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GENERAL MEMBERSHIP MEETING

UNIQUE TOUR OF BUCK INSTITUTE

The Buck Institute for Age Research will welcome members of the Marin County Bar Association on Wednesday, July 27th. Following the association's meeting and lunch, an institute representative will highlight some of the latest efforts to understand aging and age-related diseases. A limited number of docent-led tours of the facility will be available before the meeting for the first 20 members to request the tour.

The Institute is located in Novato on a campus designed by internationally-respected architect I.M. Pei. It is the only freestanding institute in the nation dedicated to the study of aging, and one of just three such independent institutes in the world. Its mission is to extend the healthy years of life through basic biomedical research and education. Its laboratories opened in 1999, and researchers from 17 countries are working to discover the processes of normal aging as well as the diseases of aging.

The Institute was honored in June when the National Institute on Aging named it as one of just five Nathan Shock Centers of Excellence in the United States. A grant of $3.7 million across five years accompanied the prestigious honor.

The biology of aging is still in many respects a mystery. Teams in the biology-of-aging labs are examining why we age, and why we age at different rates and with different outcomes. A solid understanding of normal aging will help advance understanding of the diseases of aging. Among the diseases studied at the Buck Institute are Alzheimer's, cancer, stroke, Parkinson's, and Huntington's.

The meeting at the Buck Institute will be slightly different from most

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Calendar of Events

July 27th
General Membership Meeting
Buck Institute for Age Research,
8001 Redwood Blvd., Novato, 12 noon

July 12th
Estate Planning Mentor Group
700 Larkspur Landing Cirele, 12 noon

July 14th
Diversity Section Meeting
MCBA Conference Room, 12 noon

Employment Law Section Meeting
591 Redwood Highway - No. 4000
Mill Valley, 12 noon

July 20th
Probate & Estate Planning Section
Whistlestop, 930 Tamalpais Ave., 12 noon

ADR Section Meeting
Noonan's Restaurant, 12 noon

July 21th
Family Law Section Meeting
Dept. L, 12 noon

Look for details each month in *The Marin Lawyer.*

In This Issue

Neil Sorensen was guest editor of this issue of *The Marin Lawyer*. Philip R. Diamond is Series Editor for 2005.

AN OVERVIEW OF THE FEDERAL FAIR HOUSING ACT AND RECENT FAIR HOUSING CASES

By Sara B. Allman (© 2005 Sara B. Allman)

Editor's Note: This is the first part of a two-part article. The second part will appear in the August issue of The Marin Lawyer.

This article provides an overview of the federal Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988, 42 USC § 3601, et seq. (the "Act"), and summarizes recent legal decisions that interpret it.

WHAT DOES THE ACT DO?

The Act prohibits discrimination in the sale or rental of housing on the basis of race, color, religion, sex, familial status, national origin, or handicap.

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(Federal Fair Housing Act continued from page 1.)

Under the Act, discrimination can take various forms, such as the refusal to sell or rent (§3604 (a)), the use of different terms of sale or rental (Section 3604(b)), advertising or statements that indicate any preference or discrimination (Section 3604(d)), failure to make reasonable accommodations for the disabled (§3604 (f)), or harassment and intimidation of individuals in the exercise of their fair housing rights (§3617).

The plaintiff in a fair housing lawsuit need not be the target in order to be aggrieved and have standing to sue. In *Edwards v. Marin Park, Inc.* 356 F.3d 1058 (9th Cir.2004), the Ninth Circuit Court of Appeals held that a mobile park tenant in Marin County, California, had stated a claim for retaliation under the Act where she alleged only that she had been harassed for complaining about unfair treatment of women tenants. The court reasoned that, while general tenant activism or complaints regarding conditions are not protected under the Act, complaints about sex discrimination are.

The Ninth Circuit held, in this same vein, that a disabled individual who worked as a fair housing tester need not allege an interest in the purchase or rental of the property in order to sue in federal court. *Smith v. Pacific Properties and Development Corp.*, 358 F.3d 1097 (9th Cir. 2004). The *Smith* court also concluded that the non-profit organization engaged in advocacy and investigation to ensure compliance with fair housing laws (for whom the tester worked) had standing to pursue an administrative claim, both on behalf of its individual members and in its own right.

WHO HAS LIABILITY EXPOSURE BASED ON THE ACT?

The Act applies to property owners, property managers, homeowner associations, lenders, real estate agents, and brokers ("housing provider").[1] Even where a corporate officer of the defendant did not participate in the discriminatory conduct, he or she may be held personally liable for housing discrimination. In *Holley v. Crank*, 386 F.3d 1248 (9th Cir. 2004), the Ninth Circuit Court of Appeals reversed summary judgment in favor of a corporate officer/broker to allow a determination by the trial court as to whether he should be held personally liable for the racial discrimination of his agent. This ruling established that corporate owners and officers may, under certain circumstances, be held vicariously liable for their agent's or employee's violation of the Act.

In *Halprin v. The Prairie Single Family Homes*, 388 F. 3d 327 (7th Cir. 2004), the Seventh Circuit Court of Appeals held that other members of plaintiffs' homeowner's association were subject to liability under the Act. The plaintiffs' neighbors had ganged up and engaged in a pattern of harassment of plaintiffs based on their religion. The plaintiffs were not complaining of being prevented from acquiring property (sale or rental), but instead were complaining about being continuously harassed by their fellow homeowner association members while residing in property they already owned. In reaching its conclusion, the court relied primarily on a regulation of the Department of Housing and Urban Development ("HUD") that states that "threatening, intimidating or interfering with persons in their enjoyment of a dwelling" because of their race, color, religion, sex, handicap, familial status, or national origin is forbidden under the Act. The court thus concluded that the Act's provisions regarding retaliation (that specifically reference interference with the enjoyment or exercise of a right under other sections of the Act that pertain only to discrimination in the sale or rental of a dwelling) apply even *after* a dwelling has been acquired. The Act's retaliation provisions are thus not limited to situations of sale or rental.

The Act does not apply to owner-occupied buildings of four or fewer units. It does not apply to the sale of a private residence where the owner owns three or fewer single family homes and is not in the business of selling or renting buildings, does not use a real estate agent, does not use discriminatory advertising, and has not engaged in a similar sale within a 24 month period. Other notable, albeit narrow, exemptions include those for senior housing and religiously-affiliated housing. Providers of senior housing can discriminate based on familial status (and age) only, and religious institutions can discriminate in housing they provide based on religion only.

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(Federal Fair Housing Act continued from page 9.)

WHAT ARE REASONABLE ACCOMMODATIONS FOR THE DISABLED?

Fair housing claims may result in large verdicts that include awards of compensatory and punitive damages, as well as attorney's fees. The law should be taken seriously. Issues of compliance with the Act frequently arise and present practical concerns that a housing provider must address to attempt to avoid liability.

One common problem which frequently arises in the landlord-tenant context, is the obligation to provide reasonable accommodations to the disabled. A housing provider must not discriminate against applicants or residents based on disability. The housing provider is obligated to make reasonable accommodations in rules, policies, practices or services to afford a person with a disability an equal opportunity to use and enjoy a dwelling. The provider's obligation to make reasonable accommodations is mandatory under the Act. Accommodation requests must be considered regardless of whether they are written or oral.

In order for a requested accommodation to be warranted, however, there must be a causal connection between the requested accommodation and the individual's disability. One example, among others noted below from the United States Department of Justice website[2], is that a housing provider must make an exception to its policy of not providing assigned parking spaces in order to accommodate a mobility-impaired resident. And a housing provider must make an exception to its "no pets" policy to accommodate a deaf tenant's request to have a service dog where the dog assists in protecting the tenant by alerting him to specific sounds.

Financial accommodations fall within the ambit of a reasonable accommodation. In *Giebeler v. M & B Associates*, (9th Cir. 2003) 343 F.3d 1143, plaintiff was disabled by AIDS and lost his job. He was unable to meet the financial requirements to rent an apartment when he became unemployed. The landlord was unwilling to waive its "no co-signer" policy to allow plaintiff's mother to guarantee the rent payments. The Ninth Circuit reversed summary judgment for the landlord and held that, in order to meet its obligation to provide a reasonable accommodation, the landlord must not inflexibly apply a rental policy that forbids co-signers.

The requested accommodation must be reasonable; it is not reasonable if it is unduly burdensome, unduly expensive, or constitutes a "fundamental alteration" of the housing provider's business operations. For example, a housing provider is not required to transport a mobility-impaired tenant to the store and assist him or her in shopping where this is not a service provided to other tenants. An alternative accommodation must be considered, however, such as modifying a parking policy to allow a volunteer to park close to the tenant's unit in order to assist the tenant in store runs. If the housing provider refuses a requested accommodation on the basis that it is not reasonable, it must then consider and grant any alternative accommodation that *is* reasonable. Failure to reach an agreement on an accommodation request is construed to be, in effect, a decision to deny an accommodation. In addition, any undue delay in responding to a reasonable accommodation request may be deemed a denial of it.

The Act does not protect an individual who poses a "direct threat" to the health and safety of the other residents unless the threat can be eliminated or substantially reduced by a reasonable accommodation. This is a difficult defense to discrimination for the housing provider to establish. In order for the defense to be successful, the provider must base its determination that there is a direct threat on objective evidence rather than on a subjective belief or stereotype.

Sara Allman is a principal in the law firm of Allman & Nielsen, P.C. in Larkspur, California. She has been a civil litigation attorney for 22 years and is AV-rated by Martindale-Hubbell. The emphasis of her general defense practice is A.D.A. and fair housing claims in federal court and wrongful eviction, habitability, and common interest development matters in state court. She can be reached at all-niel@pacbell.net.

[1] State and local governments are similarly prohibited from discriminating under Section 504 of the Rehabilitation Act of 1973 and Title II of the 1990 Americans with Disabilities Act.

[2] The website of the United States Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, at http://www.usdoj.gov/crt/hcesec.htm, is a helpful resource.