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Housing Facilities Cannot Discriminate Based on Religion

Religious freedom is one of the most revered rights in the United States. The First Amendment to the United States Constitution prohibits the government from making any law prohibiting the free exercise of religion or abridging the freedom of speech.¹ The Fair Housing Act (FHA) protects the free exercise of religion in the private and public housing markets 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”² Importantly, the United States Department of Housing and Urban Development (HUD) has emphasized that recipients of its funding fall squarely within the FHA.³

Moreover, the United States Department of Justice (“DOJ”) has made clear that the FHA’s prohibition on religious discrimination “covers instances of overt discrimination against members of a particular religion as well [as] less direct actions”⁴ In the context of housing discrimination, for example, the DOJ explained the following:

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

¹ U.S. Const. amend. I.

² 42 U.S.C. § 3604(b).

³ U.S. HUD, Non-Discrimination in Housing and Community Development Programs, https://www.hud.gov/program_offices/fair_housing_equal_opp/non_discrimination_housing_and_community_development_0 (last visited Jan. 17, 2024).

⁴ *The Fair Housing Act*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/fair-housing-act-1> (last updated June 22, 2023).

room for a prayer meeting when the room may be reserved for various comparable secular uses.⁵

Similarly, HUD Regulations state that “[i]t shall be unlawful, because of . . . religion . . . to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.”⁶ These prohibited actions include, “[s]ubjecting a person to harassment because of . . . religion . . . that has the effect of imposing different terms, conditions, or privileges . . . or denying or limiting services or facilities in connection with the sale or rental of a dwelling.”⁷

In short, the FHA prohibits apartment complexes, condominiums, and other housing complexes from preventing residents or homeowners from engaging in private religious expression and from using common rooms for religious events or activities where non-religious events or activities are permitted.

Apartment complexes, condominiums, and other housing complexes, are also prohibited from *inconsistently applying their rules and regulations* if they detrimentally single out religious expression. In *Bloch v. Frischholz*, for example, the United States Court of Appeals for the Seventh Circuit “consider[ed] whether condominium owners can sue their condo association under the Fair Housing Act . . . for alleged religious . . . discrimination.”⁸ Here the condo association refused to allow the Blochs to display a mezuzah on their exterior doorpost pursuant to a facially neutral (hallway) rule that barred “outside the units in the common hallways . . . mats, boots, shoes, carts or objects of any sort”⁹ Based on the facts of this case, the court determined that the Blochs could “proceed on an intentional discrimination theory under §§ 3604(b)” because “[a] trier of fact could conclude that the Association’s reinterpretation of the Hallway Rule and clearing of all objects from doorposts was intended to target the only group of residents for which the prohibited practice was religiously required.”¹⁰ In other words, “[s]electively interpreting ‘objects of any sort’ to apply only to the mezuzah but not to secular objects create[d] an inference of discriminatory intent.”¹¹

Interestingly, according to the DOJ, “[t]he number of cases filed since 1968 alleging [discrimination in housing based upon religion] . . . is small in comparison to some of the other prohibited bases, such as race or national origin.”¹² To this point, the DOJ

has investigated cases involving various forms of denial of equal terms and conditions of housing on the basis of religion *that have been resolved prior to filing*

⁵ *Know Your Rights: Federal Laws Protecting Religious Freedom*, U.S. DEP’T OF JUST., https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/know_your_rights.pdf (last visited Jan. 17, 2024) Even though one DOJ administration may interpret certain religious issues related to housing, or other matters differently than another DOJ administration, religious discrimination related to housing should never be permitted.

⁶ 24 C.F.R. 100.65(a).

⁷ 24 C.F.R. 100.65(b)(7).

⁸ *Bloch v. Frischholz*, 587 F.3d 771, 772 (7th Cir. 2011).

⁹ *Id.* at 773.

¹⁰ *Id.* at 787.

¹¹ *Id.* at 786.

¹² *The Fair Housing Act*, *supra* note 4.

suit . . . includ[ing] allegations of denying residents the ability to reserve common rooms for religious purposes on an equal basis with other private uses¹³

In May 2018, for example, “Christians who were banned by a homeowners association from holding Bible studies or other faith-related meetings in the common areas of a California retirement community [. . .received] a [settlement](#) after they prevailed in the dispute.” Also in 2018, a Virginia couple was told that they must “stop holding their Bible study at the senior living center’s community room or face [eviction](#).” Thankfully, in January 2020, the Virginia couple reached a [settlement](#) “allowing them to continue holding Bible classes and movie screenings at the community room.” And in February 2020, a retired Florida woman “filed a federal complaint after her homeowners association [barred her](#) from continuing to host a Bible study in the social room of her own condominium complex” This case, according to reports, also [settled](#) in her favor.

Despite these favorable outcomes, residents of senior living centers, for example, have been increasingly subject to religious discrimination. In fact, we recently sent demand letters to two separate senior living centers that were attempting to illegally interfere with residents’ Bible studies (see [here](#) and [here](#), for example). We also recently achieved a [victory](#) in response to a senior living center’s illegal attempt to ban Christmas decorations.

Thus, contrary to many senior living facilities’ mistaken belief that they have an obligation to refrain from any and all association with religion, the FHA prohibits religious discrimination in senior living facilities.

We hope that this information is of assistance to you. Should you have any questions, feel free to contact the ACLJ again.

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¹³ *Report on Enforcement of Laws Protecting Religious Freedom*, U.S. DEP’T OF JUST., <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/report.pdf> (emphasis added).