condominium owners to have temporary or permanent alterations to a condominium unit or facilities based on a protected ground, for example, setting up succahs (temporary huts) for religious observances.

Tip: For more information on how to determine if accommodation is necessary and what a condominium corporation needs to do to accommodate a person, see the Commission's human rights guide *Duty to Accommodate*, or contact the Commission.

Can discrimination be justified in condominiums?

Section 11 of the *Act* recognizes that, in some circumstances, there is a reasonable and justifiable defence to discrimination. A condominium corporation may argue that there is a reasonable and justifiable defence to discrimination under section 11 of the *Act*. However, the condominium corporation must be able to provide reasons for its argument that the contravention was reasonable and justifiable.

A condominium corporation may also argue that their conduct was justified based on section 11. This defence cannot be successfully established unless the service provider has attempted to reasonably accommodate to the point of undue hardship. It's important to consider that the undue hardship standard is a very high standard, and as a result, in most situations, condominium corporations will be required to provide some accommodation.

How to resolve a human rights complaint

Individuals who believe that a condominium corporation has discriminated against them may first try to resolve the issue on their own. In some cases, the condominium corporation may not be aware that they have done anything discriminatory. A condominium corporation may stop the discrimination and correct any inequity they may have caused if they know about the problem or concern. Before making a complaint to the Alberta Human Rights Commission, both the person making the complaint (the complainant) and the condominium corporation can try to resolve a human rights matter using the following tips.

Dispute resolution tips for complainants

Try talking to the condominium corporation and explaining the situation. It is important to notify the condominium corporation of the cause of the discrimination. You may find that writing a letter to the condominium corporation can help to clarify your thoughts. You can explain:

- what happened
- when it happened
- who you are complaining about
- how it made you feel
- what you would like to happen to fix the situation

Use non-accusatory language and assume your condominium corporation wants to help with the situation. This will show the condominium corporation that you are prepared to work out the issue together. You may also offer to get some information from the Commission so that you can work together to resolve the issue.

Dispute resolution tips for condominium corporations

People who come to you with a complaint may be considering making a human rights complaint to the Commission. By listening with

an open mind to their complaint before they go to the Commission, you may prevent further legal action. As the condominium corporation, you should:

- Try to get the entire story from the complainant. The more details you understand about the situation, the more likely you will be able to find a creative and mutually satisfying solution.
- Be respectful when discussing concerns with the complainant.
- Review your facilities and bylaws to identify and address any potentially discriminatory aspects of your service.
- Remember that you have a legal duty to accommodate a person's needs to the point of undue hardship. Review the Commission's human rights guide *Duty to accommodate*. This will help you decide what is required and how to resolve requests for accommodation.

Making a human rights complaint

When a person believes they have been discriminated against, they can make a complaint to the Alberta Human Rights Commission within one year of the alleged incident of discrimination. When a person is unsure if a dispute involves a human rights issue, they should contact the Commission.

Important note on age-related complaints

The Commission can only accept age-related complaints in the area of goods, services, accommodation and facilities if the incidents occurred on or after **January 1, 2018**. Where there are multiple alleged incidents of discrimination that occurred before and after December 31, 2017, only the incidents that took place after December 31, 2017 will be covered under the Act.

Tip: The *Condominium Property Act* is provincial legislation that applies to condominiums. It covers the rights and responsibilities of condominium buyers, developers, owners and condominium boards. For more information about condominium law and general dispute resolution options in a condominium context, refer to the resources on condominium law at the end of this publication.

Related resources

For more information on human rights law and the complaint process, refer to the following Alberta Human Rights Commission resources (available at albertahumanrights.ab.ca):

- *Protected areas and grounds under the Alberta Human Rights Act* information sheet
- *Duty to accommodate* human rights guide
- *Defences to human rights complaints* human rights guide
- *Notice of Changes to Alberta's Human Rights Legislation* (January 2018)
- *The human rights complaint process* information sheet
- *Information for complainants* information sheet
- *Information for respondents* information sheet
- albertahumanrights.ab.ca/services/pages/condos.aspx webpage

For general information and resources on condominium law in Alberta:

- Service Alberta www.servicealberta.ca
- Centre for Public Legal Education Alberta's Condo Law for Albertans www.condolawalberta.ca 

Contact us

The Alberta Human Rights Commission is an independent commission of the Government of Alberta. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

Hours of operation: 8:15 a.m. to 4:30 p.m.

Monday to Friday (holidays excluded)

Northern Regional Office (Edmonton)
800 – 10405 Jasper Avenue NW
Edmonton, Alberta T5J 4R7
780-427-7661 Confidential Inquiry Line
780-427-6013 Fax

Southern Regional Office (Calgary)
200 J.J. Bowlen Building
620 – 7 Avenue SW
Calgary, Alberta T2P 0Y8
403-297-6571 Confidential Inquiry Line
403-297-6567 Fax

To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

Email: humanrights@gov.ab.ca

Website: albertahumanrights.ab.ca

Please note: The Commission must receive your completed complaint form or letter within one year after the alleged contravention of the *Alberta Human Rights Act*. The one-year period starts the day after the date on which the alleged contravention of the Act occurred. For help calculating the one-year period, contact the Commission.

The Human Rights Education and Multiculturalism Fund provided a grant to CPLEA (Centre for Public Legal Education Alberta) to develop this information sheet in consultation with the Alberta Human Rights Commission.

The Commission will make this publication available in accessible formats upon request for people with disabilities who do not read conventional print.