



FAIR HOUSING

YOUR MONTHLY UPDATE TO HOUSING NEWS, INFORMATION AND EVENTS

July 2018

When Cities Discriminate – Fighting Back

Thanks to a 2016 United States Supreme Court decision, the owners of manufactured homes (and the communities where they reside) may be able to sue the local jurisdiction for violating the Fair Housing Act.

These cases are giving property owners a new tool to fight unfair land use planning ordinances like zoning and density requirements.

The Fair Housing Act makes it illegal to discriminate in any type of housing based upon race, color, religion, sex, national origin, disability or familial status. These groups are often referred to as “protected classes” of people.

The Supreme Court has ruled that

cities and counties are liable for making sure their ordinances and enforcement actions do not have a discriminatory impact on “protected classes” of people.

The very first case filed after the Supreme Court decision involved a manufactured home community in Richmond, VA. The allegation was that the government was using selective enforcement of certain ordinances against a community that was largely occupied by minorities. The case ended up settling in favor of the community and its residents.

Since that decision, MHI has been assisting several state associations in developing cases for HUD to

consider.

In addition, two lawsuits have been filed in Arkansas where the basis has been that the city discriminated against people based upon being impoverished. While the cases are not based in Fair Housing, one suit has already settled successfully.

If you believe residents of your MH community have been discriminated against by the ordinances or actions of a local government, contact your state association executive director. MHI will work with them to see if there is a basis for filing a complaint with HUD for fair housing discrimination or have another basis for a claim.

STATES PASS ASSISTANCE/SERVICE ANIMAL LAWS

Congratulations to the following states with General Assemblies that have adopted bills in 2018 on misrepresentation of assistance animals: [Alabama](#), [Arizona](#), [Hawaii](#), [Indiana](#), [Kentucky](#), [Minnesota](#), [Oklahoma](#), [South Dakota](#), [Washington](#) and [Wisconsin](#). A broader bill on misrepresentation of disabilities passed in [West Virginia](#). And, [Mississippi](#) came up with new definitions and [New York](#) is forming a commission.



Senior Communities and HOPA Updates

... what about conversions?

MHI has received several requests to include issues relative to the Housing for Older Persons Act (HOPA) in the monthly Fair Housing Update. This month we continue the series on how fair housing rules apply to senior communities.

The Fair Housing Act protects all residents from discrimination on the basis of race, color, national origin, religion, sex, handicap or familial status.

However, the Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Under this very narrow exemption, senior communities can lawfully refuse to sell or rent manufactured homes to families with minor children. How the exemption applies was addressed in last month's edition.

Recently, MHI received a question about an existing land-lease community wanting to convert to housing protected under the HOPA Act.

Remember that the HOPA age exemption is very specific and there is a test to qualify as a senior housing facility:

“Provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

Intended for, and solely occupied by persons 62 years of age or older; or

Intended and operated for occupancy by persons 55 years of age or older.”

In order to qualify for the broader "55 or older" housing exemption, HUD requires a manufactured home community to satisfy several requirements, including one mandating:

“At least 80 percent of the homes must have at least one occupant who is 55 years of age or older; and

When HOPA passed there was a provision setting a deadline for conversion of existing communities. During the time frame of that exemption, owners could discriminate against persons based upon age to reach the 80% number above. The deadline has long since expired.

Unfortunately, it is the opinion of most lawyers that to convert now an owner must grow into the exemption, without discriminating based upon age or familial status in the process. Of course, a brand-new community could be developed to be age-qualified and governed by HOPA.

For more information on HOPA, [click here](#).

Future editions of the Fair Housing Update will deal with topics specific to senior manufactured home communities. Feel free to send ideas for topics to Rick Robinson at robinson@mfghome.org.

If you have any questions regarding Fair Housing or would like back issues, please contact MHI's Senior Vice President of State and Local Affairs and General Counsel, Rick Robinson at robinson@mfghome.org.

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