

Destiny Drake

Legal Research Paper:

Enforcing the Fair Housing Act through California Bureau of Real Estate

Law 017

22 May 2016

Prof. D. Jordan

Los Angeles Mission College

Large segments of the population residing in the state of California experience forms of discrimination that disrupts their quality of life. Housing discrimination, in particular, has made an impact on every major function of society—the economy, politics, education, religion, and the family. Therefore, fair housing laws should be strictly enforced. Furthermore, the California Bureau of Real Estate should develop policies to strengthen compliance among licensees.

Imagine being a first time home buyer, excited, prepared, and ready to make the “American Dream” your reality, only to have that dream crushed by the discriminatory practices of housing professionals. For many Americans, belonging to minority groups, this travesty occurs at alarming rates every single day. Not only do these individuals suffer financially, having been deprived of their opportunity to build wealth with home equity, but they are also subjected to long-term, socio-economical disadvantages steaming directly from residing in impoverished neighborhoods. To address this issue, the California Bureau of Real Estate should mandate periodic compliance audits of all licensees, to be administered by an independent oversight agency, in order to reduce housing discrimination statewide.

At the federal level, measures have been put in place to address the issue of housing discrimination. In 1968, President Lyndon Johnson signed the Fair Housing Act into law, which made it illegal to discriminate in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin. In 1988 the law was amended by the Fair Housing Amendments Act, expanding its protections to cover two additional classes: disability and familial status, which includes the presence of a child under the age of 18 and pregnant women. [F1] It is now enforced by the U.S. Department of Housing and Urban Development (HUD). Unfortunately, current legal practices have undermined the efficacy of the Fair Housing Act of 1964.

The state of California has taken steps, in the past, to strengthen the impact of the FHA by implementing the Fair Employment and Housing Act (FEHA). According to the California Department of Fair Employment and Housing, this law “prohibits harassment and discrimination in employment because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (Government Code sections 12940, 12945, 12945.2) and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.” [F2] Additionally, the Unruh Civil Rights Act (Unruh Act) was implemented, which states that “all persons are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments, including both private and public entities. The Unruh Civil Rights Act protects all persons against arbitrary and unreasonable discrimination by a business establishment (Civil Code section 51).” [F3]

Analyzing Cases and Codes

The first case that captivated my interest in housing discrimination was the Jones vs Mayer case. The petitioner was an African American man named Joseph Lee Jones. [F4] The case was argued shortly after the passage of the Fair Housing Act of 1968, which states that discrimination involving the sale, rental, or financing of property based on race and other protected classes is illegal.

On December 17, 2009, the Secretary of the United States Department of Housing and Urban Development (the “Charging Party”) issued a Determination of Reasonable Cause and Charge of Discrimination on behalf of Complainants and aggrieved persons Melissa Garrett, Jamaal King, Christopher Doss, Amanda Garrett, and three minor children, alleging that

Respondents Phillip Maze and Opal Maze violated the Fair Housing Act (the “Act”), 42 U.S.C. §§ 3601-31. [F5]

Moreover, Mr. King alleged that as a result of Phillip Maze’s actions, he suffered a “distinct and palpable injury,” as with *Havens Realty Co. v. Coleman*, 455 U.S. 363, 372 (1982). [F6] To initiate an administrative process under the Act, an “aggrieved person” can file a complaint within one year after an alleged discriminatory housing practice with the HUD Secretary. 42 U.S.C. § 3610(a)(1)(A)(1). An “aggrieved person” under the Act is broadly defined to include any person who, inter alia, “claims to have been injured by a discriminatory housing practice.” 42 U.S.C. § 3602(i). Section 3604(b), which prohibits discrimination against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race or color. Furthermore, the fact that Mr. King was denied use and enjoyment of the Mobile home supports his claim that the landlord had violated Section 3604(a). If the California Bureau of Real Estate would mandate every licensee to undergo periodic compliance audits in order to maintain their license, the prevalence of similar cases may be significantly lowered.

Steering

Of the many forms of housing discrimination, steering is one of the most commonly practiced fair housing violations. Steering occurs when housing professionals guide prospective home buyers towards or away from certain neighborhoods based on their race. In such cases, prospective tenants or homeowners (belonging to minority groups), are redirected to properties located outside of predominately “white” neighborhoods. Similarly, white clients are often discouraged from considering homes within communities that are predominately comprised of

minorities. Some familiar scare tactics include warnings of low-performing schools and higher crime rates.

According to a study released by the National Fair Housing Alliance in April 2006, approximately 87 percent of the testers participating in the study, who inquired about purchasing a home, were racially steered. This means, the majority of real estate agents involved in the study took the liberty of deciding where the prospective home buyer “belonged,” and limited their options accordingly. Though homes were available in predominately white communities, minority buyers were shown none. This indicates that not only are minorities often subjected to steering practices, but they are also denied services altogether.

In 1999, an interracial couple filed suit against a real estate agent for housing discrimination based on race. After meeting the couple, the agent proceeded to show them homes that were not within their budget in order to prevent them from making an offer on any of the homes in predominately white communities. He referred to them as the “salt and pepper team.” [F7].

Underreported incidents help perpetuate housing discrimination. Usually, victims are unaware that they have been discriminated against and therefore fail to report the incident to proper authorities. This can be attributed to the subtlety of the discrimination. For example, in the study previously discussed, minorities were required to show preapproval letters, while their white counterparts were not. In circumstances such as that, it would be difficult to identify or prove discrimination. Therefore, systems must be in place to hold housing professionals accountable. This is the only way to truly encourage compliance industry-wide. Considering the current climate of the industry, housing laws alone are not enough to deter steering practices. Fortunately, compliance agencies, such as *the Fair Housing Center of Los Angeles*, are growing

and will continue helping to strengthen and diversify neighborhoods throughout the state. If the California Bureau of Real Estate would begin partnering with such organizations, the impact would be stronger. Currently, however, organizations like the HRC has to resort to private funding in order to serve the public. Furthermore, they must resort to conducting private investigations using volunteer investigators.

Discriminatory Advertising

Housing discrimination is so pervasive that it can often be detected in the advertisements associated with the sale of a home. Realtors make the mistake of showing preference for a particular type of buyer when posting listings for properties in particular neighborhoods. Language, which promotes equality, is key to fair housing practices. Crafting advertisements that encourage specific types of applicants over others, such as couples or young professionals, is a direct violation of the law. It could cause individuals who do not identify with certain labels to feel excluded from the application process.

In 2006, a licensed California real estate agent, by the name of Dan Bader, placed an advertisement on Craigslist.com for one of the units he owned. The property was a duplex located in Newport Beach. The advertisement included the following statement, "well suited for professional adult/s who appreciates a very friendly, upscale beach neighborhood and relaxed setting" and was "well-suited for 1 or 2 professional adults." [F8]

The FHCOC discovered the advertisement and filed a discrimination complaint against Bader because it was written with a preference for applicants without children. Therefore, the violation was based on familial status, which is a direct violation of federal and state laws. Ultimately, he was found guilty and made to pay a fee. According to California law, "(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or

advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.” 42 USCS § 3604. [F9]

Improper Screening of Applicants

Realtors and other housing professionals should never ask questions, during the application process, regarding prospective buyer’s familial status. As aforementioned, familial status is a protected class. Therefore, asking a woman if she has children is illegal. Even if a woman is not a mother, if the realtor thinks she is, she too is protected under the familial class. This should be kept in mind at all times.

Housing professionals must never make inquiries concerning the citizenship or immigration status of a tenant, occupant, prospective tenant, or prospective tenant of a residential property. This policy applies to professionals managing lease agreements. Asking someone if they are a legal resident or citizen of the United States is against the law. Asking if someone has a green card is also illegal. [F10]

Conclusion

As the U.S. Declaration of Independence states, “all men are created equal” and “are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” While many steps have been taken to promote equal housing opportunities, more should be done. The California Bureau of Real Estate has much power and influence. Consequently, they should take a more proactive approach to resolving and combatting housing discrimination. During a weekly address, President Obama once stated, “too often, where people

live determines what opportunities they have in life.” Research continues to support his claim.

Accordingly, every realtor practicing in California must understand the importance of complying with fair housing laws and must strive to overcome any personal bias to ensure that every buyer receives a fair opportunity to purchase the home they can afford, regardless of their background or personal attributes. With this, I could not agree more.

Footnotes

[F1] TITLE 42. THE FAIR HOUSING ACT

<http://www.lexisnexis.com.libproxy.calbaptist.edu/lnacui2api/api/version1/getDocCui?lni=4YF7-GK71-NRF4-4371&csi=6362&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true>

[F2] California Fair Employment and Housing Act

<http://www.lexisnexis.com.libproxy.calbaptist.edu/lnacui2api/api/version1/getDocCui?lni=4WK3-RP80-R03M-Y0HK&csi=4867&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true>

[F3] Unruh Civil Rights Act

http://www.dfeh.ca.gov/Publications_Unruh.htm

[F4] Jones v. Mayer

<http://caselaw.findlaw.com/us-supreme-court/392/409.html>

[F5] King v. Maze

http://portal.hud.gov/hudportal/documents/huddoc?id=26b_HUD_21-5-94.pdf

[F6] Havens v. Coleman

<http://www.lexisnexis.com.libproxy.calbaptist.edu/lnacui2api/api/version1/getDocCui?lni=3S4X-6MC0-003B-S1HF&csi=270944,270077,11059,8411&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true>

[F7] Holley v. Meyer

<http://www.lexisnexis.com.libproxy.calbaptist.edu/lnacui2api/api/version1/getDocCui?lni=47F6-42H0-0038-Y117&csi=270944,270077,11059,8411&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true>

[F8] Bader v. Fair Housing Council of Orange County,

<http://www.lexisnexis.com.libproxy.calbaptist.edu/lnacui2api/api/version1/getDocCui?lni=7XXY-1190-YB0K-H005&csi=270944,270077,11059,8411&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true>

[F9] Familial Status Discrimination

<http://www.lexisnexis.com.libproxy.calbaptist.edu/lnacui2api/api/version1/getDocCui?lni=4WK3-RP80-R03M-Y0KF&csi=4867&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true>

[F10] Unlawful Practices

<http://www.lexisnexis.com.libproxy.calbaptist.edu/lnacui2api/api/version1/getDocCui?lni=4WK3-RP80-R03M-Y0KB&csi=4867&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true>