



July 8, 2024

Office of the General Counsel
U.S. Department of Housing and Urban Development
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Re: Request for Guidance on Widespread Religious Discrimination by Senior Living Communities and Complexes

To whom it may concern,

The American Center for Law and Justice (“ACLJ”)¹ would like to bring to your attention the recent surge in religious discrimination against residents of senior living communities and complexes across the country. The purposes of this letter are to (1) raise awareness of the ongoing illegal conduct taking place; (2) explain the federal law that is being misunderstood/misapplied; and (3) respectfully request guidance from the Department of Housing and Urban Development (“HUD”) on religious discrimination in senior living facilities specifically relating to religious decorations, gatherings and advertisements in common areas open to all residents.

ISSUE

Since the beginning of 2023, the ACLJ has addressed violations of the Fair Housing Act (“FHA”) by 10 different complexes/communities across eight states. Each instance involves the same problem – senior living facilities across the country simply do not understand the laws that have been in place for decades preventing religious discrimination against residents by housing complexes. Some instances of discrimination we have addressed include: (1) Bible studies prohibited from common areas/rooms while other resident-led groups are able to utilize the same

¹ By way of introduction the American Center for Law and Justice is an organization dedicated to the defense of religious and constitutional freedoms. The ACLJ engages legal, legislative, and cultural issues through advocacy, education, and litigation that includes representation before the United States Supreme Court and international tribunals around the globe.

area for other gatherings such as card games, board games, and knitting clubs; (2) religious decorations banned while allowing a variety of other decorations; (3) Bible studies and other religious gatherings banned from advertising the event in common areas where other resident-led groups advertise their events; and (4) religious literature banned in common areas used by other individuals for various pamphlets, flyers, and business cards. Ironically, the alleged reasons for the illegal conduct are attempts to be “neutral,” more “inclusive,” or even claims that allowing Bible studies in common areas violates federal housing laws. Furthermore, some residents have faced eviction for exercising rights protected by the FHA.

LAW

The freedom to exercise and practice religion is one of the most revered rights in the United States and is not left at the doorstep when one enters their home. The FHA preserves the free exercise and practice of religion in housing and makes it unlawful “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . religion” 42 U.S.C. § 3604(b). Moreover, the FHA also makes it unlawful to coerce, intimidate, threaten, or interfere with any person exercising any right granted under the FHA. 42 U.S.C. § 3617. The United States Supreme Court notes that the FHA must be given “generous construction” because of the act’s “broad and inclusive” language. *Hunter v. District of Columbia*, 64 F. Supp. 3d 158, 173 (D.D.C. 2014) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 212 (1972)). Congress authorizes the HUD to administer and enforce the FHA. 42 U.S.C. §§ 3608, 3612 (a) & (o).

Buyers and renters are not only protected from discrimination before a sale, but the FHA also reaches post-acquisition discriminatory conduct. *Bloch v. Frischolz*, 587 F.3d 771, 776 (7th Cir. 2009); *Evans v. Tubbe*, 657 F.2d 661, 662-663 & n.3 (5th Cir. 1981). Accordingly, courts have explained that

The inclusion of the word “privileges” implicates continuing rights . . . there are many “services or facilities” provided to the dwelling associated with the occupancy of the dwelling. Under this natural reading, the reach of the statute encompasses claims regarding services or facilities perceived to be wanting after the owner or tenant has acquired possession of the dwelling.”

Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690, 713 (9th Cir. 2009) (see also *Idaho Aids Found., Inc. v. Idaho Hous. & Fin. Ass’n*, No. CV-04-155-S-BLW, 2008 U.S. Dist. LEXIS 16178, *16 (D. Idaho Feb. 29, 2008) (“Consistent with Congress’ broad purpose in enacting the FHA, its language, and HUD’s implementing regulations, courts throughout the country have held that § 3604 applies to a myriad of activities related to housing beyond the actual selling and renting of homes.”)). The Department of Justice (“DOJ”) emphasizes that the FHA’s ban on religious discrimination covers both overt discrimination against members of a particular religion as well as less direct actions. U.S. DOJ, Civil Rights Div., *The Fair Housing Act*, <https://www.justice.gov/crt/fair-housing-act-1> (last visited June 9, 2024).

Even if a senior complex receives Section 8 funding from HUD, the complexes are still subject to HUD’s housing regulations and not given a free pass to violate federal law. Specifically,

HUD regulations prohibit religious discrimination that imposes “different terms, conditions, or privilege relating to the sale or rental of a dwelling.” 24 C.F.R. 100.65(a). Moreover, HUD makes it clear that “limiting the use of privileges, services, or facilities, associated with a dwelling” because of the owner’s or tenant’s religion is prohibited as well. 24 C.F.R. 100.65(b)(4).

Particularly relevant to the specific issues here is the DOJ’s instruction regarding residents’ rights to engage in religious speech and other activities in common areas and meeting rooms:

No one may be discriminated against in the sale, rental or enjoyment of housing because of their religious beliefs. This includes equal access to all the benefits of housing: someone could not, for example, be excluded from reserving a common room for a prayer meeting when the room may be reserved for various comparable secular uses.

U.S. DOJ, *Know Your Rights: Federal Laws Protecting Religious Freedoms*, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/know_your_rights.pdf (last visited June 9, 2024).

Further, the FHA prohibits an apartment complex, condominium or other housing complex from *inconsistent* application of rules or regulations to single out religious speech and/or beliefs for different treatment. In the case of *Bloch v. Frischholz*, for example, plaintiff homeowners brought suit under the FHA against the condo association following the association’s refusal to allow the owners to display a mezuzah on their exterior doorpost pursuant to a facially neutral rule that barred the placement of “mats, boots, shoes, carts or objects of any sort” outside a co-owner’s door. *Bloch v. Frischholz*, 587 F.3d 771, 773 (7th Cir. 2011). The Court upheld the Blochs’ claim of discriminatory intent against the association where evidence indicated that the association ordered the removal of the mezuzah but allowed other tables and coat racks to remain in place. *Id.* at 786. The Court reasoned that a selective interpretation and/or enforcement of the rule could infer discriminatory intent. *Id.* The Second Circuit, in a similar fashion, “recognized that an FHA violation could be established through a showing that a facially neutral or policy had a discriminatory effect on a protected class.” *Anderson Group, LLC v. City of Saratoga Springs*, 805 F.3d 34, 49 (2d. Cir. 2015).

CONCLUSION

Time and time again, senior citizens fall victim to illegal religious discrimination. Oftentimes, Bible studies and prayer groups are formed in complexes because many of the residents are physically unable to attend church. As discussed above, federal laws and regulations are already in place to combat religious discrimination by senior living facilities. The rise in the cases we have seen, however, seem to reflect more of a misunderstanding of the applicable statutes and regulations. For example, most residents we have assisted have been denied access to an apartment’s community room or prevented from having religious decorations in an effort by management to be “neutral” or “more inclusive.” In no way does the Fair Housing Act permit complexes to discriminate on the basis of religion, which would include preventing religious activity in the name of neutrality. We have explained to each complex that this practice

of excluding religious groups while including any other groups violates federal law. Following these explanations, we have been able to reach quick resolutions in most of the matters after laying out the clear and longstanding Fair Housing Act. But nonetheless, the fact that such legal action was necessary demonstrates a widespread lack of awareness of what the Fair Housing Act actually prohibits.

Therefore, we respectfully request that HUD provide a written guidance to senior living complexes and management companies explaining the laws and regulations currently in place that prohibit religious discrimination in the context of religious gatherings, decorations, and advertisements. Agencies oftentimes offer guidance on specific issues. For example, in May 2023, the United States Department of Education offered “[Guidance on Constitutionally Protected Prayer and Religious in Public Elementary and Secondary Schools](#).” The DOJ explains “guidance materials often convey important information to the public in language that is clearer and more accessible than the underlying statutes and regulations. Department of Justice Manual 1-19.000 – Principles for Issuance and Use of Guidance Documents, <https://www.justice.gov/jm/1-19000-limitation-issuance-guidance-documents-1>. If HUD were to provide a similar guidance then instances of discrimination against senior citizens could be prevented in the future.

We appreciate your attention to this matter and are hopeful this letter results in HUD guidance.

Respectfully,



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