

April 2017

Community Associations Newsletter

Fair Housing Amendments – What You Need to Know

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Effective October 14, 2016 the Department of Housing and Urban Development adopted a significant rule amending its Fair Housing Regulations. This will potentially have a major impact upon how community associations deal with claims of discrimination against protected classes among its owners and residents. The full title of the new regulation, which amends the Code of Federal Regulations at 24 C.F.R. Part 100 is “Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act.” These new regulations flesh out and some would say add new standards for how HUD will investigate and adjudicate allegations of harassment on the basis of race, color, religion, national origin, sex, familial status or disability in relation to housing practices.

Briefly, the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination in the availability and enjoyment of housing and housing related services, facilities, and transactions because of race, color, national original,

religion, sex, disability and familial status (42 U.S.C. 3601-19). Until now, community associations experienced these regulations and the Fair Housing Act itself primarily in reasonable accommodation and reasonable modification requests. A reasonable accommodation involves changes in rules (including governing documents) policies, practices or services; a reasonable modification involves physical changes to the premises. Upon the request of a disabled individual, a community association has to allow either a reasonable accommodation or a reasonable modification, depending on the nature of the request, if such is necessary to afford the disabled individual an equal opportunity to use and enjoy a dwelling or common area.

The amended regulations have added new concepts for community associations to be aware of: quid pro quo harassment and hostile environment harassment. The Fair Housing Act and its regulations already recognized these types of violations, according to HUD, but did not specifically address them until the new regulations were

put in place. The new regulations define “quid pro quo” and “hostile environment” harassment and provide for adjudication of actions that violate the Fair Housing Act and its regulations based upon those categories. In either case, the harassment must be committed against a person who is a member of a protected class identified above.

The regulations define quid pro quo harassment as an unwelcome request or demand to engage in conduct where submission to the request or demand either explicitly or implicitly is made a condition related to (1) the sale, rental, or availability of a dwelling; (2) the terms, conditions or privileges of the sale or rental or the provision of services or facilities in connection therewith; (3) the availability, terms or conditions of a residential real estate related transaction.

The hostile environment harassment regulations are probably more pertinent to a community association since the existence of a hostile environment can require a community association to act even where it was not the cause of the hostile environment. If a homeowner or non-owner resident files a complaint with the community association for harassment committed against him or her by another homeowner or resident and the harassment is alleged to have been committed against a person who is a member of a protected class, then the association may be required to investigate the allegation and to respond to the complaint in a manner that resolves or

remedies the harassment situation. Thus, the community association is called upon to take a pro-active role in complaints involving, not the association or actions caused or committed by the association, but actions between and among owners and residents of the association brought to its attention.

There are two additional concepts with these changes that will affect community associations: direct liability and vicarious liability.

Direct liability attaches where the person himself or herself, which includes a homeowners association, condominium association or cooperative association or its board members, engages in conduct that results in a discriminatory housing practice. Direct liability also occurs where the community association fails to take prompt action to correct or end the discriminatory housing practice performed by its agents or employees where it knew or should have known of the discriminatory conduct or fails to take prompt action to correct and end a discriminatory housing practice by a third party where it had the power to correct it.

Vicarious liability attaches where a person’s agent or employee engages in a discriminatory housing practice regardless of whether the person knew or should have known of the conduct that resulted in the discriminatory housing practice. This provision applies established principles of agency law that a principal is vicariously liable for the actions of his or her agents taken within the scope of their authority,

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relationship or employment. In short, a community association must control its agents or employees. These agents or employees may include its officers and directors.

In sum, the new rule makes explicit that which was formerly implicit by defining hostile environment harassment and quid pro quo harassment and identifying those persons who are liable where such harassment occurs. A community association now expressly has a duty to take prompt action to correct and end a discriminatory housing practice by a third party where it knew or should have known of the discriminatory conduct and has the ability or power to influence the conduct by ending it. Many of these situations, if not all of them, are fact specific but the potential liability is still very real.

One final thought. Most states and counties and some municipalities in our area have human rights laws that track the Federal statutes and regulations. Often the more aggressive enforcement occurs at the county or state level. Community associations can expect that entities such as the Maryland Commission on Civil Rights, Virginia Fair Housing Office, the Montgomery County Human Rights Commission or the Fairfax Office of Human Rights and Equity Programs to be active in enforcing these new regulations. The connection will be that, as the HUD itself states, they do not create new law but formalize existing law.