

Exemptions for Housing for Older Persons

Legal Opinion: GME-0006

Index: 9.211

Subject: Exemptions for Housing for Older Persons

January 17, 1992

Mr. Earl Cornelius
1201 W. Valencia Drive, #68
Fullerton, California 92633-3315

Dear Mr. Cornelius:

This is in response to your December 10, 1991 letter to Secretary Jack Kemp expressing concern about the manner in which the Department of Housing and Urban Development handled your fair housing complaint against Rancho Fullerton Mobile Home Estates and Roy Rousher (Case No. 09-91-2014-1).

You ask how the Department can conclude that "pregnancy clauses" are lawful and how it can permit families with children to be evicted.* The Fair Housing Act (Act) prohibits most housing discrimination against families with minor children. See generally 42 U.S.C. 3604. However, Congress created an exemption from the Act's prohibitions against familial status discrimination when the housing in question is "housing for older persons." 42 U.S.C. 3607(b); 24 C.F.R. 100.301(a). If a housing provider qualifies as housing for older persons, it can provide housing solely for older persons without violating the Act. Accordingly, the Act would not prohibit a housing provider which qualified as housing for older persons from requiring all residents to sign an agreement stating that they will move out of the housing if they have a minor child, such as one containing the "pregnancy clause" which you enclose with your letter. Similarly, the Act would not prohibit a housing provider which

* As an example of a "pregnancy clause," you submit a copy of an agreement in which residents agree that:

... in the event the woman becomes pregnant, or Residents decide to adopt a child who is not an adult, or Residents otherwise decide to have a child who is not an adult regularly occupy their coach as a member of their family, then:

(a) As soon as the fact of pregnancy becomes known or such a decision is made, Residents will list or otherwise offer their mobilehome for sale, and

(b) In any event Residents will not occupy their mobilehome after the date their child is born or adopted or a child who is not an adult begins to regularly occupy their coach as a member of their

family.

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qualified as housing for older persons from evicting a resident with a minor child.

It also appears from your letter that you believe that the Department's determination of no reasonable cause in another familial status complaint against Rancho Fullerton (McDaniel v. Rancho Fullerton, Case No. 09-90-1171-1) had an inappropriate effect on your complaint. In that case, the Department determined that Rancho Fullerton had qualified for the above-described housing for older persons exemption on or about October 10, 1989, the date on which the discrimination at issue there allegedly occurred. Accordingly, because at the time in question Rancho Fullerton was exempt from the Act's provisions that prohibit familial status discrimination, the Department determined that no reasonable cause existed to believe that Rancho Fullerton had unlawfully discriminated because of familial status in that case. However, as noted in Assistant Secretary Russell K. Paul's November 22, 1991 letter to Congressman Dannemeyer regarding your situation (emphasis in original):

The Department's determination in McDaniel does not mean that Rancho Fullerton is certified as housing for older persons and is free to discriminate against families with children indefinitely. For example, if the park did not maintain its facilities and services adequately, or if its occupancy changed so that fewer than 80 percent of the units were occupied by at least one person age 55 or over, then it would no longer qualify as housing for older persons. See 24 C.F.R. Subtitle B, Ch. I, Subch. A, App. I at 717-18 (explaining that 55 or over housing loses its exemption if its occupancy changes so that fewer than 80 percent of the units are occupied by at least one person age 55 or over.) Further, even if it continued to qualify as housing for older persons, the park could not evict families with children in a manner that violated any applicable State or local laws. Accordingly, while the Secretary's February 8, 1991 determination is informative, it is not necessarily dispositive of Mr. Cornelius' situation.

Thus, it is possible, although not necessarily very likely, that Rancho Fullerton could have qualified for the Act's housing for older persons exemption on October 10, 1989, but lost that exemption before it took the actions which you contend injured your family and you. Accordingly, the Department would not have dismissed your case based solely on its McDaniel determination, and it did not.

With respect to your complaint, the Department's file indicates that on November 20, 1991, your wife and you signed a "Notification of Complaint Withdrawal" form stating that you had

decided to withdraw your complaint because the respondents had agreed to allow you to remain in the mobile home park for 9 months. Based on your decision to withdraw your complaint, the Department closed your case without further investigation.

I hope the information provided is helpful. If you have any additional questions, please contact:

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Very sincerely yours,

Frank Keating
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