

## **Enforcement Of Fair Housing Laws, Including Occupancy Standards**

The Fair Housing Act (42 U.S.C. §§ 3601-3633) prohibits discriminatory sales or rental practices based upon a person's familial status, as well as race, color, religion, sex or national origin. Additionally, specified practices are also prohibited based on a person's handicap or association with a handicapped person. "Familial status" is defined to mean one or more persons under the age of 18 domiciled with a parent or legal custodian, or domiciled with persons designated by and with written permission from the parent or legal custodian. The protection afforded against discrimination based on familial status also applies to pregnant women and anyone in the process of securing custody of a person under 18 years of age. "Handicapped" means a person's physical or mental impairment that substantially limits their major life activities, a record or having such an impairment, or being regarded as having such an impairment. The term has not been defined to include current illegal use of or addiction to a controlled substance as defined in 21 U.S.C. § 802.

The Fair Housing Act expanded the powers of enforcement with the Department of Housing and Urban Development (HUD) and provided expanded investigatory and conciliation procedures. An aggrieved person can now file complaints with HUD up to one year after the alleged discriminatory practice occurred or terminated. The Secretary of the Department of Housing and Urban Development ("Secretary") can also file the complaint and such persons can do so by submitting the complaints in person or by mail to HUD in Washington, D.C. However, the complaint can also be filed with a state or local agency which has been certified as "substantially equivalent". When a complaint has been filed in this manner it is considered to be filed both with the agency under its law and with HUD under the Fair Housing Act (See 24 COFER. § 103.25). The State of Arizona has now become certified as substantially equivalent due to its enactment of the Arizona Fair Housing Act (A.R.S. § 41-1491 *et. seq.*). Consequently, an aggrieved person can also file a complaint alleging a discriminatory housing practice with the Civil Rights Division of the Arizona Attorney General's Office. Upon receipt of the complaint, the Attorney General's office advises the aggrieved person of the receipt of the complaint and within 20 days thereafter provides to the respondent (the person accused of the discriminatory practice) notice of the alleged discriminatory housing practice and information pertaining to the procedural rights and obligations of the respondent under the Fair Housing Act, as well as a copy of the original complaint. The respondent is permitted to file an answer to the complaint within ten days. The Act goes on to require that the Attorney General's Office investigate the complaint and complete such investigation within 100 days after the filing of the complaint. The Attorney General's Office is also charged with engaging in conciliation, including mediation procedures, and in the event the conciliation process is unsuccessful, the Attorney General's Office will prepare a final investigative report. The conciliation agreement may be reached between the complainant and the respondent, but is subject to final approval by the Attorney General's Office and it may provide for any of the following: binding arbitration or other methods of dispute resolution; relief including monetary relief; nondisclosure of the agreement unless the parties agree to the disclosure or the Attorney General determines the disclosure is necessary to further the purposes of the Fair Housing Act; and finally, that nothing in the course of conciliation may be made public or used as evidence in any subsequent proceeding under the Fair Housing Act without the written consent of the persons involved.

The Attorney General's Office shall determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur and it is to make this

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determination within 100 days after the complaint is filed. If the Attorney General determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred, the complaint will be dismissed, but if the Attorney General determines that reasonable cause does exist to believe a discriminatory housing practice has occurred or is about to occur, the Attorney General is to attempt for a period of 30 days to try to reach a conciliation agreement, but if none is reached after 30 days, the Attorney General will file a civil action in Superior Court.

An action in Superior Court also may be brought by the complaining party within two years after the alleged discriminatory housing practice or a breach of the conciliation agreement and this remedy for the complaining party is available to them whether or not the Civil Rights Division of the Attorney General's Office has taken action or not. However, the complaining party may not file such a civil action if the Attorney General's Office has reached a conciliation agreement between the parties. It should be pointed out that the complaining party may even have the ability to have the Judge appoint an attorney for them in Superior Court. The complaining party may seek in Superior Court all actual and punitive damages, reasonable attorney's fees, court costs and injunctive relief. The Attorney General's Office likewise may seek damages and injunctive relief and in the event the Attorney General alleges a pattern of discriminatory practices, civil penalties may be assessed by the court including \$50,000.00 for the first violation and \$100,000.00 for the second or subsequent violations.

Whether the Arizona Attorney General's Office will allege a discriminatory practice based upon a landlord's adherence to an occupancy standard restricting the maximum number of occupants is an issue of increasing importance. The Arizona Fair Housing Act does not on its face provide that occupancy limitations is violative of the Fair Housing law, as it provides:

"This Article does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating health or safety standards." (A.R.S. § 41-1491.06)

However, recent pronouncements by the Arizona Attorney General's Office, while unaccompanied by any determination by HUD on this issue, illustrate a willingness on the part of the Arizona Attorney General's Office to allege a discriminatory housing practice based upon an occupancy standard which tends to eliminate families with children from occupying a rental unit. It is recommended that close examination of the local municipal ordinance pertaining to the occupancy restrictions be reviewed by you and your counsel in order to assure compliance with the Arizona Fair Housing Act in such instances.

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