

Illegal Immigrants, Rentals and Fair Housing Discrimination

Real Estate In-Depth April, 2009

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The fastest growing component to the U.S. population in the past decade has been the Hispanic community. The expansion of the Hispanic population, including illegal immigrants, has generated a highly emotional issue for many Americans. What rights should be granted to illegal immigrants? What rights do illegal immigrants have to housing? Do the Fair Housing Laws apply to illegal immigrants? In an environment in which one out of nine residences in the U.S. is estimated to be vacant (there are an estimated 14 million apartment units, homes and condominiums currently vacant) these issues assume heightened importance for immigrants, for landlords and for Realtors.

Fair Housing Laws and Illegal Immigrants

Federal, state and local Fair Housing Laws protect persons seeking shelter. Virtually every Fair Housing Law prohibits discrimination based upon national origin. It is clear that the Federal Fair Housing Laws protect persons who are legally in the United States as well as those who are not. U.S. Government policy regarding protection of illegal immigrants can be used by the government to deny funding by the U.S. Department of Housing and Urban Development (HUD) of various programs. States which refuse to support Fair Housing for all persons do so at the risk of losing such funding. The Associated Press recently reported that Ron Haskins, a former welfare advisor to President Bush, placed enforcement of Fair Housing Laws as a priority. When asked if that included providing legal services to illegal immigrants, Haskins stated that on issues such as Fair Housing, it is appropriate to spend money on issues that "advance the interest of society." It is clear that President Obama will similarly want to ensure that Fair Housing Laws administered by HUD will be fully enforced.

Do Illegal Aliens Have the Right to Rent an Apartment?

A recent case decided in the Supreme Court in New York County, *Recalde v. BAE Cleaners, Inc.*, affirms the right of an illegal alien to obtain an apartment and not be subjected to an inquiry by a landlord to verify "a tenant's immigration status...." The Court found that there was no Federal or New York legal precedent which "prohibits a landlord from renting an apartment to a tenant who lacks legal immigration status."

The Court also noted that this was a case of first impression in New York State. The Court responded to the assertion by the landlord that the landlord could be charged criminally for "harboring" a person who was an illegal alien.

"Harboring" an Illegal Alien

Since 1917 it has been a crime in the United States to harbor a person who is an illegal alien. The "harboring" provisions under Federal Law are included in the Immigration Reform and Control Act of 1986. This Act makes it a crime to "conceal, harbor or shield from detection" an illegal immigrant. If a person protects an illegal immigrant from

discovery and has acted “knowingly or in reckless disregard of the fact that an alien has come to, entered or remains in the United States” that person would be in violation of the Law. Congress has never, however, defined the term “harboring.”

As a result of this lack of a specific definition the landlord in the Recalde case asserted that while he had not actually been charged with a violation of a Federal immigration law, he could be subjected to civil or criminal penalties for continuing to rent to the Recaldes who were tenants in the building for many years. When a new landlord acquired the building the landlord discovered that the Recaldes were illegal immigrants as a result of sending a questionnaire in connection with the renewal of the tenants’ lease. The Recaldes countered that they were being subjected to Fair Housing discrimination and that the landlord was in violation of the Rent Stabilization Code of the City of New York, the City’s Human Rights Law as well as the General Business Law of the State of New York. The tenant asserted that the owner of the property had “engaged in an elaborate scheme to deceptively evict Latino tenants.” The Court found for the tenants.

Legislation Making Rentals to Illegal Immigrants Illegal

On December 9, 2008, the National Commission of Fair Housing and Equal Opportunity delivered a report at the National Press Club in Washington, DC in which it stated:

“Anti-immigrant ordinances are a particularly egregious example of the use of land use regulation to erect barriers to fair housing. In an effort to exclude immigrants entirely and others entirely, some municipalities have enacted zoning ordinances that prohibit members of extended families from living together. Even more extreme, between 2005 and 2007, more than 30 municipalities throughout the Country (in, California, Texas, Missouri, Georgia, New Jersey and Pennsylvania) enacted legislation penalizing and even jailing individuals for renting apartments to illegal immigrants. Without the authority or expertise to determine a potential tenant’s immigration status, a landlord may refrain from renting or leasing to anyone he suspects could be an undocumented immigrant, a behavior likely to lead to racial and ethnic profiling and discrimination against people of color, and most commonly, Latinos.”

The laws that have been enacted by various municipalities making rentals to illegal immigrants a violation of local ordinances or a violation of state laws, have been promoted by organizations such as the “Immigration Reform Law Institute” (IRLI). IRLI filed a RICO and Fair Housing discrimination lawsuit against Connolly Properties, Inc. in the Spring of 2008 in the Federal District Court in New Jersey. The lawsuit seeks to hold Connolly Properties, Inc. liable for “unlawfully harboring illegal aliens” and

discriminating against U.S. citizen tenants, asserting that Connolly Properties targeted illegal aliens to fill vacant apartments in its complexes in New Jersey and Pennsylvania. Proponents of this point of view assert that U.S. citizens are victimized by the failure of the United States government to enforce its own immigration laws. IRLI's general counsel Mike Hethmon was quoted as saying "mistreatment of U.S. citizens is just another consequence Americans face daily when we tolerate the exploitation of illegal aliens for business gain...."

What is a Landlord to do?

For a New York State based landlord the case of *Recalde v. BAE Cleaners, Inc.* can be relied upon to affirm that there is no current definitive statement in the law or in cases in New York which requires a landlord to verify a tenant's immigrant status. Moreover, no law or precedent exists which prohibits a landlord from renting an apartment to a tenant who lacks legal immigration status.

As to Fair Housing laws, they apply to every person seeking shelter. Only the federal government has the right to regulate immigration. A landlord cannot and should not be placed in a position of asking anyone for their immigration status lest they be subjected to very harsh penalties under federal, state and local Fair Housing Laws.

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