

Foundations *Update*

A Publication of The Building Industry Association of New York City, Inc.
2071 Clove Road ~ Staten Island, NY 10304 ~ 718-390-0617 ~ Fax 718-390-0619

Volume 1, Issue 4

February 2000

Fair Housing Act

By R. Randy Lee, Esq.

"Even Exempt Homeowners Are Not Free From Regulation"

The Federal Fair Housing Act prohibits discrimination in housing because of race or color, national origin, religion, sex, handicap, or familial status. Familial status refers to the discriminatory treatment of pregnant women, or of parents or legal custodians of children under the age of 18. The Act applies to most kinds of housing, but there are exemptions for owner-occupied buildings with no more than 4 units, single-family housing sold or rented without a broker, and housing operated by private organizations that limit occupancy to members.

The Act prohibits a broad range of discriminatory conduct. Regarding the sale and rental of housing, for example, no one can, on the basis of any of the protected classifications: refuse to rent or sell housing; refuse to negotiate for housing; set different terms or conditions for obtaining housing; provide different services or facilities; or falsely deny that housing is for inspection, sale, or rental. It is also illegal to threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others to exercise such rights. Advertising (or other statements) for renters or buyers may not indicate a limitation or a preference based on a protected category, even as to single-family and owner-occupied housing that is otherwise exempt.

A person claiming to have been victimized by discrimination prohibited by the Fair Housing Act can file an administrative complaint with the Department of Housing and Urban Development. If the matter is not resolved at the complaint level, it will be heard in an administrative hearing or, at the option of either side, in federal district court. Either procedural track can lead to an award of damages, injunctive relief, and recovery of attorney's fees and costs if violations of the Act are proven.

A recent decision by an administrative law judge

("ALJ") illustrates the breadth of coverage under the Act. Gayle, a single mother of a 12-year old son who lived with her, responded to an advertisement for renting an apartment in a 2-family house. The owners occupied the other unit. While describing the apartment to Gayle over the phone, one of the owners stated, "This apartment has a pool, so we don't want children or pets." Gayle responded that, given her son's age, the pool was not dangerous. The owners stood their ground and turned Gayle down.

Since the owners occupied one-half of the house, they were able to discriminate with impunity in renting the apartment. They remained subject, however, to the Act's prohibition on making a statement with respect to rental of a dwelling that indicated any preference, limitation or discrimination based on familial status. In other words, the owners could simply have kept their mouths shut and thoughts to themselves and rejected Gayle, without explanation, but once they stated their reasons, they were in trouble.

According to the ALJ, the violated section of the Act gives persons seeking housing the right to inquire about its availability without having to endure the insult of discriminatory statements. In her view, the owners' comment rejecting anyone with children because of the pool was such a statement. The statement expressed a blanket ban on renting to a family with a child or children, even if it stemmed from a concern for the safety of children. The ALJ stated that the decision on whether a dwelling poses unacceptable risks to a child is for the prospective tenant/parent to make. Gayle and her son were awarded damages for emotional distress, and a civil penalty was assessed against the homeowners.

The lesson to be learned is that keeping your own counsel is the best course of action whether or not you think you are in the right (exempt), when dealing with fair housing issues.

