

Fair Housing and You

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It's been about forty years since race riots, demonstrations and the passive protests of Martin Luther King, Jr., Rosa Parks and others ushered in a new era of civil rights, including fair housing legislation on a Federal level in the United States. However, in light of recent issues concerning the wars in Iraq and Afghanistan, prejudice and rental selection against Muslims, and the growing anti-Hispanic sentiment due to illegal alien issues, I thought it would be a good idea to revisit some of the basic principals of Federal Fair Housing Laws.

There are three major pieces of Federal Fair Housing Legislation. In 1968, Title 8 of the Civil Rights Act of 1968 was passed, known also as the Fair Housing Act. That law prohibits discrimination and imposes liability on anyone who discriminates against persons seeking to buy or rent housing on the basis of race, color, religion or national origin. In 1974, Congress added sex or gender as a protected category. The Fair Housing Act of 1988 extended the protected classes or categories to include individuals with handicaps or disabilities, and any discrimination on the basis of "family status." State and local laws can add to but not take away from the protection by the federal law. For example, the City of Pittsburgh has an ordinance preventing discrimination on the basis of sexual orientation, as well.

Under these laws, it is a violation to refuse to sell or rent residential property, or to refuse to negotiate a sale or rental, or refusing to otherwise make a dwelling available for someone in a protected class. This also means that the housing provider cannot discriminate in the setting of terms or conditions of the transaction, such as charging higher rent or higher security deposit on the basis of a protected class. The illegal conduct also extends to representations. This means that representing that a dwelling is not available for inspection, sale or rental when it is available, violates the law. Other acts explicitly made illegal under the law include, redlining, discriminatory advertising and steering. Blockbusting, an infrequently used term these days, is also a violation of the law. Blockbusting occurs, for example, when a black family moves into a previously all white neighborhood, and the real estate investor repeatedly solicits the white families in the area to sell their homes due to the "problem" facing them.

Note that there are some exceptions to the Fair Housing Act. Obviously, housing acts do not apply to the sale or rental of commercial or industrial properties. There are also several exceptions to the protection provided in the law. A person is not held to violate the law providing he or she meets all the criteria for the exception. First, the person may not own more than three houses at any one time. Second, the person must be the one living in the house or the last person to live there. (If that residency requirement were not met, then the exception would only apply to one sale every twenty-four months). Third, the person claiming exemption from the fair housing laws may not use a broker, an agent or a sales associate to facilitate the sale. There is also

an exception when the owner of a multi-family dwelling with no more than four units resides in one of the units and rents out the other units. Other than these narrow exceptions all sales and rentals of residential property are covered by fair housing laws.

In the past ten years, we have seen a notable reduction in the number of discrimination claims involving refusal to sell or rent to black families, but we're seeing blatant discrimination against Hispanics, Muslims and others who "appear to be" Muslim, such as Indian families, who although they are Hindu and not Muslim or Arabic at all, face discrimination because they "look" Arabic to those who are engaging in the discriminatory conduct.

If you are selling real estate in Pennsylvania, you should have no requirement other than the ability to meet your price and terms, to who ever may purchase the property you're selling. If you're renting property, you should have a set of non-discriminatory standards which you apply to the rental of all of your units. For example, you can require a minimum credit score, you can require a minimum length of employment. You can also require that the rent not exceed a maximum percentage of available income.

You cannot refuse to rent your two-bedroom house to a woman with two or three children, because the house is "too small." You cannot refuse to rent your property overlooking a hillside to individuals with children because the rear deck would be unsafe. You cannot refuse to rent to someone with a physical disability because making minor modifications to facilitate access to and use of the property would be burdensome.

Of course, this doesn't mean you have to install an elevator to a third floor unit. However, allowing a removable ramp to cover three stairs to a first floor unit is a much more reasonable accommodation. Note that the landlord is required to permit a physically challenged, at the tenants' expense, reasonable modifications of the living space to have use and enjoyment of the property. Such modifications may include grab bars, ramps, alarms or widening doorways. The modifications might go beyond the actual living unit into laundry rooms or garages. Of course, the tenant must obtain the landlord's consent prior to making modifications, and the consent can only be withheld where the modification is unreasonable due to a financial or administrative burden it imposes. If the modification interferes with the landlords or the next tenant's use or enjoyment of the property, the physically challenged tenant may be required to restore the premises to its original condition on leaving.

In properties with four or more living units, if the building has an elevator, or ground floor dwellings with four or more units, if there is no elevator, such properties qualify as multi-family dwellings and are required to have full handicapped accessibility to common areas, and all entrances must be wheelchair accessible. Within individual units, the law requires accessibility to all switches and environmental controls such as heating and air conditioning, reinforcement of bathroom walls to allow for future installation of grab bars, and sufficient widths in kitchens and bathrooms to afford

wheelchair maneuverability. These accommodations should be factored into any renovations done to a multi-family unit as well. Additionally, a landlord may have to waive a “no pet” policy to accommodate a service or companion animal such as a Seeing Eye dog for a blind person. Parking rules may have to be adjusted to accommodate people with mobility related disabilities. There are programs available to help to cover the costs of many of these modifications, and they’re available through County Agencies as well as certain non-profit groups.

Our organization is working to include for future meetings a program on such types of grants and other financial assistance available to create housing which accommodates those with physical limitations. This can be beneficial to landlords as well, since modified properties suitable for wheelchair access are not readily available. This means such units are generally easier to relet than a comparable inaccessible unit, and also that tenants with limitations who find suitable space of ten stay longer.

Another area of discrimination we have seen recently involves group home accommodations. The Fair Housing Act prohibits local communities from applying laws and regulations, including zoning provisions, which discriminate against group homes of non-related persons. If the purpose or effect of a law or a code provision is to exclude or restrict group homes, it violates the reasonable accommodation provisions. As with the accommodation provisions applied to disabled individuals, the courts will generally use a balancing test in group home cases. The courts attempt to determine whether the accommodation of the law to the group home imposes an undue hardship on the municipality. It examines crime and safety concerns, negative impact on real estate values and the financial burden placed on the parties. There is an exemption in the Fair Housing Act for restrictions regarding the maximum number of occupants permitted in a dwelling. The Courts have carefully confined it to regulations limiting the number of persons in a unit and we still see a number of municipalities seeking to enforce three unrelated or five unrelated party caps on occupancy. We anticipate that these ordinances will be litigated and will pave the way for more variations in living opportunities.

However, a disturbing reverse trend has been in the methods by which many municipalities are clamping down on student housing, imposing heavy burdens on properties inspected and certified as student housing. When these burdens are coupled with the refusal of many insurance companies to insure student housing, it becomes difficult for a landlord in a college community to successfully and profitably rent his or her units. We anticipate some of these restrictions on student housing will likely be challenged under the fair housing laws in Federal Court and that many of those challenges will be successful. PROA is reviewing several of these laws and considering mounting a challenge to the worst such law.

For now, play this brief refresher and summary on Fair Housing Laws will help you to stay out of trouble with the Pennsylvania Human Relations Commission and the EEOC with regard to your dealings in real estate.