



MEMORANDUM

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Homeowners' Associations Cannot Discriminate Based on Religion

The federal Fair Housing Act (“FHA”), 42 U.S.C. § 3601, *et seq.*, 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). The United States Department of Justice (“DOJ”) has explained that the FHA’s prohibition on religious discrimination also “covers instances of overt discrimination against members of a particular religion as well [as] less direct actions . . .”¹ For example,

[I]f people are permitted to put decorations on their apartment doors, religious individuals should be able to put religious items or decorations on their doors, such as a Jewish mezuzah or a cross [as the *Bloch* case to be discussed illustrates]. Similarly, when condominiums or apartments have a common room that can be reserved by residents for private activities like parties or book studies, residents seeking to hold a Bible study or other private religious activity may not be discriminated against.²

Similarly, Housing and Urban Development (“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.” 24 C.F.R. 100.65(a). 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.” 24 C.F.R. 100.65(b)(7).

Courts have reiterated that § 3604(b) of the FHA applies to “post-acquisition conduct” including governance by homeowners’ associations. *United States v. Advocate Law Grps. Of Fla.*,

¹ *The Fair Housing Act*, THE U.S. DEP’T OF JUST., <https://www.justice.gov/crt/fair-housing-act-1> (last updated May 31, 2022).

² U.S. DEP’T OF JUST., CIVIL RIGHTS DIV., REPORT ON ENFORCEMENT OF LAWS PROTECTING RELIGIOUS FREEDOM, at 17 (2001–2006), <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/report.pdf> (last visited February 1, 2023). Even though one DOJ administration may interpret certain religious issues related to the FHA differently than another DOJ administration, religious discrimination under the FHA should never be permitted.

2019 U.S. Dist. LEXIS 167233, *17 (M.D. Fla. Sept. 27, 2019). *See also Bloch v. Frischholz*, 587 F.3d 771, 779 (7th Cir. 2011) (citing *Cox v. City of Dallas*, 430 F.3d 734, 746 (5th Cir. 2005)); *Committee Concerning Community Improvement v. Modesto*, 583 F.3d 690 (9th Cir. 2009); *Neals v. Mortg. Guar. Ins. Corp.*, 2011 U.S. Dist. LEXIS 53183, *10 (W.D. Pa. April 6, 2011). In other words, the FHA's protections, under 3604(b), are not left on the doorstep as owners enter their new homes.

In *Bloch*, 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. The Blochs alleged that the Board discriminated against them in wielding such power. *Bloch*, 587 F.3d at 780. The Seventh Circuit determined that "because the Blochs purchased dwellings subject to the condition that the Condo Association can enact rules that restrict the buyer's rights in the future, § 3604(b) prohibits the Association from discriminating against the Blochs through its enforcement of the rules, even facially neutral rules." *Id.* at 780.

As the Eleventh Circuit has stated, "the Supreme Court has repeatedly instructed us to give the Fair Housing Act a 'broad and inclusive' interpretation." *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1223 (11th Cir. 2016) (quoting *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008)). In short, the FHA prohibits an association from applying regulations or guidelines to the owners' use of their property and/or common areas in a manner that discriminates against religion.

Thus, contrary to many neighborhood or community associations' mistaken belief that they have an obligation to refrain from any and all association with religion, the FHA requires neighborhood associations to treat religion neutrally.

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