

HUD Urged to Limit Association Fair Housing Liability

By Thomas Schild Law Group, LLC
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IN REFERENCE TO: **Federal – Public Law – [Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act](#)** Effective October 14, 2016
Specifically: [Code of Federal Regulation §100.7\(a\)\(1\)\(iii\)](#)

Boards of directors are required to address members' claims of harassment on the basis of race, color, religion, national origin, sex, familial status, and disability. This includes harassment by other residents, board members, managers, and vendors. The law requires that boards take prompt steps to investigate and end harassment

More than two years after new fair housing rules regarding discriminatory actions of residents which create a **hostile housing environment** for other residents were adopted by the United States Department of Housing and Urban Development (HUD) in October 2016, it remains uncertain what community association boards and managers must do to avoid liability for not ending the discriminatory conduct of owners and other residents of condominiums, homeowner associations, and housing cooperatives.

The HUD rules establish nationwide standards which HUD will apply in enforcing the federal Fair Housing Act with respect to alleged harassment based on race, religion, national origin, sex, familial status or disability. In addition to liability for a person's own conduct and the conduct of that person's agents and employees, the 2016 fair housing rules also make a community association liable for **failing to take prompt action to end a discriminatory housing practice by residents** where the person knew, or should have known, of the discriminatory conduct and had the power to correct it. The HUD rule does not require that the housing provider have a discriminatory intent in not intervening to stop the resident's discriminatory conduct.

CAI Seeks Modified Rule or Legal Guidance for Association Boards

The Community Associations Institute (CAI)—a national organization with members who include association volunteers, managers, attorneys and other service providers—has urged HUD to revise the rule to impose liability for hostile environment housing discrimination **only where there is a discriminatory intent** by the association board or manager. CAI contends that the HUD rule departs from established judicial precedent and exposes associations to increased litigation costs to defend fair housing claims which may not be covered by its liability insurance. It also explained that, unlike a landlord who can evict a tenant for conduct which violates a lease, the authority of an association to stop discriminatory conduct of a resident is far more limited.

Alternatively, if the HUD rule is not modified, CAI asked HUD to provide additional guidance concerning what reasonable actions a community association may take to comply with the 2016 housing environment harassment rule and what actions an association is not expected to take.

Federal Appeals Court Rules Discriminatory Intent Is Not Required

Separately, a federal appellate court ruled in August, 2018 that discriminatory intent is not required for a landlord to be liable for violating the Fair Housing Act when it **knows of discriminatory harassment by a tenant and does not act to stop such conduct**. In *Wetzel v. Glen St. Andrews Living Community, LLC*, the United States Circuit Court for the Seventh Circuit based its conclusion on an analysis of the text of the Fair Housing Act and judicial guidance from the United States Supreme Court concerning sex-

based discrimination in education. The appeals court stated it was not relying on the 2016 HUD rule and suggested that HUD provide “more analysis” of its reliance on federal employment discrimination law as a basis for the rule.

The *Wetzel* decision applies in Illinois and other nearby states but does not apply in Maryland or the District of Columbia, where there is no precedential court ruling regarding the HUD rule, or landlord or community association liability for not taking action to prevent discriminatory conduct by a resident.

Posted by Thomas Schild Law Group, LLC, attorneys for condominiums, homeowner associations and housing cooperatives in Maryland -- including Montgomery County, Prince George’s County, Howard County, and Baltimore County; and in Baltimore City and Washington, D.C.

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