

New Fair Housing Rule: Boards Must be Proactive in Addressing Harassment of Residents

Nov 30 2016

Practice Area: Community Associations

In multi-family housing, disputes among neighbors are inevitable. Many times the disputes are minor and can be resolved by the quarreling neighbors without board intervention. Other times, the disputes get personal, linger on for weeks, months, or longer, and have the potential to significantly affect an owner's ability to enjoy his or her home. Such disputes can have an impact on a person's overall well-being and quality of life.

These personal and ongoing disputes will usually make their way to the board level. They present a challenge for the board because they are often "he said, she said" situations where there may be no clear violation of Wisconsin condominium law, federal law, or the Association's governing documents. Further, the board may not want to take sides and risk escalating the dispute.

Given the inherent difficulty boards face in these situations, many boards take the approach that the dispute is between owners, does not rise to an Association-level problem, and should be resolved by the unit owner's themselves.

Now, taking a hands-off approach, while justified in many situations, just got riskier if the dispute involves harassment or discriminatory conduct.

The U.S. Department of Housing and Urban Development (HUD) has adopted new regulations regarding discrimination in condominium and homeowners association that will impact a board's obligations and potential liability in certain owner disputes.

Under the new regulations, Associations may be liable under the Fair Housing Act for the discriminatory actions of residents who harass or create a hostile environment for other residents.

The Fair Housing Act prohibits harassment in housing and housing-related transactions against a person because of race, color, religion, sex, national origin, disability, and familial status. The protections provided by the Fair Housing Act apply to an owner's use and enjoyment of their home.

Under the new regulations—which became effective as of October 14, 2016—an Association may be liable for, "Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the [the Association] knew or should have known of the discriminatory conduct and had the power to correct it." For the purposes of this rule, the third-party can be another owner or resident in the association.

In adopting this regulation, HUD recognizes that condominium and homeowners Associations have the power to respond to complaints of harassment by, for example, sending notices of violations, threats of fines, and the imposition of fines. On the other hand, boards do not have unlimited powers to address the situation: for example, they cannot simply evict an owner for bad behavior.

Accordingly, HUD stated in the commentary to the new regulations that “the rule merely requires the community association to take whatever actions it legally can take to end the harassing conduct.”

In other words, a board of directors cannot simply bury its head in the sand when it is faced with complaints of harassment and discriminatory conduct that falls, or could potentially fall, within the prohibitions contained in the Fair Housing Act.

It should also be noted that the Association can be held liable for acts of its agents or employees, such as a property manager, even if the Association or board did not know of the discriminatory conduct. So, it is important that the board is involved with vetting and addressing unit owner complaints and not rely solely on a property manager for this important job.

What does this new rule mean for boards going forward?

- If the board becomes aware that a resident is being harassed on the basis of race, sex, disability or other protected category, it cannot ignore the complaint.
- When such a complaint is made, the board should be proactive in attempting to resolve the dispute. Such attempts could be informal, such as attempting to mediate the dispute with the owners at a sit-down meeting. Or, the board could send notices of violations and impose fines and possibly seek other legal recourse.
- Boards must be aware of all complaints that are made to their property manager and cannot simply outsource dispute resolution to the management company.

In the event your board is presented with a complaint alleging harassment of a discriminatory nature, your Association’s attorney should be contacted immediately to discuss appropriate action under the new regulations.

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.