



Beware Of The One-Two Punch Expected In The Fair Housing Law Arena

Insights

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The combination of a recent unfavorable Supreme Court decision along with dramatically increased federal funding for fair housing enforcement could spell bad news. Businesses that operate in the housing industry and those businesses that provide financing and insurance coverage for the industry should be prepared for a new wave of legal challenges on the horizon.

Expansive New Legal Standards

In June 2015, the U.S. Supreme Court expanded the kinds of claims that can be brought under the Fair Housing Act (FHA). The FHA covers direct providers of housing, such as property management and real estate companies, as well as other entities in the housing industry, including banks, lending institutions and homeowners insurance companies. The federal statute prohibits discriminatory housing decisions on account of race, color, national origin, religion, sex, disability, or familial status.

In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, the Supreme Court ruled that “disparate impact” claims could be brought by those who believe the FHA was violated. (Read full alert [here](#).) These kinds of claims attack otherwise-neutral policies and practices that happen to have a disproportionate adverse impact on those protected by the FHA, even if unintentional. Unless the business can show there is a legitimate, non-discriminatory business justification for the policy or practice in question, an FHA violation will now be found in every jurisdiction in the country.

Increased Federal Funding

A month later, in late July 2015, the U.S. Department of Housing and Urban Development (HUD) announced it will make \$39.2 million available to fight housing discrimination under the agency’s 2015 Fair Housing Initiatives Program. These funds will be used to support nonprofit fair housing organizations that carry out testing and enforcement initiatives aimed to prevent and eliminate discriminatory housing practices.

Fair housing testers are individuals who, without any bona fide intent to rent or purchase a dwelling or obtain a residential mortgage, pose as fictitious prospective buyers, renters, or borrowers. They gather information in an effort to show that a housing provider or lender is engaging in discriminatory practices in violation of the FHA.

What Should You Expect?

This boost in federal funding and favorable new legal landscape should lead to a flood of new testers in the housing market. For the foreseeable future, real estate owners, brokers, developers, property managers and lenders should expect to be targeted by fair housing organizations. These advocates now possess sufficient federal funding to conduct well-organized testing, coupled with the ability to address allegations of systemic housing discrimination through the disparate impact theory. You can expect to see an increase in class and collective actions asserting such claims on behalf of large groups of individuals.

Examples of anticipated testing include:

- groups targeting those providers that misrepresent the availability of housing;
- testers probing to see if providers offer differing terms and conditions of housing (conflicting information on pricing, security deposit requirements, etc.); and
- advocates steering attention towards both small and large lending institutions to discover whether certain classes of individuals receive unjustifiably different loan products, interest rates, points, or fines.

What Should You Do Now?

Real estate owners, brokers, developers, property managers and lenders should immediately educate their workforce about the fair treatment requirements of the FHA. In response to this expected one-two punch, businesses in the industry should implement policies and practices ensuring that all housing applicants, tenants, prospective purchasers, and mortgage applicants are treated consistently, fairly, and without regard to any protected class.

If you have any questions about these developments, or how they may affect your business, please contact your Fisher Phillips attorney or the co-authors of this Alert.

This Legal Alert provides an overview of a specific Supreme Court decision and related developments. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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