

Fair Housing Expansion

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By Edward I. Sumber, Association Counsel

The Federal Fair Housing Act of 1968 (the "Act") was enacted to protect individuals from discrimination by sellers or landlords in purchases and/or rentals of homes as well as other housing based transactions such as mortgage financing and advertising. An individual's background cannot be used to arbitrarily restrict or prevent access to the ownership or rental of property. Initially, the law was targeted to protect against discrimination based on race, color, religion or national origin, and in fact, was passed one week following the assassination of Martin Luther King, Jr. Throughout the past few decades, the law has been significantly expanded to extend to discrimination based on sex/gender (1974), handicap (1988) or familial status/families with children (1988).

What is targeted by the Federal Fair Housing Act?

If discrimination is based upon a prospective tenant's or buyer's membership in a protected group it is improper for anyone to "refuse to sell, rent or negotiate with any person, or otherwise make a dwelling unavailable to any person." Similarly, it is improper to change the terms, conditions or services for different individuals as a means of discriminating against protected persons. The law also extends to advertisements, mortgage financing, refusing to show property or representing that a property is not available for sale or rental. It prohibits the denial of any individual membership in a multiple listing service, brokerage organization or other association as a result of an intent to discriminate.

New Fair Housing Initiatives

The political arena has been filled with polarized points of view issues relating to discriminatory or even permissive approaches. For example, a law was passed recently that was immediately suspended but would have made it illegal to rent your home or apartment to an illegal alien. This column has also addressed attempts by landlords to reject tenants who pay with Section 8 vouchers. Westchester County almost became one of the earliest jurisdictions in New York to ban such landlord rejections. Our County Executive, Robert Astorino, vetoed this legislation and the County Executive is now being examined by a court appointed monitor in the federal court to clarify the reasons for his veto. He had rejected the enactment as "worded badly", "likely to produce unintended consequences", etc. Governor Paterson vetoed similar statewide legislation regarding source of income, shortly after the Westchester veto.

Even questions such as, "What constitutes a "service animal"?", are now being examined in light of the Americans with Disabilities Act. While seeing eye dogs are not an issue, a housing authority in the City of San Francisco, California recently made a decision that indicates that a "service animal" may be "any animal that brings help or

comfort to a physically or mentally disabled person, as long as it is prescribed by a physician”.

With respect to gays, lesbians, bisexuals and transsexuals, the Department of Housing and Urban Development (“HUD”) has taken the position that such individuals are covered under a broadened view of the Federal Fair Housing Laws which goes beyond the traditional focus of race, religion, national origin, etc. HUD indicated over the summer that it would welcome complaints by the gay, lesbian, bisexual and transsexual communities so that HUD’s resources could be used to see if local or state laws already are in place which might have jurisdiction over the claims. Housing Secretary Shaun Donovan has indicated that if there are no such state or local laws, HUD will assume jurisdiction based upon “disability” or possibly “gender based” discrimination. Many states have already enacted laws which prohibit housing discrimination based upon sexual orientation. New York is amongst them.

How did NAR get ahead of the Curve?

By changing its Code of Ethics and its policies at the upcoming November convention so as to protect against discrimination based on sexual orientation, the National Association of Realtors® will be providing protection through the Realtor® community in advance of a change in the Federal Fair Housing Laws. This came about through the efforts essentially of one Realtor®, Eric Kodner, owner of Madeline Island Realty and Wayzata Lakes Realty in Minnetonka, Minnesota. Realtor® Kodner began his initiative in 2007 when he created a blog to discuss this issue. After almost 3 years of efforting, NAR’s Board of Directors adopted the proposed change to the Code of Ethics at its May 15th meeting in Washington, DC. In order for it to become effective, it will have to be approved by NAR’s “Delegate Body”, which will meet at the Realtor® convention in New Orleans on November 8, 2010. Kodner’s efforts demonstrate that when a single Realtor® has an idea whose time has come, that individual can effect significant change.

Proposed Code of Ethics Change

The May 2010 vote of the NAR Directors followed a unanimous vote in support of the change by the Professional Standards Committee earlier that week. If approved in November, Article 10 of the Code of Ethics will read, as amended, as follows:

REALTORS® shall not deny equal professional service to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation.

REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation.

REALTORS® in their real estate employment practices shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation.

While passage of these changes by NAR's Delegate Body is uncertain, Congress may soon be addressing these issues. Changes to the Fair Housing Act to prohibit discrimination based on sexual orientation or gender identity are currently before Congress. The proposed Fair and Inclusive Housing Rights Act of 2010, with the addition of sexual orientation and gender identity as protected classes, would be the first change to the Fair Housing laws since handicap and familial status were added in 1988.

What does this have to do with Realtors?

During this period of time in which Americans are losing their homes at an unprecedented rate, issues of discrimination have come sharply into focus. By way of example, the Michigan Fair Housing Center reported recently that it found discrimination against same sex couples in approximately 30% of the tests it conducted. In twenty states, including New York, discrimination based on sexual orientation is already illegal. Accordingly, although sexual orientation and/or gender identity are not yet expressly included in the Fair Housing Act, many states, including New York, already include them as protected classes and for those states that do not have such laws, HUD will likely attempt to classify sexual orientation and/or gender identity discrimination claims within the existing provisions of the Fair Housing Act.

Renew Your Knowledge

While mandatory continuing education in the field of Fair Housing is required in New York it is clear that consistent renewal of each Realtor's knowledge base is essential to professionalism. Every Realtor is encouraged to go beyond any legal or statutory requirement for continuing education in order to be certain that there is absolute clarity about applicable fair housing requirements.

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