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HUD Ruling...Neighbor to Neighbor Discrimination Regulation Impact Community Associations

Towards the end of 2016, the U.S. Department of Housing and Urban Development (HUD) released final regulations that change how the Federal Fair Housing Act is applied to "quid pro quo" (a favor or advantage granted or expected in return for something - literally "this for that") and hostile environment housing claims within community associations. The new rules, some of which went into effect on October 14, 2016, affect what community associations are expected to do in situations where neighbor to neighbor harassment occurs within the community.

Under the new regulation, community associations may be liable under the Act for the discriminatory actions of residents who harass or create a hostile environment for other residents if the community association has knowledge of the harassment, the power to stop it, but fails to act.

Quid Pro Quo in this instance states HUD, relates to an unwelcome request or demand to engage in conduct where submission to the request or demand is made a condition of the "sale, rental or use or enjoyment of a dwelling, the terms, conditions or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith". Ostensibly, this rule will generally apply to a housing provider who can be a commercial owner (apartments) or an individual landlord who is renting their property(ies), but obviously can and does apply to the Association as well.

The new rule has significant impact on how neighborly disputes are handled by community associations. In the past, these disputes were almost solely dealt with privately between the two parties. However, now community associations may need to intervene. HUD explains, "the duty to take prompt action to correct a discriminatory housing practice by a third party derives from an obligation to the aggrieved person created by contract or lease (including bylaws or other rules in a homeowner's association, condominium or cooperative), or by federal, state or local law."

Imposing liability for the action of third parties seems harsh. To explain their decision, HUD states in Chapter 24, Part 100 of their Rules and Regulations that "we are long



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past the time when racial harassment is a tolerable price for integrated housing; a housing provider is responsible for maintaining its properties free from all discrimination prohibited by the Act." HUD goes on to explain that rather than creating a new rule, they are simply making an amendment to an existing law.

CAI (Community Association Institute) Federal Legislative Action Committee submitted comments on the proposed new legislation. HUD responded to the comments by noting that:

- Not all resident disputes rise to the level of housing discrimination but associations should treat any allegation of discrimination very seriously regardless of the parties. Generally, the conduct needs to be sufficiently severe or pervasive as to interfere as defined above. If you become aware of alleged discrimination the association should take reasonable actions within its authority to stop, deter or minimize the discrimination

When should a community association act on a dispute between neighbors?

HUD says:

- [A] verbal or written account from an aggrieved tenant may be enough to provide notice to a housing provider that a hostile environment may be occurring, but whether it would be sufficient to establish that the conduct is sufficiently severe or perverse to create a hostile environment depends upon the totality of the circumstances...A housing provider has knowledge when a reasonable person would conclude that the harassment was occurring. Such knowledge can come from, for example, the harassed residence, another resident, or a friend of the harassed resident.

Community associations should review their documents with legal counsel to determine what authority they possess to curtail discriminatory behavior. Most documents contain "nuisance" provision that may create a duty to act. Communities should also consider adopting policies regarding discrimination outlining what actions will be taken in the event allegations of discrimination occur and amending their document to address this new responsibility. If the association becomes aware of conduct that may be discriminatory, it should immediately seek advice of counsel.

This writer would like to thank the law firm of AriasBosinger for allowing me to liberally apply the benefit of their research on this issue in our E-News.



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I think we can all discern from the above that not every complaint from an owner will come under the umbrella of either discrimination or a hostile environment. But I think we all know what those situations would be.

