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NMHC GOVERNMENT AFFAIRS UPDATE

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FAIR HOUSING & RENT CONTROL RESOURCES

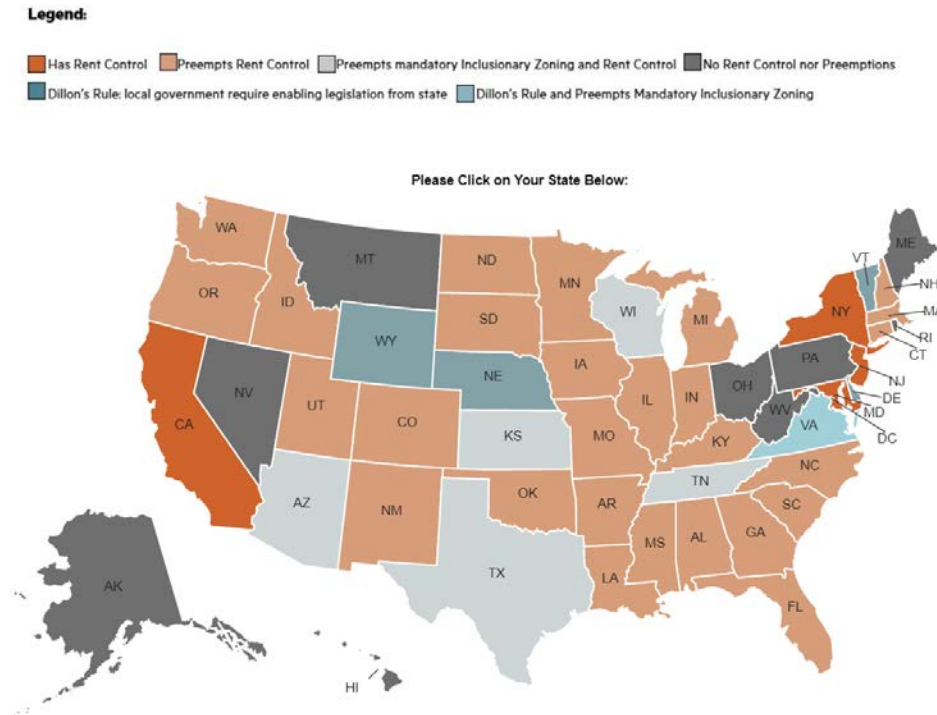
Fair Housing White Papers

Disparate Impact and Fair Housing; New Administration Remedies & Guidance – October 2017

Recent HUD Actions Regarding Disparate Impact – April 2017

Criminal Conviction Screening Policies: Best Practices to Avoid Disparate Impact Liability – May 2016

Fair Housing: Familial Status and Occupancy – March 2016



NMHC NATIONAL MULTIFAMILY HOUSING COUNCIL Spring 2018

RENT CONTROL BY STATE LAW

OVERVIEW

STATES WITH RENT CONTROL	California, District of Columbia, Maryland, New Jersey, New York
STATES THAT PREEMPT RENT CONTROL	Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin
STATES THAT PREEMPT MANDATORY INCLUSIONARY ZONING	Arizona, Kansas, Tennessee, Texas, Virginia, Wisconsin
DILLONS RULE STATES (local government requires enabling legislation from the state legislature)	Delaware, Indiana, Mississippi, Nebraska, Vermont, Virginia, Wyoming
STATES WITH NO RENT CONTROL / NO PREEMPTION	Alaska, Hawaii, Maine, Montana, Nevada, Ohio, Pennsylvania, Rhode Island, West Virginia

*Not intended for use as legal advice. Information pulled from publicly available sources.

FAIR HOUSING

- **Disparate Impact Liability.** HUD should: 1) review and replace the Final Rule on disparate impact liability to ensure compatibility with recent Supreme Court analysis; and 2) reevaluate guidance stemming from the Final Rule and reissue guidance that helps housing providers execute necessary business practices without running afoul of fair housing requirements.
- **Criminal Screening Guidance.** HUD must reconcile the guidance with current Supreme Court precedent and offer additional compliance guidance.
- **Emotional Support Animals.** HUD should specify that an individual providing verification for the resident must have actual knowledge of the person's disability and have an established therapeutic



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ADA RIGHT TO CURE

- The apartment industry supports the goals of the Americans with Disabilities Act and is fully committed to creating communities that are accessible to people with disabilities.
- **Predatory lawsuits (“drive-by lawsuits”) are on the rise.** Focused on obtaining a monetary settlement, these suits often center on technical details.
- **Allegations of non-compliance create costly operational and legal challenges.**
- These easily remedied issues can be better addressed through a fixed notice and cure period than a lengthy litigation process.
- **The House passed bipartisan legislation** on February 15, 2018 (H.R. 620) to address frivolous ADA lawsuits that would provide a business owner with up to 120 days to cure an alleged ADA design defect prior to the initiation of a lawsuit.
- **This speeds remedies for the disabled** and creates an important disincentive for complaints motivated purely for financial gain.



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DATA SECURITY & BREACH NOTIFICATION STANDARDS

- The personal information that rental housing owners and operators, and their third-party service providers, rely on to operate on a daily basis puts a **big target on our industry for cyber crimes**.
- Rental housing operators, like all businesses, must comply with a **patchwork of over 50 different state (and DC/territories) laws** governing data security, breach notification & privacy standards.
- The Equifax data breach—impacting over half of the nation—and the privacy issues surrounding the recent Facebook data security incident have put the **issue front-and-center for Congress with calls for heightened consumer and data protections**.



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NMHC SUPPORTS LEGISLATION THAT PROVIDES FOR THE FOLLOWING:

- **Federal preemption** of existing state data security, privacy and breach notification laws.
- **A reasonable, flexible and scalable national standard** for data protection. Any standard must consider the needs and available resources of small and large businesses as well as the sensitivity of the data in question.
- **Financial and legal liability being assigned to the entity that actually suffered the data breach**—especially in the case of third party providers.
- A requirement that third-party providers notify their customers of any breach and **allow them to notify the consumer, if they so choose.**



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FLOOD INSURANCE & RISK MITIGATION

- The National Flood Insurance Program (NFIP) **expires July 31, 2018.**
- Without the NFIP in place, federally backed multifamily loans (GSE, FHA) cannot close.
- Many multifamily properties need the NFIP for some or all of their flood insurance coverage.
- **A more viable private market** needs to be supported by Congress to allow for rental property owners the flexibility to better mitigate their flood risk.



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COMMERCIAL REAL ESTATE PRIORITIES

- **Provide flexibility** so rental property owners can access the private market instead of being bound by the limitations of the NFIP.
- **Allow NFIP umbrella coverage** for owners of multiple properties or garden style communities.
- **Expand the NFIP to include Business Interruption coverage** for rental properties
- **Provide Replacement Cost Value (RCV) instead of Actual Cost Value (ACV)** to damaged rental properties.
- **Increase apartment communities' access** to current flood mitigation funding and programs



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TAX REFORM

Protect Flow-Through Entities / REIT Structure

- Rate for Individuals and Flow-Through Entities Falls to 37% from 39.6%
- New 20 percent deduction for flow-through income & REIT dividends
- NMHC working to clarify firms can group real estate activities and that REIT dividends from mutual funds qualify

Retain Full Business Interest Deduction

- Multifamily firms may elect to retain full deductibility of business interest

Ensure Depreciation Rules Avoid Harming Real Estate

- Depreciation of new buildings 30 years for firms electing out of interest limits
- NMHC working to clarify 30-year period for buildings in existence prior to 2018.



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TAX REFORM

Opportunity Zones

- Designed to drive investment in distressed areas
- Deferral to as late as 2026 for capital gains invested in Opportunity Funds
- No tax on Opportunity Fund gains held at least 10 years



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REGULATORY REFORM AND CAPITAL MARKETS

- **HVCRE** - Senate bank regulation reform bill (S.2155) included HVCRE modifications, final approval by the House is in stalemate
- **Davis-Bacon Wages** - real estate industry coalition working to get Department of Labor to modify key provisions regarding split-wages and timing on wage determination
- **CRA** - Treasury issued report recommending updates to CRA, banking regulators expected to issue draft language in May



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INFRASTRUCTURE

- The Administration has proposed a \$1.5 trillion plan to expand and revitalize the nation's infrastructure.
- An infrastructure package can facilitate needed apartment growth and improve existing communities.
- A package could ease regulatory barriers to apartment construction, upgrade municipal infrastructure and improve affordable housing.
- Any major investment in the nation's infrastructure should seek to remove barriers to housing development and rehabilitation.
- An infrastructure package must address housing and supports measures that drive new investment in housing, promote transit-oriented and high-density development and fund community-level infrastructure needs.



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BUILDING CODES

- Development of the ICC 2021 national model codes is underway.
- NMHC actively participates in all aspects of the code process - advocating for specific proposals of importance to the multifamily industry.
- Nearly 300 proposals would impact multifamily construction - top priorities include holding back onerous proposals related to fire protection, building egress, accessibility and mechanical ventilation.



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