SB

187

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 17, 1991 FURTHER REFERRALS:

Date of Committee Action: 5-19-91

The JUDICIARY Committee considered: CSSB 187(JUD)

CS FOR SENATE BILL NO. 187 (JUDICIARY) FAILURE TO DISCLOSE: SALES OF REALTY

"An Act relating to certain failures to disclose in real property transactions."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [X] zero fiscal note(s) CED 4-12-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Terry Martin	✓				
Mark Farley	X				
Mike Miller	✓				
Jim Ellis	✓				
Debra Dudley	✓				
Bill Hinchey	✓				

Debra Dudley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

Bill Version: SB 187

(S) Publish Date: 4/12/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: An Act relating to the disclosure of certain facts in real property transactions

BRU: Occupational Licensing

Component: Administration

Sponsor: Senate Labor & Commerce

Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO. 0 3 5 6

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

Changes in CS SB 187 (Jud) have no fiscal impact. This fiscal note is appropriate.

5-7-91 date — DiSalvo Comte Aide (initial)

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) The bill releases liability of an owner, the owner's agent, and the agent of the transferee with an interest in real property, from disclosing certain facts in real property transactions. Although the bill affects real estate licensees, the bill does not impact the licensing of real estate agents.

Prepared By: Jennifer Strickler, Administrative Officer Phone: 465-2144

Division: Occupational Licensing Date: 3/22/91

Approved by Commissioner: Glenn A. Olds Asst. Comm.

Agency: Department of Commerce & Economic Development Date: 3-22-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(les).

Rev 10/90
JS/dg19224D/032191a

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 187

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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

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Rev 10/90
JS/dg19224D/032191a

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kertula

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
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3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

TO: Representative Dave Donley

FROM: Senator Drue Pearce

DATE: May 14, 1991

RE: Scheduling of Psychologically Impacted Properties Bill (SB-187).

Senate Bill 187 was requested by the Alaska Association of Realtors in an effort to bring state law into compliance with federal law.

Currently, under federal law, if a seller or his agent directly or inadvertently discloses that a previous inhabitant of a property had AIDs he is in violation of the Federal Fair Housing Act of 1968 Amendment. The federal law's intent is to protect handicapped individuals from unfair housing discrimination.

Under Alaska state tort law, if a seller or his agent does not disclose "material" facts that affect the value of the property under negotiation, he can be sued for the difference in perceived value. A "material" fact is broadly defined by state courts to mean anything that affects the price a reasonable consumer is willing to pay for a product or service.

Senate Bill 187 will make the following fact "immaterial": The disclosure of any information that is deemed discriminatory under the U.S. Fair Housing Act (42 U.S.C. 3601 - 3631).

Would you schedule this bill for a hearing in House Judiciary Committee as soon a possible pending a referral from the House Labor and Commerce Committee.

5/17/91

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 14, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 5-16-91

The LABOR AND COMMERCE Committee considered: CSSB 187(JUD)

CS FOR SENATE BILL NO. 187 (JUDICIARY)

FAILURE TO DISCLOSE: SALES OF REALTY

"An Act relating to certain failures to disclose in real property transactions."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

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[ ] do not pass
[✓] no recommendations
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ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____
[✓] Senate zero fiscal note(s) DCED 4-12-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Finkelstein					
		Parnell		✓	
		Ivan		✓	
		Brackman		—	

Finkelstein
CHAIRMAN'S SIGNATURE

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH
SECTION OF NURSING

WALTER J. HICKEL, GOVERNOR

JUNEAU HEALTH CENTER
320 WEST WILLOUGHBY
SUITE 202
JUNEAU, ALASKA 99801-1777
PHONE: (907) 586-3736

463

M E M O R A N D U M

DATE: MAY 17, 1991

TO: Representative Pat Parnell

FROM: Fran Kinkead
Public Health Nurse F. Kinkead

SUBJECT: SB 187

Human immunodeficiency virus is a virus that causes AIDS. Regarding ways the HIV virus can be transmitted:

1) Blood to blood: Infected blood from one individual coming in contact with blood from another individual ie;
   Sharing IV drug needles, ear piercing and tattoo needles, razor blades, tweezers and tooth brushes (if bleeding gums). Through organ donors and blood products before 1985.

2) Sexual Contact:
   Exchange of vaginal secretions or semen through unprotected oral, vaginal or anal sex.

3) Perinatal Transmission:
   Acquired in the womb, before birth during birth or through breast milk.

There is no evidence that HIV can spread through body fluids like saliva, tears, urine, feces and sweat. HIV is not spread through routine contact in households, schools, work places or public settings.

See enclosed

FK/kmlc
cc: Mary O'Bryan

MAR 18 19

REALTOR®

ALASKA ASSOCIATION OF REALTORS, INC®
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133

March 13, 1991

Senator Drue Pearce
Alaska State Legislature
P.O. Box V
Juneau, AK 99811
Telefax 463-5352

Re: S.B. 187

Dear Senator Pearce:

The Alaska Association of REALTORS® is writing in support of S.B. 187, "an act relating to the disclosure of certain facts in real property transactions."

This short bill, if enacted, would serve to clarify the duties and responsibilities of real property owners and real estate agents with regard to disclosure of certain facts surrounding so-called "psychologically impacted" properties.

Currently, fourteen other states have this type of legislation in place. The Alaska Association of REALTORS® supports S.B. 187 and urges the legislature to act on passage of this bill.

Sincerely,

Dea Turner ap

Dea Turner
Executive Vice President

REALTOR®

ALASKA ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133

DATE: March 18, 1991

TO: Senator Drue Pearce

FROM: Dea Turner
Executive Vice President

SUBJECT: S.B. 187

In response to your request for an analysis of the proposed legislation, the Alaska Association of REALTORS® offers the following.

Enactment of S.B. 187 serves several important functions. First, it provides protection to an owner's interest in real property in that it limits the stigma that may be attached to a particular property through the acts of the former owner, or by events that may have occurred on the property. Acts or occurrences are not "material facts" that should have any bearing on establishing the value of a property. Likewise, the value of a property should not be indefinitely affected by an act or occurrence that may have taken place years previously. In short, this bill protects an owner's ability to receive fair market value for the property at time of sale or rental.

Secondly, S.B. 187 protects both an owner and his agent or representative from inadvertent violation of the Fair Housing Act of 1968 amendment, which establishes certain groups of people that are protected from discrimination. One of these groups is handicapped individuals, which includes victims of AIDS.

On May 9, 1990, HUD's General Counsel, Frank Keating, made the following statement in a letter to the National Association of REALTORS®: "We agree that unsolicited statements made by a real estate broker or agent that a current or previous occupant of the property has AIDS would violate

the (Federal Fair Housing Act). A broker's unsolicited statements to a prospective buyer or renter would indicate a discriminatory preference or limitation based on handicap." In this same letter, Mr. Keating went on to say that if asked whether an occupant has AIDS, a broker should decline to respond.

Finally, this bill reiterates for real estate agents as seller's/owner's representatives their fiduciary obligation to protect the client's confidences and not to disclose anything that would harm the client.

At the present time the following states have adopted similar legislation: Nevada, Connecticut, California, Rhode Island, Georgia, Oklahoma, Oregon, South Carolina, North Carolina, Florida, Hawaii, Texas, Illinois, and New Jersey.

We hope this clarifies for you the positive effect this legislation would have.

Director's Report

Between a Rock and a Hard Place

by Mary Bettis, The Bettis Co.

A new area of disclosure issues is emerging — psychologically impacted (or stigmatized) property — which involves disclosure of facts not associated with the real estate itself, but rather facts about the owner or occupant of the property.

REALTORS FIND THEMSELVES BETWEEN A ROCK . . .

Would you as a REALTOR disclose to a potential buyer or tenant that occupants of a residence have or had AIDS? Would you disclose the fact that the property was the site of a homicide, other felony, or a suicide? What is your responsibility to seek such personal information about the seller or previous tenant? Might it be considered a material factor?

. . . AND A HARD PLACE

If you were to disclose such psychological factors, would you be guilty of discrimination, or of invasion of privacy? By merely bringing up the matter in your disclosure, would you create or keep alive a stigman — feelings that adversely affect the value of the property? Would you violate your responsibility to your owner/client?

My partners and I discovered first hand the adverse effect of keeping a stigma alive. Three years ago, a woman and her two children were murdered in an apartment building which we own. Everyone, tenants and neighbors as well as ourselves, were determined to cooperate with the police investigation in any way possible. The apartment was sealed and the area cordoned off.

There was a prolonged investigation and notoriety. Tenants moved and were difficult to replace. Finally, when a relative of the victims was apprehended, tried, and convicted for the crime, and the victims' apartment was made new from the wallboard out, we thought we could put the matter behind us.

But soon after the conviction, the victims' husband and father called the new tenants living in the apartment. He told them his wife and children had been murdered there, and wondered if he could come over and look around one last time before leaving town. The tenants gave their moving notice that day.

On advice of council, we have since disclosed the matter to every prospective tenant. In doing so, we feel we needlessly keep alive the psychologically chilling effect, sabotage our efforts to create a pleasant environment, and adversely affect the value of our property.

IS DISCLOSURE REQUIRED . . .?

Much of the concern with the question of disclosure began with *Reed* v. *King*, 145 Cal. App. 3rd 261 Rprt. 130 (1983), a California court case, regarding the sale of a home in which a woman and her four children had been murdered 10 years prior to the sale. Neither the seller of nor his agent informed the purchaser that the murder had taken place. Both the seller and agent represented that the house was in good condition and fit for an alderly lady living alone. After the purchaser moved in, she was informed by the neighbors that no one had been interested in purchasing the property because of the stigma following the murders. The buyer sued alleging the property was worth less because of the murders. The trial court dismissed the case. But on appeal, the court held that a vendor of real property has a duty to disclose to the purchaser facts materially affecting the value of the property when the facts are known only to the vendor and are not readily detectable by the purchaser.

This case was the first to find a cause of action for the failure to disclose a stigma attached to a residential property. The same line of reasoning could be used for failure to disclose the stigma that might attach to a residence as a result of habitation by an AIDS victim.

The *Reed* v. *King* case was cited in a civil action involving the sale of a home in California. In *Roberts* v. *Heramb*, slip op. no. 5943942, the purchaser sued to rescind a purchase agreement and recover a $10,000 escrow desposit when she learned of the death of one of the sellers of hepatitis and the illness of the other seller with pneumonia. The purchaser suspected that at least one of the sellers had AIDS. The case was settled out of court. It has no value as precedent. But it did show that a complaint could be filed based on an allegation that the seller failed to disclose the habitation of an AIDS victim in a residence for sale.

OR IS DISCLOSURE PROHIBITED . . .?

In response to the problem, California enacted legislation which provides that no cause of action shall arise against a seller of real property, or his agent, for a failure to disclose deaths which occurred on the property more than 3 years prior to sale. The California statute also provides immunity for failure to disclose that a prior occupant had, or was suspected to have, AIDS.

The Federal Fair Housing Act of 1968 amendments, effective March 12, 1989, include the handicapped as a new protected class. Real estate agents and brokers are prohibited from discriminating agains the handicapped (which can include persons with AIDS) in the sale or rental of real property. Although the legislation does not directly address the issue of whether a real estate licensee can, without being specifically questioned by a potential buyer, disclose that an occupant of a property for sale had or was suspected to have AIDS, such a disclosure could be considered a discriminatory action which is clearly prohibited by the Federal Air Housing

Act. However, neither the Act nor the regulations, makes clear a licensee's course of action if directly asked by a potential buyer whether the property has been the home of an AIDS victim.

In response to the problem, The National Association of Realtors adopted a policy and model legislation. Anita Bates and her committee got to work seeing a sponsor to introduce a bill in Juneau this session. The text of the policy and model legislation follows:

NATIONAL ASSOCIATION OF REALTORS® POLICY

Psychologically Impacted Properties

The NATIONAL ASSOCIATION OF REALTORS® encourages states to adopt legislation to declare that all psychological impacts or stigmas which are associated with real property are not material facts and need not be disclosed to a potential purchaser or lessee. (1989 Statement of Policy, page 14)

NATIONAL ASSOCIATION OF REALTORS® ACTIVITY

In addition to the policy statement, the NATIONAL ASSOCIATION OF REALTORS® has provided each state REALTOR® Association with the following model legislative language on Psychologically Impacted Property:

The following language is proposed to be drafted into bill form appropriate to the legislative style of the state to amend the real estate license law:

Sections _____ of Chapter _____ of the laws of the State of _____ the Real Estate Licensure Act of (19____), are hereby amended to read as follows:

(1) Section _____: The fact or suspicion that a property might be or is psychologically impacted, such impact being the result of facts or suspicious, including but not limited to:
   (a) that an occupant of real property is, or was at any time suspected to be, infected or has been infected with Human Immuno-deficiency Virus or diagnosed with Acquired Immune Deficiency Syndrome, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or
   (b) that the property was; or was at any time suspected to have been, the site of a homicide, or other felony or a suicide; is not a material fact that must be disclosed in a real estate transaction.

(2) Section _____: No cause of action shall arise against an owner of real estate or his or her agent for the failure to disclose to the transferee that the transferred property was psychologically impacted as defined in Section _____ of this Chapter.

(The National Association of Realtors provided the background information for this article.)

A Quarterly Publication of the Office of the General Counsel

For The Record . . .

REALTOR®

Vol. 1 Fall 1990

HUD Says AIDS Disclosure Can Violate Title VIII

by Robert D. Butters, Deputy General Counsel

One of the most perplexing issues confronting real estate brokers and their legal counsel is the relationship between the recent changes to Title VIII contained in the Federal Fair Housing Act Amendments of 1988 and state tort law. Nowhere is this ambiguity more acute than over the question of when, if ever, a real estate broker may disclose that an owner or occupant of a dwelling has, or recently died from, AIDS or an AIDS related illness. The issue arises from a direct confrontation between two well established public policies. The first is the policy of non-discrimination against persons with handicaps reflected in the recent Title VIII amendments. A second, and arguably conflicting, public policy is reflected in the evolving common law of misrepresentation, and the broad consumer protection statutes adopted by many states prohibiting acts or omissions that are, or can be, misleading or deceptive. The key issue in most misrepresentation or consumer fraud cases is whether the alleged statement or omission was "material." A "material" fact in turn is broadly defined to mean anything that bears upon the price a reasonable consumer is willing to pay for a product or service.

Broadly construing the "materiality" concept, a creditable argument can be made that a property owner's AIDS condition is material given the fear, albeit irrational, held by some persons that AIDS can be transmitted by casual contact notwithstanding the overwhelming scientific evidence to the contrary, and also the social stigma attached to homosexuality and intravenous drug use through which AIDS is known to be communicated. The argument that an owner's AIDS condition is a material fact is also bolstered by decisions such as *Reed v. King*, 145 Cal. App. 3d 261, 193 Cal. Rptr. 130 (1983), which held that a murder occurring on the premises several years earlier could be a material fact if the plaintiff could prove a loss of market value attributed to the property's stigma.

Given the conflict between the competing public policies of non-discrimination against AIDS victims in the provision of real estate related services, and prohibiting the withholding of material facts from consumers about products and services for sale, the National Association sought an opinion in January of 1990 from the General Counsel of the Department of Housing and Urban Development concerning whether, and under what circumstances, the federal fair housing laws prohibit a real estate broker from disclosing

In This Issue:

in the owner's household has ... from ... of ...

AIDS Legislation

Several states have passed legislation on disclosure of AIDS and other stigmas such as murders, suicides and ghosts. Most of the statutes provide that the particular stigmas are not material facts, and there is no cause of action against the owner or real estate agent for failing to disclose this information.

STATE RECAP

NY - AIDS and other stigmas
CT - AIDS and other stigmas
CA - AIDS and other stigmas
RI - AIDS and other stigmas
GA - AIDS and other stigmas
DC - AIDS and other stigmas
OR - AIDS and other stigmas
SC - AIDS and other stigmas
NC - AIDS and other stigmas
FL - AIDS only
HI - AIDS only
TX - AIDS only
IL - AIDS only
NJ - AIDS only (Real Estate Commission Advisory Opinion)

Note: Consult statute or regulation for specific information on the real estate agent's duties and obligations.

Please direct questions and information to Holly Heckathorne, Associate Counsel, Office of the General Counsel, NATIONAL ASSOCIATION OF REALTORS®, 430 North Michigan Avenue, Chicago, Illinois 60611.

occupant is a swimming ...

The National Association's concern, therefore, is not with the substance of HUD's advice regarding the proper response to a buyer's direct question about an occupant's AIDS condition, but rather HUD's rationale for its advice. In his May letter, Mr. Keating stated that a real estate broker "may run afoul of the Act by aiding a buyer or renter in steering clear of properties owned or occupied by people with AIDS." Mr. Keating further stated that once a broker is aware that a buyer harbors a preference not to live in or around a home occupied by an AIDS victim, the broker may not cooperate with the buyer by identifying properties to pursue or avoid.

This rationale implicitly adopts the view that any reference to the protected status of a person living in or around a dwelling violates Title VIII, even if the information is truthful and provided only in response to a direct unsolicited question from a buyer. This construction of Title VIII reflects an assumption that Title VIII limits a broker's ability to cooperate with a buyer who is exercising his or her own freedom of choice in housing -- a right supposedly guaranteed by Title VIII.

One will not find any provision in Title VIII, or its legislative history, that suggests that the Act contains any limitation upon a homeseeker's freedom to choose where he or she will live. To be sure, an owner's freedom to sell or rent to whomever they choose is directly restrained by Title VIII, and any broker who cooperates with an owner to discriminate against a homeseeker unquestionably violates Title VIII. But cooperation with a homeseeker is not equally constrained. So long as a homeseeker's freedom of choice is not limited by an owner, broker, property manager or any other person providing real estate related services, a homeseeker is free to choose where to live, even if that choice is based upon criteria an owner is expressly forbidden to employ in choosing to whom to sell or rent. Therefore, if a homeseeker is free to make a housing choice based upon criteria otherwise foreclosed to an owner, a real estate broker who provides truthful information, upon request, to a homeseeker to allow him or her to exercise their freedom of choice cannot violate the Act. By analogy, one cannot commit a crime by aiding and abetting an otherwise lawful act. "Aiding and abetting" is a crime only if the underlying act is also a crime.

In conclusion, the weight of authority supports the view that an occupant's AIDS condition, is a fact that a real estate broker does not have any duty to discover, or if known, to disclose to any prospective buyer. These are also facts that need not, and should not, be disclosed even if the broker is asked a direct question by a homeseeker. What still remains unclear is whether this course of conduct is dictated by concerns about protecting the occupant's right to privacy in areas not material to a real estate transaction, or by an interpretation of Title VIII that imposes liability upon a broker for assisting a homeseeker who has freely and unilaterally chosen to take racial, ethnic, or handicap considerations into account in selecting a dwelling.■

that a homeowner, or someone in the owner's household has, or died from, AIDS. On May 9, 1990, HUD's General Counsel, Frank Keating, responded to the National Association's inquiry. In that response, Mr. Keating made the following unambiguous statement:

> **"... we agree that unsolicited statements made by a real estate broker or agent that a current or previous occupant of the property has AIDS would violate the [federal Fair Housing Act]. A broker's unsolicited statements to a prospective buyer or renter would indicate a discriminatory preference or limitation based on handicap."**

This portion of Mr. Keating's response is consistent with the position the National Association took in its January, 1990 inquiry letter. In the National Association's view, an unsolicited reference by a real estate broker to the handicapped status of an occupant of a dwelling could be construed as a notice or statement that the property should be avoided because of the occupant's handicap and, therefore, violate Section 804(c) of Title VIII. It is also possible that such a reference could be construed as an attempt to steer a prospect away from a dwelling based upon handicap in violation of Section 804(a).

HUD's position that unsolicited disclosure of an occupant's AIDS condition violates the federal fair housing laws is strong persuasive authority for the proposition that the federal fair housing laws preempt any interpretation of state statutory or common law that might impose an affirmative duty upon a real estate broker to investigate and disclose whether an occupant of a dwelling has AIDS on the ground that AIDS is a "material" fact in a real estate transaction.

> ***"... if a broker is asked whether an occupant has AIDS they should decline to respond."***

Consequently, real estate brokers should be counseled that they do not have any duty to investigate whether an occupant has AIDS and, indeed, should scrupulously avoid making any inquiries that are likely to elicit this information. Likewise, if a real estate broker unavoidably learns that an occupant has AIDS, the broker does not have any affirmative duty to disclose that information while marketing the property. Hence, the obligations regarding an occupant's AIDS condition are no different than obligations regarding an occupant's race or religion. Clearly a broker does not have any duty to discover an occupant's religion, or disclose that fact, if known, to prospective buyers.

Uncertainty still remains, however, concerning the broker's liability under the federal fair housing laws for responding truthfully and objectively to a buyer's direct inquiry concerning whether a dwelling occupant has AIDS. In his letter, Mr. Keating offers his advice that if a broker is asked whether an occupant has AIDS they should decline to respond.

This is sound advice for a variety of reasons not directly related to liability under the fair housing laws. Brokers who list property for sale or rent owe fiduciary duties to owners under the common law of agency. These fiduciary duties include a duty to safeguard a client's confidences and secrets. An occupant's AIDS condition certainly could be reasonably construed to be information protected from disclosure without the client's prior consent. A person's private medical history also could be construed as information sufficiently personal to justify an invasion of privacy claim if disclosed without prior consent. For these reasons, the National Association agrees that brokers should not disclose a seller's AIDS condition, even if asked by a potential buyer. The National Association's advice to brokers who unavoidably learn of an occupant's AIDS condition, and who are subsequently asked an unsolicited question by a prospective buyer about that condition, is to respond by advising the buyer that the broker's company has a policy of not addressing that subject one way or the other. If the buyer believes this information is relevant to their purchasing decision they must pursue that investigation on their own.

Attention EOs!

Please help us keep our State and Board Legal Counsel records accurate and ensure timely delivery of NAR correspondence to your legal counsel. If your board or state association is presently retaining legal counsel, please complete the enclosed form giving us your counsel's name, firm name, mailing address, telephone number and board represented to Kim Johnson, Office of the General Counsel, NATIONAL ASSOCIATION OF REALTORS®, 430 N. Michigan Avenue, Chicago, IL 60611. Thanks!

QUESTIONS

HIV/AIDS

ANSWERS

QUESTIONS

WHY DO I NEED TO KNOW ABOUT HIV INFECTION AND AIDS?

Like many diseases, HIV infection and AIDS are preventable. It is estimated that between 945,000 and 1.5 million people in the United States are infected with human immunodeficiency virus (HIV), the cause of AIDS. Many of these people got infected before they knew about AIDS and the steps they could take to protect themselves and others. While it can be disturbing to think about AIDS and consider your risk, getting up-to-date information is the first step toward protecting yourself.

WHAT IS AIDS?

AIDS stands for Acquired Immune Deficiency Syndrome. It is a serious condition that weakens the body's immune system, leaving it unable to fight off illness. People with AIDS experience certain life-threatening infections and cancers that make them very sick and can eventually kill them.

WHAT CAUSES AIDS?

AIDS is caused by a virus known as the Human Immunodeficiency Virus, or HIV. HIV is sometimes called the "AIDS virus." This virus damages the cells in the immune (defense) system that fight off infections and diseases. As the virus gradually destroys these important cells, the immune system becomes less and less able to protect against illness. Typically, HIV lives in an infected person's body for months or years before any signs of illness appear.

IS THERE A CURE FOR HIV INFECTION AND AIDS?

Currently there is no way to get rid of all the virus once a person is infected. However, new medicines can slow the damage that HIV causes to the immune system. Also, doctors are getting better at treating the illnesses that are caused by HIV infection. Many people now consider HIV infection a manageable, long-term illness.

ANSWERS

QUESTIONS

HOW DO PEOPLE BECOME INFECTED WITH HIV?

This virus is spread through the blood, semen (cum), and vaginal secretions of an HIV-infected person. People put themselves at risk for getting HIV infection when they have contact with these fluids. This can happen by engaging in specific sexual and/or drug use practices. Also, HIV-infected women can pass the virus to their newborns during pregnancy and childbirth. Lastly, some people who received blood products between 1978 and 1985 got infected blood. Now all donated blood is screened for HIV.

Many people do not know they have this virus and therefore may unknowingly pass it to others. This is because they usually look and feel fine for many years after HIV infection occurs.

Sex and HIV

• Both men and women can pass HIV to a sex partner, whether the partner is the same sex or the opposite sex. This can occur during unprotected anal, vaginal, and oral (mouth) sex through contact with infected semen (cum), blood, or vaginal secretions.

Drugs, Sex, and HIV

• People can get infected with HIV through sharing needles, cookers, or cottons (works) with someone who is infected. This can happen even when the person passing the works looks clean and healthy.

• Some people stopped shooting and/or sharing works many years ago and do not realize that they may have become infected with HIV back when they were still shooting drugs. They also may not realize they are passing it through unprotected sex now.

Pregnancy and HIV

• More than a third of all babies born to an HIV-infected woman will have the virus and eventually get sick.

WHAT ABOUT GETTING AIDS FROM BODY FLUIDS LIKE SALIVA?

Although small amounts of HIV have been found in body fluids like saliva, feces, urine, tears, and sweat, there is no evidence that HIV can spread through these body fluids.

By now, HIV has been the subject of more research than most other diseases in history. Medical science is confident about these basic

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facts: You can't get HIV or AIDS from touching someone, through sharing items such as cups or pencils, or through coughing or sneezing. HIV is not spread through routine contact in restaurants, workplaces, or schools.

There has never been any danger of becoming infected with HIV from donating blood. The needles at blood collection sites in the United States are never used twice.

COULD I BE AT RISK FOR HIV INFECTION AND AIDS?

Until they know someone who has it, many people think this disease can't happen to them. Unfortunately, it can and does happen to all kinds of people. By carefully looking at your current and past sexual and drug practices (and your transfusion history), you can get a picture of your risk for HIV. Also you can figure out what you can do to reduce your future risk for HIV infection.

WHAT CAN I DO TO AVOID GETTING HIV INFECTION?

SIX WAYS TO REDUCE RISK

1. **Sex.** Many of the things that feel good are safe because no blood, semen (cum), or vaginal secretions get into the body. This includes hugging, cuddling, masturbating, kissing, fantasizing, body-to-body rubbing, and massage.

2. **Safer Sex.** Unless you're 100% sure your sexual partner is not infected with HIV, reduce your risk by using a latex condom (rubber) on the penis from start to finish if you decide to have anal, vaginal, or oral (mouth) sex.

3. After condoms, for vaginal sex the spermicides found in birth control foams and jellies are considered the next best protection against HIV and other STDs. Spermicides offer less protection than condoms and are more effective when used along with condoms – not in place of them.

4. If you use a lubricant, use one that is water-based. Lubricants containing oil (such as Vaseline) can damage the condom and might cause it to break. Learn to

QUESTIONS

talk with your partner about condoms and safer sex. The adjustment to condom use can be hard for everyone.

5. If you shoot **drugs**, seek help. And never share needles. If you do share works, clean it with a solution of 10% bleach and water before each use.

6. Avoid mixing **alcohol or other drugs** with sexual activities – they might cloud your judgment and lead you to engage in unsafe sexual practices.

IS THERE A RELATIONSHIP BETWEEN HIV AND OTHER SEXUALLY TRANSMITTED DISEASES?

Yes. Sexually transmitted diseases (STDs) do not by themselves lead to HIV infection or AIDS. But the presence of certain STDs increases the risk of getting HIV infection during contact with an HIV-infected person. Infection with certain STDs results in the presence of sores on or in the anus, vagina, or penis that permit the virus to enter the blood system more easily. These STDs include syphilis, genital herpes, and chancroid. See a health care provider for testing and treatment if you think you might have any STD.

HOW CAN I TELL IF I HAVE HIV INFECTION?

The only way to know for sure if you have this virus is by taking a blood test called the "HIV Antibody Test." Some people call it the "AIDS Test," even though this test alone cannot tell you if you have AIDS. The "HIV Test" can test for antibodies to the AIDS virus and will tell you if you are able to pass it to others in the ways already described. The HIV test is not a part of your regular blood tests – you have to ask for it by name. It is a very accurate test.

If your test result is "positive," it means you have HIV infection and could benefit from special medical care. Additional tests can tell you how strong your immune (defense) system is and whether drug therapy is indicated. Some people stay healthy for a long time with HIV infection, while others develop serious illness and AIDS more rapidly. Scientists do not know why people respond in very different ways to HIV infection.

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Q U E S T I O N S

If your test is "negative," and you have not had any possible risk for HIV for six months prior to taking the test, it means you do not have HIV infection. You can stay free of HIV by following prevention guidelines. (In the past five years, one study indicated that a few people with HIV infection took longer than six months to test "positive." This is an extremely rare possibility.)

Less than 2% of all people who test for HIV get an "inconclusive result." This means the test cannot determine whether or not they have the virus. Repeat testing is recommended.

SHOULD I TAKE THE HIV TEST?

Recent gains in HIV medical care and treatment have increased the benefit of learning whether you have HIV infection even before symptoms of illness appear. Also, if you are planning a pregnancy, you and your partner may want to know if either of you is infected before conceiving.

Individuals who are planning to be tested should be sure that counseling is provided, both before and after the test. Consult with a health care provider with experience in HIV care or call your local health department.

You can call the National AIDS Hotline at 1-800-342-AIDS to discuss testing, and to get the name of the test site nearest you. Many test sites provide free testing and counseling. Ask for more literature on HIV testing.

IF I AM HIV POSITIVE, WHAT SHOULD I DO?

If you've tested positive for HIV, consider the following:

- See a health care professional for a complete medical work-up for HIV infection and advice on treatment and health maintenance. Make sure you are tested for TB and other STDs. For women, this includes a regular gynecological exam.
- Inform your sexual partner(s) about their possible risk for HIV. Your health department has a partner notification program that can assist you.
- Protect yourself from any additional exposure to HIV.
- Avoid drug and alcohol use, practice good nutrition, and avoid fatigue and stress.

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- Seek support from trustworthy friends and family when possible, and consider getting professional counseling.
- Find a support group of people who are going through similar experiences.
- Protect others from the virus by following the precautions talked about in this pamphlet (for example, always using condoms and not sharing needles with others).
- Do not donate blood, plasma, semen, body organs, or other tissue.
- Get as much information on HIV infection as you can.

WHAT IF A FRIEND OR ASSOCIATE HAS HIV INFECTION OR AIDS?

A friend or acquaintance will need your support and understanding, just as with any other life-threatening illness. Assurance of your continued friendship is very important. Most importantly, your friend will want to be treated as usual – as a valuable human being. And remember, casual contact – a hug, a handshake, a kiss on the cheek – poses no threat of infection to you.

ANSWERS

Q U E S T I O N S

For more information on HIV/AIDS, you can contact your personal physician, local health department, or AIDS information/education agency.

You can also call these toll-free telephone hotlines for information and referrals in your area:

National AIDS Hotline
(English-language)
1-800-342-AIDS
24 hours, 7 days a week

National AIDS Hotline
(Spanish-language)
1-800-344-SIDA
8 AM to 2 AM
Eastern Time,
7 days a week

National AIDS Hotline
(TTY-TDD)
1-800-243-7889
10 AM to 10 PM,
Eastern Time,
Monday through Friday

National STD Hotline
1-800-227-8922
8 AM to 11 PM
Eastern Time,
Monday through Friday

The American Social Health Association (ASHA), a non-profit, tax-exempt organization, operates the National AIDS Hotline and National STD Hotline under contract with the U.S. Centers for Disease Control.

ASHA publishes this and other pamphlets on sexually transmitted diseases, and maintains programs in the areas of education, public policy, and research. We need your support to continue and expand our efforts to combat AIDS and other STDs. Tax-deductible donations may be sent to the address below.

For more information, or to order pamphlets, write:

American Social Health Association
P.O. Box 13827
Research Triangle Park, NC
27709

A United Way Agency

BULK PRICES:
$16 PER HUNDRED
$140 PER THOUSAND

Prices subject to change without notice.

A N S W E R S

How You *Won't* Get AIDS

The U.S. Centers for Disease Control, Atlanta, discusses some myths and answers some questions about the AIDS virus.

AMERICA
RESPONDS
TO AIDS

An Important Message from the U.S. Public Health Service
Centers for Disease Control

People today are worried about getting AIDS. Some of them should be worried and need to take some pretty tough precautions. But many others are not in any real danger of contracting AIDS, even though they think they might be. The purpose of this brochure is to tell you how you can and, just as important, how you can't become infected with the AIDS virus.

Regardless of what you may have heard, the AIDS virus is easily avoided.

You can't just "catch" AIDS like a cold or flu, because the virus is a different type. The AIDS virus is transmitted through sexual intercourse, the sharing of drug needles, or to babies before or during birth.

- You can't get the AIDS virus through everyday contact with the people around you in school, in the workplace, at parties, stores, or by swimming in a pool, even if a person is infected with the AIDS virus. Students attending school with someone infected with the AIDS virus are not in danger from casual contact.
- You won't get AIDS from a mosquito bite. The AIDS virus is not transmitted through a mosquito's salivary glands like other diseases such as malaria or yellow fever. You can't get it from bed bugs, lice, flies, or other insects, either.
- You won't get it from clothes, a telephone, or a toilet seat.
- It can't be passed through a glass or eating utensils.
- You don't have to worry about shaking hands, hugging, or being in a crowded elevator with a person who is infected with the AIDS virus, or who has AIDS.
- You won't get AIDS from saliva, sweat, tears, urine, or excrement.

- You won't get AIDS from food that has been handled, prepared, or served by someone who is infected with the AIDS virus.
- You won't get AIDS from a kiss.
- Don't worry about getting AIDS from everyday contact with a person with AIDS. You need to take precautions such as wearing rubber gloves only when blood is present.

The Difference Between Giving And Receiving Blood

1. Giving blood. You are not now, nor have you ever been, in danger of getting AIDS from giving blood at a blood bank. The needles that are used for blood donations are brand new. Once they are used, they are destroyed. There is no way you can come into contact with the AIDS virus by donating blood.

2. Receiving blood. The risk of getting AIDS from a blood transfusion has been greatly reduced. In the interest of making the blood supply as safe as possible, donors are screened for risk factors and donated blood is tested for the AIDS antibody. Call your local blood bank if you have questions.

How *Do* You Get AIDS?

You can become infected by having sex — oral, anal, or vaginal — with someone who is infected with the AIDS virus. You can be infected by sharing drug needles and syringes with an infected person.

Babies of women who have been infected with the AIDS virus may be born with the infection because it can be transmitted from the mother's blood to the baby before or during birth.

People with hemophilia and others have been infected by receiving blood.

Can You Become Infected?

Yes, if you engage in high risk behavior. The male homosexual population was the first in this country to be affected by the disease. No matter what you have read or heard, the number of heterosexual cases is growing.

People who have died of AIDS in the United States have been male and female, rich and poor, white, black, Hispanic, Asian, and native American.

Would You Like More Information?

If you'd like to know more about AIDS or whether you should consider a blood test, talk to your doctor, local health department, or hospital. In addition, you can get helpful, confidential information from the National AIDS Information line, 1 800-342-AIDS. It's open 24 hours a day. The Spanish hotline is 1-800-344-SIDA (1-800-344-7432). The hotline number for the hearing impaired is 1-800-AIDS-TTY.

AMERICA
RESPONDS
TO AIDS

Part of the America Responds To AIDS brochure series.
This brochure has been prepared by the Centers for Disease Control, U.S. Public Health Service. The Centers for Disease Control is the government agency responsible for the prevention and control of diseases, including AIDS, in the United States.

UNITED STATES CODE SERVICE

Lawyers Edition

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CUMULATIVE SUPPLEMENT

By The Publisher's Editorial Staff

42 USCS
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§§ 2571–3700

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IT-117

(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity to make the determination;

(B) shall provide for the imposition of a penalty only after the person has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order, the determination or order shall be final.

(2) Factors in determining amount of penalty. In determining the amount of a penalty under subsection (f), consideration shall be given to such factors as the gravity of the offense, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(3) Reviewability of imposition of a penalty. The Secretary's determination or order imposing a penalty under subsection (f) shall not be subject to review, except as provided in subsection (h).

(h) Judicial review of agency determination. (1) In general. After exhausting all administrative remedies established by the Secretary under subsection (g)(1), a person against whom the Secretary has imposed a civil money penalty under subsection (f) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (g)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part.

(2) Objections not raised in hearing. The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (g)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review. The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

(4) Order to pay penalty. Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(i) Action to collect the penalty. If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (f), after the determination or order is no longer subject to review as provided by subsections (g)(1) and (h), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(j) Settlement by the Secretary. The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(k) Regulations. The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(l) Deposit of penalties. The Secretary shall deposit all civil money penalties collected under this section into miscellaneous receipts of the Treasury.

(m) Definitions. For the purpose of this section—

(1) The term "Department" means the Department of Housing and Urban Development.

(2) The term "Secretary" means the Secretary of Housing and Urban Development.

(3) The term "person" means an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

(4) The term "assistance within the jurisdiction of the Department" includes any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

(5) The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(n) Effective date. This section shall take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment.

(Dec. 15, 1989, P. L. 101-235, Title I, Subtitle A, § 102, 103 Stat. 1990.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section was enacted as part of Act Dec. 15, 1989, P. L. 101-235, and not as part of Act Sept. 9, 1965, P. L. 89-174, popularly known as the Housing and Urban Development Act, which generally comprises this chapter.

Effective date of section:

This section is effective as provided by subsec. (n).

CHAPTER 45. FAIR HOUSING

Section

RESEARCH GUIDE

Forms:

5 Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 71.

25 Am Jur Pl & Pr Forms (Rev), Zoning and Planning, Form 13.1.

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§ 3601. Declaration of policy

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Short titles:

Act Sept. 13, 1988, P. L. 100-430, § 1, 102 Stat. 1619, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as a note to this section, provides: "This Act may be cited as the 'Fair Housing Amendments Act of 1988'.".

Act Apr. 11, 1968, P. L. 90-284, § 1, 82 Stat. 73; Sept. 13, 1988, P. L. 100-430 § 2, 102 Stat. 1619, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as a note to this section, provides: "This Act may be cited as the 'Civil Rights Act of 1968'.".

Act Apr. 11, 1968, P. L. 90-284, Title VIII, § 800, 82 Stat. 81; Sept. 13, 1988, P. L. 100-430, § 4, 102 Stat. 1619, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as a note to this section, provides: "This title may be cited as the 'Fair Housing Act'.".

Other provisions:

Disclaimer of preemptive effect on other Acts. Act Sept. 13, 1988, P. L. 100-430, § 12, 102 Stat. 1636, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as a note to this section, provides: "Nothing in the Fair Housing Act [42 USCS §§ 3601 et seq., generally; for full classification, consult USCS Tables volumes] as amended by this Act limits any right, procedure, or remedy available under the Constitution or any other Act of the Congress not so amended.".

Effective date and initial rulemaking. Act Sept. 13, 1988, P. L. 100-430, § 13, 102 Stat. 1636, provides:

"(a) Effective date. This Act and the amendments made by this Act [amending 42 USCS §§ 3601 et seq., generally; for full classification, consult USCS Tables volumes] shall take effect on the 180th day beginning after the date of the enactment of this Act.

"(b) Initial rulemaking. In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the date of the enactment of this Act, issue rules to implement title VIII as amended by this Act [42 USCS §§ 3601 et seq.,

generally, for full classification, consult USCS Tables volumes]. The Secretary shall give public notice and opportunity for comment with respect to such rules.".

Separability of provisions. Act Sept. 13, 1988, P. L. 100-430, § 14, 102 Stat. 1636, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note, provides: "If any provision of this Act [for full classification, consult USCS Tables volumes] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.".

CODE OF FEDERAL REGULATIONS

Add:
24 CFR Part 111.

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:132, 212, 220, 357, 358, 426, 486, 501.

Housing and Urban Development, Fed Proc, L Ed § 44:73.

Am Jur Proof of Facts:

Sexual Harassment by Landlord, 3 Am Jur Proof of Facts 3d, p. 581.

Forms:

10A Federal Procedural Forms L Ed, Highways and Bridges § 38:60.

10A Federal Procedural Forms L Ed, Housing and Urban Development §§ 39:1, 3, 33, 34, 44, 45, 61.

15 Federal Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits § 61:32.

5 Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 71.

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 74.

13A Am Jur Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Forms 41, 42.

25 Am Jur Pl & Pr Forms (Rev), Zoning and Planning, Form 13.1.

Annotations:

What constitutes illegal discrimination under state statutory prohibition against discrimination in housing accommodations on account of marital status. 33 ALR4th 964.

Law Review Articles:

Morales, Creating New Housing Opportunities for Families with Children: The Fair Housing Amendments Act of 1988. 22 Clearinghouse Rev 744, December, 1988.

Civil Rights—Racial Discrimination—Fair Housing Act of 1968—Standing for Testers—Havens Realty Corp. v. Coleman, 102 S. Ct. 1114. 21 Duquesne L Rev 295, Fall, 1982.

Wolff, The Fair Housing Amendments Act of 1988: A Critical Analysis of "Familial Status". 54 Mo L Rev 393.

Andersen, The 1988 Fair Housing Act Amendments. 35 Prac Law 79.

Kushner, The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing. 42 Vand L Rev 1049.

INTERPRETIVE NOTES AND DECISIONS

1. Generally

Remedies provided by 42 USCS §§ 1981 and 1982 are independent from those provided by Fair Housing Act (42 USCS §§ 3601 et seq.), and may be utilized to grant appropriate relief in case within coverage of both Act and Civil Rights Act. Wilkey v Pyramid Constr. Co. (1985, DC Conn) 619 F Supp 1453, 39 BNA FEP Cas 25, 120 BNA LRRM 3125.

Language of Fair Housing Act (42 USCS §§ 3601 et seq.) is broad and inclusive and subject to generous construction. Stackhouse v De Sitter (1985, ND Ill) 620 F Supp 208.

Hotel chain is denied motion under 28 USCS § 1404(a) to transfer New York motor hotel's action alleging that chain expelled hotel from affiliation because it was providing lodging to black and Hispanic homeless persons under contract with local welfare department despite existence of forum selection clause selecting Arizona for resolution of disputes between parties where transfer of action would contravene strong public policy interest of local residents in determining whether chain's actions were inimical to goal of ensuring fair housing and equal access to public accommodations. Red Bull Associates v Best Western International, Inc. (1988, SD NY) 686 F Supp 447, app gr (SD NY) 1988 US Dist LEXIS 5132, affd (CA2) 1988 US App LEXIS 16532.

2. Purpose

Action by challengers of housing project fails under 42 USCS § 1982 and Fair Housing Act (42 USCS §§ 3601 et seq.), where municipality's decision not to build low-income housing on site was motivated by financial concerns and not racially discriminatory intent or purpose. Strykers Bay Neighborhood Council, Inc. v New York (1988, SD NY) 695 F Supp 1531.

4. Duties created

With respect to administration of federal housing grants to city, HUD has not satisfied minimum levels of compliance with Title VIII of Civil Rights Act of 1968 (42 USCS §§ 3601 et seq.) where (1) HUD has continued community development block grant funding for city despite city's failure to file minority needs assessment, (2) HUD has never published regulations under Title VIII, thus discouraging local enforcement and (3) HUD has accepted from city cosmetic changes regarding fair housing policies, without utilizing any of its immense authority to provide adequate desegregated housing, despite fact that HUD-financed city programs were neither intentionally discriminatory nor had discriminatory impact. NAACP v Harris (1983, DC Mass) 567 F Supp 637.

Neighborhood integration is important goal of Fair Housing Act of 1968 (42 USCS §§ 3601 et seq.). Jorman v Veterans Admin. (1984, ND Ill) 579 F Supp 1407..

HUD does not violate its duties imposed under 42 USCS §§ 3601 et seq. by continuing to fund city redevelopment authority after it knew that authority was following racially discriminatory relocation practices, where HUD entered into cooperation agreement by which city assumed responsibility for relocation under urban renewal and neighborhood development plan, and where to have cut off funds would have penalized those most in need of housing. Jenkins v Missouri (1984, WD Mo) 593 F Supp 1485.

It has been clear at least since passage of Title VIII—if not from date of Executive Order 11063 and HUD's inception as federal agency—that HUD has affirmative duty to eradicate segregation, and necessary prerequisite for fulfilling this duty is to obtain information about discrimination practices under agency's auspices. Young v Pierce (1985, ED Tex) 628 F Supp 1037.

5. Standing

Only constitutional requirements for standing need be met in suit brought under Fair Housing Act by tenants' union challenging allegedly racially discriminatory housing practices and, therefore, tenants' union has standing where complaint alleges (1) injury to organization's goal of open housing, (2) Department of Housing and Urban Development failed to condition its provision of federal funds for housing project on municipality's compliance with non-discriminatory housing policy, (3) State of Rhode Island and municipality successfully lobbied for withdrawal of developer's financing commitment to housing project in least integrated area of municipality, and (4) corporate developer's withdrawal of funds prevented construction; causation element of standing is not properly alleged as to individuals associated with defendant organizations because they did not, as individuals, have legal authority to halt project. Project Basic Tenants Union v Rhode Island Housing & Mortg. Finance Corp. (1986, DC RI) 636 F Supp 1453.

6. Remedies

When plaintiff who has standing to bring suit shows substantial likelihood that defendant has violated specific fair housing statutes and regulations, that alone, if unrebutted, is sufficient to support injunction remedying those violations; in light of subtle, pervasive, and essentially irremedial nature of racial discrimination, proof of existence of discriminatory housing practices is sufficient to permit court to presume irreparable injury. Gresham v Windrush Partners, Ltd. (1984, CA11 Ga) 730 F2d 1417.

Court lacks authority to order innocent white tenants to vacate apartments to remedy discrimination against blacks or other minorities by apartment management. Gresham v Windrush Partners, Ltd. (1984, CA11 Ga) 730 F2d 1417.

Irreparable injury for purposes of injunction may be presumed from fact of discrimination and violations of fair housing statutes; unrebutted showing by plaintiff that defendant has violated specific fair housing statutes and regulations is sufficient to support injunction remedying those violations. Gresham v Windrush Partners, Ltd. (1984, CA11 Ga) 730 F2d 1417.

Scope of review of agency action under Title VIII (42 USCS §§ 3601 et seq.) is narrow; HUD has great discretion in choosing methods to achieve national housing goals, but its action will be overturned if found to be arbitrary and capricious within meaning of 5 USCS § 706(2)(a). Little Earth of United Tribes, Inc. v United States Dept. of Housing & Urban Dev. (1983, DC Minn) 584 F Supp 1292.

§ 3602. Definitions

(a)-(e) [Unchanged]

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 [42 USCS §§ 3604, 3605, 3606, or 3618].

(g) [Unchanged]

(h) "Handicap" means, with respect to a person—

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(i) "Aggrieved person" includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) "Complainant" means the person (including the Secretary) who files a complaint under section 810 [42 USCS § 3610].

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means—

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a) [42 USCS § 3610(a)].

(o) "Prevailing party" has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

(As amended Sept. 13, 1988, P. L. 100-430, § 5, 102 Stat. 1619.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988. Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note), in subsec. (f), substituted "806, or 818" for "or 806"; and added subsecs. (h)-*(o)*.

Other provisions:

Handicap definitions not applicable to transvestites. Act Sept. 13, 1988, P. L. 100-430, § 6(b)(3), 102 Stat. 1622, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note, provides: "For the purposes of this Act as well as chapter 16 of title 29 of the United States Code [29 USCS §§ 701 et seq.], neither the term 'individual with handicaps' nor the term 'handicap' shall apply to an individual solely because that individual is a transvestite.".

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:212, 357-359, 363, 501.

Forms:

10A Federal Procedural Forms L Ed, Housing and Urban Development § 39:3.

INTERPRETIVE NOTES AND DECISIONS

4. "Familial status"

4. "Familial status"

Tenants lack standing to challenge their eviction under 42 USCS § 3602(k), where complaint alleges eviction is due to tenants' intent to house foster children but tenants, who are licensed to be foster parents, are not in process of securing legal custody of foster children to live with them, because tenants have not attained "familial status." Gorski v Troy (1989, ND Ill) 714 F Supp 367.

§ 3603. Effective dates of certain prohibitions

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights § 11:212, 357, 358, 360, 501.

Forms:

10A Federal Procedural Forms L Ed, Housing and Urban Development § 39:3.

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices.

[Introductory matter unchanged]

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.[;]

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988 [enacted Sept. 13, 1988], a failure to design and construct those dwellings in such a manner that—

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

y shall encourage, but may not require, States and units of local clude in their existing procedures for the review and approval of l covered multifamily dwellings, determinations as to whether the uction of such dwellings are consistent with paragraph (3)(C), and nical assistance to States and units of local government and other ent the requirements of paragraph (3)(C).

his title shall be construed to require the Secretary to review or ı, designs or construction of all covered multifamily dwellings, to r the design and construction of such dwellings are consistent with of paragraph 3(C).

ragraph (5) shall be construed to affect the authority and responsibil- ry or a State or local public agency certified pursuant to section Act [42 USCS § 3610(f)(3)] to receive and process complaints or n enforcement activities under this title.

s by a State or a unit of general local government under paragraphs ll not be conclusive in enforcement proceedings under this title.

bsection, the term "covered multifamily dwellings" means—

ısisting of 4 or more units if such buildings have one or more

nits in other buildings consisting of 4 or more units.

itle shall be construed to invalidate or limit any law of a State or of a State, or other jurisdiction in which this title shall be effective, gs to be designed and constructed in a manner that affords handi- :r access than is required by this title.

ubsection requires that a dwelling be made available to an individual constitute a direct threat to the health or safety of other individuals uld result in substantial physical damage to the property of others.

1988, P. L. 100-430, §§ 6(a)-(b)(2), (e), 15, 102 Stat. 1622, 1623,

STORY; ANCILLARY LAWS AND DIRECTIVES

to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 opularly known as the Fair Housing Act, and appears generally as 42 . For full classification of this Title, consult USCS Tables volumes.

colon is inserted at the conclusion of subsec. (f)(3)(A) as the punctua- ed by Congress.

1988 (effective on the 180th day beginning after enactment, as provided Act, which appears as 42 USCS § 3601 note), in subsecs. (a) and (b), atus,"; in subsecs. (d)-(e), inserted "handicap, familial status,"; added para. (3)(A) of such subsec., substituted "except that, in the case of a may where it is reasonable to do so condition permission for a renter agreeing to restore the interior of the premises to the condition ne modification, reasonable wear and tear excepted." for the concluding xplanatory note to this section].

RESEARCH GUIDE

. Ed:
Civil Rights §§ 11:82, 106, 212, 220, 221, 223, 357, 358, 360, 483, 485,

ural Forms L Ed, Highways and Bridges § 38:60.
ural Forms L Ed, Housing and Urban Development §§ 39:2, 3, 31, 36-

Pr Forms (Rev), Housing Laws and Urban Redevelopment, Forms 43,

ing of denial of home loans or insurance coverage in certain neighbor- ation in violation of §§ 804 and 805 of Fair Housing Act (42 USCS ALR Fed 899.

gal discrimination under state statutory prohibition against discrimina- mmodations on account of marital status. 33 ALR4th 964.

s:
w Project, Mental Disability Law: 1988. Clearinghouse Rev 966,

n Title VIII: Importing an Employment Discrimination Doctrine into ct. 54 Fordham L Rev 563, March, 1986.

INTERPRETIVE NOTES AND DECISIONS

20.5. Class action
26. Limitations

5. Application

42 USCS § 3604(a, b, d) applies to prospective black tenants of apartment complex, not-for-profit corporation organized to further goals of Fair Housing Act, apartment complex owners, and rental agents employed by complex. Davis v Mansards (1984, ND Ind) 597 F Supp 334.

8. Generally

Rental housing practice may be found unlawful either because it is motivated by racially discriminatory purpose or because it is shown to have disproportionately adverse effect on minorities; in order to prevail in discriminatory impact case plaintiffs, members of discrete minority, are required to prove only that given policy had discriminatory impact on them as individuals. Betsey v Turtle Creek Associates (1984, CA4 Md) 736 F2d 983.

In determining whether particular practice violates 42 USCS § 3604(a), court looks to whether statement or conduct would have untoward effect on reasonable person under circumstances who is seeking housing, and behind statement or conduct to intent of agent; if statement or act would have discriminatory effect and is made with intent to steer, it violates § 3604(a). Heights Community Congress v Hilltop Realty, Inc. (1985, CA6 Ohio) 774 F2d 135.

Not every denial, especially temporary denial, of low-income public housing has discriminatory impact on racial minority sufficient to establish prima facie violation of Fair Housing Act (42 USCS §§ 3601 et seq.); accordingly, naked effect of action by governmental subdivision, without more, does not invoke provisions of Act. Arthur v Toledo (1986, CA6 Ohio) 782 F2d 565.

In order to state prima facie case of housing discrimination, plaintiff must establish following elements: (1) that he is member of protected class; (2) that he applied for and is qualified to purchase housing; (3) that he was rejected; and (4) that housing opportunity remained unavailable. Jiminez v Southridge Cooperative Section I, Inc. (1985, ED NY) 626 F Supp 732.

Constitution prohibits government from funding racial discrimination with public dollar, and indeed, any tangible assistance to segregation is prohibited if it has significant tendency to facilitate, reinforce, or support private discrimination; action of Department of Housing and Urban Development in form of federal funding, technical assistance and regulatory oversight of segregations in connection with public housing was federal action that constituted direct support for racial discrimination. Young v Pierce (1985, ED Tex) 628 F Supp 1037.

9. Refusals to sell

In action under 42 USCS § 3604 against real estate firm, 2 of its sales agents and sellers, for alleged racial discrimination in sale of real estate, jury verdict for black plaintiffs is supported by evidence where broker in informing sellers that offer came from black purchasers, failed to inform sellers that federal law prohibits sellers from taking race into account, or that black purchasers' financial resources were superior to white purchaser's resources, and where offer by blacks was not revived when white purchasers were unable to produce earnest money. Green v Century 21 (1984, CA6 Ohio) 740 F2d 460.

Real estate agency and individual brokers violated 42 USCS §§ 1982 and 3604 where (1) defendants stated to prospective black home buyers different and higher terms than they stated to prospective white buyers, (2) defendants offered different and more favorable terms to white buyers after rejection of plaintiffs' offer and (3) defendants never sold or listed home to black person. Hobson v George Humphreys, Inc. (1982, WD Tenn) 563 F Supp 344.

Hispanic plaintiffs failed to state cause of action under 42 USCS § 3604 against corporate owners of co-operative residential apartment building, arising from owners rejection of plaintiff's application for acquisition of apartment building, since plaintiffs have failed to show any purposeful or intentional discrimination as result of rejection, and since evidence reveals that rejection of plaintiff's application resulted from negative information corporation received relating to prior unbecoming business dealings involving plaintiffs. Kaplan v 442 Wellington Cooperatives Bldg. Corp. (1983, ND Ill) 567 F Supp 53.

Plaintiff, who applied to purchase apartment, did not establish that he was victim of housing discrimination where his applications did not indicate that he had enough assets to purchase apartment, and did not prove that he could meet job stability requirement for purchase; in any case, defendant proffered legitimate, non-discriminatory reason for its action where it showed that its refusal to consider plaintiff's later application was based upon its previous determination that plaintiff did not meet employment stability requirement and information it had received regarding competing applicant. Jiminez v Southridge Cooperative Section I, Inc. (1985, ED NY) 626 F Supp 732.

Minority homeseekers' suit against area planning association under 42 USCS § 3604(b) for discrimination in provision of services in connection with terms, conditions or privileges of sale or rental of dwelling is dismissed, where planning association voluntarily supplied limited housing information regarding only "non-traditional moves," those of whites into integrated areas and of minorities into predominantly white, nonintegrated areas, since such activity is far removed from transactions in commercial residential market to be considered in connection with sale or rental of dwelling. Steptoe v Beverly Area Planning Asso. (1987, ND Ill) 674 F Supp 1313.

10. Refusals to rent

In determining whether all-adult conversion policy had disproportionate impact on minorities in total group to which policy was applied court considers that majority of affected tenants and majority of tenants receiving eviction notices were members of racial minority; upon showing of discriminatory impact, defendants must prove business justification sufficiently compelling to justify challenged practice. Betsey v Turtle Creek Associates (1984, CA4 Md) 736 F2d 983.

White mother of daughter whose father is black states cause of action under 42 USCS § 3604 against owners and managers of trailer park, along with lessee of trailer pad at park, for defendants' race-conscious refusal to sublease available trailer

and paid to plaintiff and her daughter, since (1) manager's statement to lessee that manager did not allow black tenants in trailer park demonstrates that manager had actual control over rental of lessee's trailer, and that manger intended to exercise his control in discriminatory way and (2) manager's similar statement to plaintiff acted as continuation and confirmation of previous act of housing discrimination. Stewart v Furton (1985, CA6 Tenn) 774 F2d 706.

Black woman establishes prima facie case of racial discrimination under 42 USCS § 3604 arising from white defendant's refusal to rent apartment to plaintiff, where (1) plaintiff testified that defendant, upon seeing plaintiff, refused to rent apartment and stated that it was his prerogative to be prejudiced, (2) defendant had no good business reason for refusing to rent to plaintiff, in that plaintiff's salary clearly made apartment affordable and (3) defendant's claim that he rented only to elderly persons was impeached by his own deposition testimony that one of his tenants was in her thirties or forties. Hamilton v Svatik (1985, CA7 Ill) 779 F2d 383.

Evidence reasonably supported magistrate's finding that defendant landlord did not intentionally discriminate against prospective tenants when he refused to rent apartment to them, where almost all evidence in case was from parties themselves and close relatives or associates, and where there were 2 completely different renditions of events in case, both of which were potentially plausible, so that court felt obligated to defer to magistrate's credibility assessments of evidence. Vaughner v Pulito (1986, CA5 La) 804 F2d 873.

Apartment owners were properly held in civil contempt for violating consent decree arising from suit under Fair Housing Act (42 USCS §§ 3601 et seq.) enjoining owners from discriminating against possible tenants on basis of race, where trial court credited testimony of rental agent that owners refused to rent to prospective tenant because she was black. Hayden v Oak Terrace Apartments (1987, CA7 Ill) 808 F2d 1269.

Ample evidence supported finding that black applicant was discriminated against on basis of race in violation of 42 USCS § 1982 and 42 USCS §§ 3601 et seq. when she was refused opportunity to rent or inspect or negotiate for rental of townhouse or apartment, where evidence showed that applicant's white sister-in-law called apartment complex to inquire about availability on next day and was invited to view apartments and to see floor plans, and was not told as applicant was that children were restricted to townhouses rather than apartments, and sister-in-law was told apartments were available immediately and one would be held for her until following week, and evidence showed that there were in fact vacant townhouses at time black applicant was looking for rental unit; although landlord claimed that reasons for rejecting black applicant arose out of policies that families with one child could rent townhouses but not apartments, and families with more than one child were not permitted at all, applicant introduced evidence showing exceptions had been made to those rules on several occasions, and evidence of high percentage of minority occupancy at complex did not conclusively rebut claim of intentional racial discrimination. Asbury v Brougham (1989, CA10 Kan) 866 F2d 1276.

Claim by tenants that purchaser of apartment complex housing 95 percent Hispanic residents discriminated against tenants on basis of national origin in violation of Fair Housing Act (42 USCS §§ 3601 et seq.) when purchaser evicted all tenants in order to renovate apartments would fail, where apartments had to be closed for renovations because they had been found unfit for human habitation, not because of national origin of tenants, and where renovation project was designed to benefit persons of low to moderate income and there was no evidence of intent to force Hispanics from area. Gomez v Chody (1989, CA7 Ill) 867 F2d 395.

Evidence supported finding that apartment owners engaged in pattern or practice of making apartments unavailable to persons because of race in violation of 42 USCS §§ 3601 et seq., where owners refused to rent to black bona fide apartment seekers, gave black and white testors differing information on availability of apartments, and treated black testors significantly differently from white testors. United States v Di Mucci (1989, CA7 Ill) 879 F2d 1488.

Black couple made out prima facie case of discrimination under 42 USCS §§ 1982 and 3604 by showing that (1) they are members of racial minority, (2) they rented apartment from defendants, (3) they were locked out of their apartment and (4) apartment continued to be available and was subsequently rented to white family; defendants failed to overcome inference of discrimination by stating that they believed plaintiffs would not be good tenants where defendants (1) are experienced in business of renting apartments and have established procedures for dealing with problem tenants, (2) produced no direct evidence that plaintiff's checks would be dishonored and (3) knew that plaintiffs had good jobs and steady income. Shaw v Cassar (1983, ED Mich) 558 F Supp 303.

In order to prevail in 42 USCS § 3604 action alleging unlawful refusal to rent, plaintiff must show that defendant represented to him, because of race, color, religion, sex or nationality, that apartment was not available for rent, when apartment in fact was available for rent. Metro Fair Housing Services, Inc. v Morrowood Garden Apartments, Ltd. (1983, ND Ga) 576 F Supp 1090.

Owners and operators of apartment complex, and rental agents employed by complex, violated 42 USCS § 3604(a, b, d) by (1) failing to offer black prospective tenants available apartment for which they applied and were qualified, (2) causing to be produced, signed and disseminated letter telling prospective black tenants that no units were available at time when units were in fact available, (3) refusing to allow prospective black tenants to fill out application or place deposit for apartment, because of applicants' race and (4) engaging in systematic practice of discrimination against black applicants and homeseekers that frustrated counseling and referral services, drained resources and hindered mission of not-for-profit corporation organized to further goals of Fair Housing Act. Davis v Mansards (1984, ND Ind) 597 F Supp 334.

42 USCS § 3604 is not violated by section of application form for federally funded housing project which requests information on church affiliation, where information on religious affiliation was sought for secular purpose of allowing managers of project to notify tenant's clergyman in event of

death or serious illness, and where plaintiffs have offered no evidence that refusal to rent to plaintiffs was in any way affected by plaintiffs' religious affiliations. Knutzen v Nelson (1985, DC Colo) 617 F Supp 977.

Action by dark-skinned Puerto Rican woman under 42 USCS §§ 1981-1982 and 3601 et seq. and New York Real Property Law based on alleged racial discrimination in refusing to rent apartment, stated claim where plaintiff alleged that she learned of apartment vacancy in building owned by defendants, that she was told that apartment was no longer available, but shortly thereafter she learned that defendants were continuing to accept applications for apartment, and that at plaintiff's insistence defendants agreed to reconsider her application, but ultimately decided to lease apartment to another applicant, a white, non-Hispanic male with no children. Quinones v Nescle (1986, ED NY) 110 FRD 346.

Black and Hispanic housing applicants established prima facie case of housing discrimination, by showing housing corporation gave priority to white applicants and stated criteria applied only within group of white applicants, and corporation's defense that discrimination resulted because Jewish cultural and economic sites were near apartment complexes and thus Jewish people tended to congregate in neighborhood is totally inadequate, especially in view of testimony that corporation's employees systematically discouraged or rejected black and Hispanic applicants over many years. Huertas v East River Housing Corp. (1987, SD NY) 669 F Supp 1219, withdrawn, rereported Huertas v East River Housing Corp. (1987, SD NY) 674 F Supp 440.

Prima facie case of racial discrimination by apartment complex is established under 42 USCS § 3604, in class action by blacks and Hispanics, where white applicants for apartments were universally chosen over blacks and Hispanics despite more pressing needs of minority candidates, earlier filing of minority applications, and other factors which should have given minority candidates priority. Huertas v East River Housing Corp. (1987, SD NY) 674 F Supp 440.

Apartment complex fails to establish credible nondiscriminatory basis for disparate treatment of blacks and Hispanics in applying for apartments under 42 USCS § 3604, in class action, where defense is that discrimination resulted because Jewish cultural institutions and retail shops are clustered near complex and Jewish people wish to congregate together. Huertas v East River Housing Corp. (1987, SD NY) 674 F Supp 440.

11. —Public housing projects

City violated Fair Housing Act (42 USCS §§ 3601 et seq.) when it failed to approve housing project after earlier consent decree allowed freeway through residential area only if displacees were provided with housing unit replacements, where city's actions had greater adverse impact on minorities than on whites, where court properly limited consideration of adverse impact to current displacees, and where justifications for disapproval of housing project were pretextual; 35 percent cap used by city on possible low-income tenants as part of policy of dispersing low-income tenants was not used in other developments, and although city claimed disapproval of development would present school overcrowding, other development in same school zones were approved, and no evidence was submitted to justify claim by city that denial of development application was based on potential increase in traffic in area, and attempt to justify denial on basis of extensive housing density would fail where city approved other developments in area after disapproval of development in question. Keith v Volpe (1988, CA9 Cal) 858 F2d 467.

42 USCS § 3604 is violated through operation of tenant selection, assignment and transfer procedures which were adopted by municipal housing authority in order to achieve and maintain integration in authority's low-income public housing projects, where clear effect of selection procedure is to deny otherwise eligible applicant access to unit solely because of race; fact that authority's policy can also work to detriment of white applicants is not bar to relief under § 3604. Burney v Housing Authority of County of Beaver (1982, WD Pa) 551 F Supp 746.

Low income housing tenants who reside in city and who are about to be displaced by construction of freeway project through city state cause of action against city under 42 USCS § 3604 for city's imposition of 35 percent limitation on number of units in housing development that may be rented to low income tenants and city's denial of lot split, zone change, and site development applications for another housing development, since (1) evidence demonstrates that city's actions had racially discriminatory effect, (2) city's proffered justification for its actions are merely pretextual and (3) plaintiffs merely seek to enjoin city from interfering with private property developers who wish to provide low income housing. Keith v Volpe (1985, CD Cal) 618 F Supp 1132.

13. Preferential advertising

Section 3604(c) prohibition of unlawfully making, printing, publishing, or causing to be made, printed or published any notice statement or advertisement is not limited to advertisements or written matter, but is broad enough to cover all forms of communication; section prohibits only statements by owner or agent that pertain to renting of his dwelling; court considered whether various statements violated section. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Action against housing development and advertising agency alleging that advertisement campaigns of defendants in newspaper featuring exclusively white models indicated racial preference in violation of 42 USCS §§ 3604(a) and (c) is dismissed, where (1) plaintiffs did not file complaint within 180 days after alleged discriminatory housing practice pursuant to 42 USCS § 3612(a), and (2) neither defendants' ads nor ad campaigns indicated racially discriminatory preference. Spann v Colonial Village, Inc. (1987, DC Dist Col) 662 F Supp 541.

14. "Blockbusting"

District Court erred in finding that real estate agent committed unlawful "blockbusting" in violation of 42 USCS § 3604(e), when agent mailed cards to residents in racially transitional neighborhood seeking buyer for house in neighborhood, which was ultimately sold to white buyer, since solicitation card was racially neutral, and since there was no evidence of panic selling or other incidents of racially charged atmosphere that would impute to any real estate solicitation racial

connotation. Heights Community Congress v Hilltop Realty, Inc. (1985, CA6 Ohio) 774 F2d 135.

15. "Steering"

District Court did not err in finding that real estate agent committed unlawful "racial steering" in violation of 42 USCS § 3604(a), where agent, when approached by black checker wanting to buy home, attempted to contact owner of home in black neighborhood, and where, after that home had been taken off market, agent suggested no other homes to checker even though homes in white neighborhood were on market. Heights Community Congress v Hilltop Realty, Inc. (1985, CA6 Ohio) 774 F2d 135.

Remand would be required in racial discrimination in hiring action under 42 USCS §§ 1981, 1982 and 3601 et seq., where court erred in finding that there was no racial identification of prospective purchasers, evidence showed that real estate agent must at least have suspected potential purchasers were black, court needed to specifically explain whether statistical evidence purporting to show pattern and practice of refusing to sell homes to blacks was admissible, court erred in finding there was no evidence of pattern of steering, and court erroneously instructed that owner of realty franchise could not be held liable for real estate agent's actions as matter of law. Sanders v Dorris (1989, CA6 Tenn) 873 F2d 938.

Racial steering, while not specifically mentioned in Act is proscribed by portion of 3604(a) which makes it unlawful to "otherwise make unavailable or deny a dwelling to any person because of race"; unlawful racial steering is use of word or phrase or action by real estate broker or sales person which is intended to influence choice of prospective property buyer on racial basis; under such definition intent to steer must be shown to prove unlawful racial steering; it is not necessary for steering to be successful in order for act to violate section inasmuch as attempts to steer are also proscribed; test used to determine whether statement constitutes racial steering in violation of section is not effect of racial statement on hearer but rather effect statement would have if heard by reasonable person, under similar circumstances, who was seeking housing. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Court, in wide variety of factual circumstances, determined whether or not individual incidents constituted racial steering. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Eight instances of racial steering upon which non-profit corporation based discrimination action, 4 nonrelated racial steering incidents, and management of real estate agency's acquiescence in actions, demonstrated corporate intent to violate Fair Housing Act. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Minority homeseekers' suit under 42 USCS § 3604(a) against area planning association is dismissed, where homeseekers' claims that planning association engaged in racial "steering" directing prospective home buyers interested in equivalent properties to different areas according to their race, since planning association was nonprofit corporation with purpose of providing limited information to persons making "non-traditional moves," defined as white persons moving into integrated areas or minority persons moving into predominantly white, nonintegrated areas, and fully informed homeseekers of its policy; association did not affect availability of housing as it did not participate in any commercial transaction, owns no real estate, is not real estate agent or broker, is not associated with agents or brokers, and housing information regarding traditional moves was available through all commercial channels which were unaffected by association's activity. Steptoe v Beverly Area Planning Asso. (1987, ND Ill) 674 F Supp 1313.

16. Zoning and land use ordinances

Under disparate impact test for evaluating claim that Title VIII of Civil Rights Act of 1968 (42 USCS §§ 3601 et seq.) had been violated by refusal of town board to amend zoning restriction so as to permit construction of private multifamily housing projects outside town's designated urban renewal area, prima facie case of discriminatory disparate impact was shown, and sole justification offered, that such restriction would encourage developers to invest in deteriorated and needy section of town, proffered to rebut prima facie case was inadequate, where record showed (1) town had about 200,000 residents, 95 percent of whom were white and less than 4 percent blacks, (2) almost 75 percent of black population was clustered in 6 tracts in 2 areas, (3) of town's remaining 42 tracts, 30 were at least 99 percent white, (4) urban renewal area was section in and around one such minority-cluster area, and contained 52 percent minority residents, and (5) although restrictions permitted town's housing authority to build multifamily housing townwide, only such existing public housing-authority project was within urban renewal area. Huntington v Huntington Branch, NAACP (1988, US) 102 L Ed 2d 180, 109 S Ct 276.

Overwhelmingly white suburbs' zoning regulation which restricted private multi-housing projects to largely minority urban renewal area, and Town Board's refusal to amend that ordinance to allow construction of subsidized housing in a white neighborhood, violated Fair Housing Act (42 USCS §§ 3601 et seq.). Huntington Branch, NAACP v Huntington (1988, CA2 NY) 844 F2d 926.

Where plaintiff in exclusionary zoning case proves violation of 42 USCS § 3604(a) it also proves violation of § 3617; municipality's refusal to zone for multiple use particular property upon which proposed apartment complex is to be built, does not establish cause of action under § 3604(a) or § 3617, since construction of complex would have only de minimis impact on pattern of segregated housing in municipal area, in light of evidence that minorities are significantly underrepresented in particular area, and that substantial majority of residents of proposed complex would be white. Re Malone (1984, ED Mo) 592 F Supp 1135.

City does not violate Fair Housing Act (42 USCS § 3604) by changing parcel's land use designation from general commercial, which does not allow residential development, to intermediate density residential, which does; while city has statutory obligation to refrain from zoning policies that foreclose construction of low cost housing within corporate boundaries, there is no similar statutory obligation to allow hotel construction. Litton International Dev. Corp. v Simi Valley (1985, CD Cal) 616 F Supp 275.

17. Miscellaneous practices

Black former insurance agent fails to state cause of action under 42 USCS §§ 3604 and 3605 against insurer based on insurer's alleged practice of "redlining," defined as arbitrary refusal to underwrite risks of persons residing in predominantly black neighborhoods, since neither section prohibits alleged hazard insurance redlining practice. Mackey v Nationwide Ins. Cos. (1984, CA4 NC) 724 F2d 419, 33 CCH EPD ¶ 34048, 1984-1 CCH Trade Cases ¶ 65795.

District Court did not err in deciding that totality of circumstances establishes that city blocked, with racially discriminatory intent, development of racially integrated low-income senior citizen and family housing by private corporation, in light of facts that several residents who opposed project expressed concern about "those people", referring to blacks, coming to city, and that city took action which eventually made it impossible for private corporation to continue negotiations on project. United States v Birmingham (1984, CA6 Mich) 727 F2d 560.

Black tenants who reside in particular building of 3-building, high-rise apartment complex established prima facie case of discriminatory impact in violation of 42 USCS § 3604 resulting from all-adult conversion policy for said building, since, of total number of men, women and children living in said building, 74.9 percent of non-wwhites were given eviction notices while only 26.4 percent of white received such notices. Betsey v Turtle Creek Associates (1984, CA4 Md) 736 F2d 983.

Black county residents fail to state cause of action against county under 42 USCS § 3604(a) or (b), based on allegations that county's discriminatory refusal to properly maintain, repair, or demolish property to which it holds tax deed in county has damaged plaintiffs' neighboring properties through diminution in value, since § 3604(a) does not protect intangible interest in already-owned property, and since county decisions regarding how to administer properties it holds by tax deeds do not come within scope of § 3604(b) prohibition. Southend Neighborhood Improv. Asso. v County of St. Clair (1984, CA7 Ill) 743 F2d 1207.

Class consisting of low and moderate income persons who are on waiting list for proposed public housing do not state cause of action against municipality under Fair Housing Act (42 USCS §§ 3601 et seq.), arising from 2 municipal referendum votes which repealed ordinances granting housing authority authority to construct sewer extensions to proposed public housing sites; absent highly unusual circumstances, discriminatory effect of municipal referendum cannot establish violation of Act. Arthur v Toledo (1986, CA6 Ohio) 782 F2d 565.

Claim that discriminatory appraisals by VA effectively prevented blacks from purchasing or selling homes for fair market value alleged cause of action interfering with exercise of rights granted by Fair Housing Act; to state claim under Act it is enough to show that race was consideration and played some role in real estate transaction; violation of § 804 of Fair Housing Act may be established not only by proof of discriminatory intent, but also by showing of significant discriminatory effect; low VA appraisals were not result of discriminatory intent; statistical evidence failed to show that VA appraisals resulted in racially-based negative impact on home values in relevant area. Hanson v Veterans Admin. (1986, CA5 Tex) 800 F2d 1381.

Developers planning multi-family housing project in areas zoned for single family residences who contended that delays in processing their housing assistance program contracts resulted in discriminatory impact on prospective tenants in violation of 42 USCS § 3604 failed to introduce any evidence indicating (1) that availability of housing to minorities was at all affected by delays of defendant city or county housing authority, or (2) that developer's race had any bearing on decision or action by city or county housing authority, and evidence suggested that delays in completing contracts were function of location of property rather than race of developer. Burrell v Kankakee (1987, CA7 Ill) 815 F2d 1127.

Private landlord who rented apartments and housing complex solely on basis of race or national origin using racial quotas, making apartments unavailable to black and hispanic applicants and then available to white applicants, violated 42 USCS § 3604, in spite of landlord's motivations to prevent white flight and maintained racial distribution in apartment complex, where quotas were not temporary, and neither were they designed to remedy prior racial discrimination or discrimination by imbalance affecting whites. United States v Starrett City Associates (1988, CA2 NY) 840 F2d 1096.

Black man fails to state cause of action against white man under 42 USCS §§ 1981, 1982, 3604, and 3617, where plaintiff alleges that defendant firebombed and caused other damage to plaintiff's automobile, thus causing plaintiff to become apprehensive when parking his automobile in front of his apartment and entering hallway of his apartment building, in violation of plaintiff's housing rights. Stackhouse v De Sitter (1983, ND Ill) 566 F Supp 856.

Plaintiffs, persons of Irish descent, establish prima facie case of discrimination under Fair Housing Act (42 USCS §§ 3601 et seq.) through allegations that housing co-operative and its president discriminated against plaintiffs in refusing to approve transfer of shares in co-operative to plaintiffs; however, defendant's intent was not discriminatory but instead was based on subjective, non-discriminatory reasons in that decision was made based upon subjective evaluation of unknown kind of tenancy which would result as consequence of one plaintiff's vague and unresponsive answers during interview with defendants. Murphy v 253 Garth Tenants Corp. (1983, SD NY) 579 F Supp 1150.

Language of section is broad in scope and prohibits all practices which make dwellings unavailable due to race, and accordingly, prohibits imposition of more burdensome application procedures, of delaying tactics, and of various forms of discouragement; however, mere requirement that buyer be financially qualified can hardly be considered either form of discouragement or unwarranted imposition; prospective home buyers should expect to be asked questions pertaining to their financial capability, and it is only when questions or comments are racially motivated and used in disparate fashion that financial qualification process becomes more burdensome application procedure or form of discouragement that statute disal-

under Title VIII of Civil Rights Act (42 USCS §§ 3601 et seq.) by demonstrating racially discriminatory effect, burden shifts to defendant to demonstrate that non-discriminatory reasons justify its conduct; if defendant offers no valid non-discriminatory reason for its actions, then plaintiff has succeeded in proving Title VIII violations; however, if defendant does offer valid non-discriminatory reasons, court must determine whether they are substantial enough to justify racially discriminatory effect. Keith v Volpe (1985, CD Cal) 618 F Supp 1132.

22. Evidence

In action under Fair Housing Act (42 USCS §§ 3601 et seq.) by class consisting of low and moderate income persons who are on waiting list for proposed public housing project, challenging, as violative of Act, 2 municipal referendum votes which repealed city ordinances granting housing authority authority to construct sewer extensions to proposed public housing sites, District Court did not err in admitting in evidence city's efforts to supply alternative low-income housing in racially segregated white areas after referendums, since such evidence was relevant in determining whether referendums had racially discriminatory effect. Arthur v Toledo (1986, CA6 Ohio) 782 F2d 565.

Evidence in housing discrimination action of bidder's performance in managing apartments after it purchased them from HUD, and sales under HUD's Minority Business Enterprise Program, was not relevant in action against HUD. Selden Apartments v United States Dept. of Housing & Urban Dev. (1986, CA6 Mich) 785 F 2d 152.

Finding of 8 racial steering incidents constituted prima facie evidence of real estate agency's continuing practice of making dwellings unavailable because of race, and 15 incidents in which steering was not found could not diminish or vitiate 8 violations, considered individually, or continuing unlawful practice represented by 8 violations; however, 15 incidents could affect nature of relief to be awarded. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

HUD's intent to discriminate was established by combination of agency's disingenuous assertions of ignorance, its actual knowledge of segregation, and its continued financial support of public housing sites in counties in question: in those instances where agency responded at all to its knowledge of discrimination, it was only through use of compliance agreements which were shown by agency's own data to be ineffective in dealing with discrimination; discriminatory intent of agency was not refuted by mass of HUD regulations which contain declarations of intent not to discriminate. Young v Pierce (1985, ED Tex) 628 F Supp 1037.

23. Vicarious liability

In action under 42 USCS § 3604 against real estate firm, 2 of its sales agents, and sellers for alleged racial discrimination in sale of real estate, trial court erroneously instructed jury that if any defendants were liable, then all defendants must be found liable; however, error is harmless except as to agents, since agents cannot be held liable for discriminatory acts by their principals. Green v Century 21 (1984, CA6 Ohio) 740 F2d 460.

District court did not err in holding real estate agency liable for Fair Housing Act (42 USCS §§ 3601 et seq.) violations of its agents, despite agency's contention that its agents were independent contractors, over whom it has no control, where agency's managerial personnel had knowledge of fair housing violations by its agents and failed to take corrective action. Heights Community Congress v Hilltop Realty, Inc. (1985, CA6 Ohio) 774 F2d 135.

In cases of racial discrimination in housing, principal is liable for wrongful acts of its agents; however, principal is liable for punitive damages for discriminatory acts of agent only if principal knew of or ratified such acts. Hamilton v Svatik (1985, CA7 Ill) 779 F2d 383.

Finding by magistrate that corporation violated 42 USCS §§ 3601 et seq. by refusing to rent apartment to plaintiffs on account of their race was not inconsistent with jury verdict in favor of defendant president of corporation, where defendants were not alleged to be jointly liable and were not similarly situated, and where corporation defaulted and thereby admitted liability. Douglas v Metro Rental Services, Inc. (1987, CA7 Ill) 827 F2d 252.

Broker under contract with its agents has nondelegable duty to obey Fair Housing Act, and thus real estate agency was liable for imputed acts and statements of agents who participated in 8 violations of § 3604(a), and also §§ 3604(c) and (e) violations. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Broker may be held liable for racial steering of its agents, and thus, if individual sales agent engages in act of racial steering, and if that act or statement is made within sales agent's course and scope of employment with real estate broker, it may be imputed to broker. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Status as president and chief operating officer of real estate company did not render owner of part of stock thereof personally liable for acts of corporation or its agents or employees in action alleging violations of Fair Housing Act. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

To impose vicarious liability upon president and chief operating officer for acts of agents who participated in continuing violations found by court, it was essential to show that he participated in acts or knew of and ratified their acts and statements. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

24. Relief

In action under 42 USCS §§ 3604 and 3617 in which it was established that city blocked, with racially discriminatory intent, development of racially integrated low-income senior citizen and family housing by private corporation, District Court exceeded its remedial authority by enjoining city from engaging in "any conduct" that interferes with construction project, since injunction should be limited to prohibition of conduct because of race; however, District Court did not abuse its discretion in permitting private corporation to obtain additional extensions of contract for sale of project site by petitioning court, since condition merely leaves door open to insure that appropriate efforts can be expended to make whole victims of city's discriminatory conduct. United States v Birmingham (1984, CA6 Mich) 727 F2d 560.

District court did not err in failing to grant injunctive relief against real estate agency and agents who committed unlawful "racial steering" practices in violation of Fair Housing Act (42 USCS §§ 3601 et seq.), since court properly concluded that plaintiffs had not proven that defendants were likely to continue to commit steering violations in future; award of nominal damages to non-profit corporation which has as its primary objective promotion and maintenance of city as open and integrated community was not error, where court found that corporation had suffered non-quantifiable injury at hands of defendants. Heights Community Congress v Hilltop Realty, Inc. (1985, CA6 Ohio) 774 F2d 135.

In housing discrimination action under 42 USCS § 3604 in which plaintiff obtained judgment against owners and managers of trailer park, along with lessee of available trailer and pad at park, District Court did not err in refusing to grant plaintiff's motion for damages against lessee under Rule 54(c) of Federal Rules of Civil Procedure, where plaintiff did not explicitly pray for damages against lessee, and where lessee proceeded to trial without attorney present in belief that plaintiff would not seek damages against him. Stewart v Furton (1985, CA6 Tenn) 774 F2d 706.

In housing discrimination case brought under 42 USCS § 1982 and Fair Housing Act (42 USCS §§ 3601 et seq.) which resulted in agreement among parties on all issues except attorneys' fees, district judge did not have authority to enforce proposed stipulation of agreement in all other respects and award attorneys' fees to plaintiff class over defendant's objections. Huertas v East River Housing Corp. (1987, CA2 NY) 813 F2d 580.

Award of $40,000 compensatory damages plus $75,000 punitive damages against corporation which violated 42 USCS §§ 3601 et seq. by refusing to rent apartment to plaintiffs because they were black was grossly excessive, where plaintiffs later moved into apartment at issue and received approximately $13,000 from apartment owner, and compensatory amount would be reduced to $10,000 and punitive damage amount to $20,000. Douglas v Metro Rental Services, Inc. (1987, CA7 Ill) 827 F2d 252.

Site specific relief would be granted to private developers who had successfully sued, under 42 USCS §§ 3601 et seq., town which had refused to amend ordinance to allow construction of multifamily minority housing in white neighborhood, where litigation had spanned over 7 years, town had demonstrated little good faith in assisting development of low-income housing, other possible parcels were not yet zoned for multi-family housing, and developers would otherwise have had to seek amendment of zoning ordinance to develop other parcels also outside of town's urban renewal area. Huntington Branch, NAACP v Huntington (1988, CA2 NY) 844 F2d 926.

Prospective injunctive relief in default judgment against apartment owner engaged in pattern or practice of making apartments unavailable to persons because of race in violation of 42 USCS §§ 3601 et seq. was proper, where apartment owners did not take steps to remove any of offending rental agents, owners refused to sign affidavits saying they would comply with law, and incidents of discrimination found by magistrate were much more recent when suit was filed, so that defendants would not be allowed to turn self-occasioned delay to their advantage. United States v Di Mucci (1989, CA7 Ill) 879 F2d 1488.

Real estate agency and individual brokers who violated 42 USCS §§ 1982 and 3604 by intentionally discriminating against black couple in purchase of home are jointly and severally liable to plaintiffs for $10,000 compensatory damage award and $2,000 punitive damage award. Hobson v George Humphreys, Inc. (1982, WD Tenn) 563 F Supp 344.

Owners and operators of apartment complex, along with rental agents employed by complex, are liable to prospective black tenants for appropriate injunctive relief, actual and punitive damages, along with costs and attorney fees, where defendants willfully engaged in systematic practice of discrimination against black applicants and homeseekers that frustrated counseling and referral services, drained resources and hindered mission of non-profit corporation organized to further goals of Fair Housing Act; defendants are also liable to non-profit corporation for both actual and punitive damages. Davis v Mansards (1984, ND Ind) 597 F Supp 334.

In action by black woman who established prima facie case of racial discrimination in housing under 42 USCS § 3604 against apartment building manager who refused to rent apartment to plaintiff, award of $12,000 in compensatory damages against building manager for humiliation, emotional distress, and embarassment, was not excessive, and award of $5,000 in punitive damages against building manager is not excessive; however, award of $2,500 in punitive damages against building owner is not supported in record where no evidence was presented that owner acted wilfully or wantonly. Hamilton v Svatik (1985, CA7 Ill) 779 F2d 383.

Nonprofit agency promoting racial integration could not recover moneys expended for monitoring real estate agency's actions where it was not shown that there was causal connection between expenditures and violations of § 3604; injunction against real estate agency violating Fair Housing Act was not appropriate where it was not shown that agency had recently violated Act and agency was not likely to again violate act. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Finding of 8 racial steering incidents constituted prima facie evidence of real estate agency's continuing practice of making dwellings unavailable because of race, and 15 incidents in which steering was not found could not diminish or vitiate 8 violations, considered individually, or continuing unlawful practice represented by 8 violations; however, 15 incidents could affect nature of relief to be awarded. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

25. Moot questions

HUD plan to transfer over and under-housed tenants, and to create agenda for further desegregation, did not establish that action against HUD alleging agency maintained system of racially segregated housing was moot, inasmuch as plan only showed that agency had begun process which might lead to desegregation. Young v Pierce (1985, ED Tex) 628 F Supp 1037.

26. Limitations

Where at least one of 8 racial steering incidents occurred within 100-day limitations period, unlaw-

ful practice continued into limitations period and complaint was timely and each of 8 incidents was rendered timely. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Where last of card solicitations violating prohibition of § 3604(c) against racial solicitation was within limitations period, action was within 100-day limitations period. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Claims of racial steering under 42 USCS § 3604 are dismissed for those alleged violations which occurred outside 180-day limitation period, since "continuing violation" theory does not apply to claims based on tester standing; however, 42 USCS § 1982 allegations are still viable since discrimination against individuals' property rights have been alleged and 42 USCS §§ 1982 and 3604 claims are independent and concurrent. Bellwood v Gorey & Associates (1987, ND Ill) 664 F Supp 320.

§ 3605. Discrimination in residential real estate-related transactions

(a) In general. It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Definition. As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal exemption. Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

(As amended Sept. 13, 1988, P. L. 100-430, § 6(c), 102 Stat. 1622.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, which is popularly known as the Fair Housing Act, and appears generally as 42 USCS §§ 3601 et seq. For full classification of such Title, consult USCS Tables volumes.

Amendments:

1988. Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note) substituted this section for one which read:

"After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 803(b).".

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights § 11:212, 357, 358, 360, 501.

Forms:

10A Federal Procedural Forms L Ed, Highways and Bridges § 38:60.

10A Federal Procedural Forms L Ed, Housing and Urban Development §§ 39:3, 33.

Annotations:

"Redlining," consisting of denial of home loans or insurance coverage in certain neighborhoods, as discrimination in violation of §§ 804 and 805 of Fair Housing Act (42 USCS §§ 3604, 3605). 73 ALR Fed 899.

INTERPRETIVE NOTES AND DECISIONS

Black former insurance agent fails to state cause of action under 42 USCS §§ 3604 and 3605 against insurer based on insurer's alleged practice of "redlining," defined as arbitrary refusal to underwrite risks of persons residing in predominantly black neighborhoods, since neither section prohibits alleged hazard insurance redlining practice. Mackey v Nationwide Ins. Cos. (1984, CA4 NC) 724 F2d 419, 33 CCH EPD ¶ 34048, 1984-1 CCH Trade Cases ¶ 65795.

Evidence supported court's finding that mortgage lender did not engage in discrimination in financing of housing under 42 USCS § 3605, where evidence submitted showed large number of mortgage loans granted in white areas but not minority areas, but borrower failed to present evidence regarding how many applications were received and rejected in particular geographical areas, and statement by bank officer that urban renewal area could not afford proposed home in $90,000 range reflected lender's legitimate financial concern regarding market value of property and likelihood that property would retain adequate value over term of loan. Cartwright v American Sav. & Loan Asso. (1989, CA7 Ind) 880 F2d 912.

Minority homeseekers' claim against area planning association for violating 42 USCS § 3605 is dismissed, where planning association makes no commercial real estate loans and in fact has no connection whatsoever in financing of real estate, since § 3605 deals only with associations whose business consists in whole or part in making commercial real estate loans. Steptoe v Beverly Area Planning Asso. (1987, ND Ill) 674 F Supp 1313.

Claim that mortgage lender engaged in discriminatory practice of redlining survives summary judgment, where plaintiffs presented proof that (1) creditworthy buyers submitted application for loan to purchase housing located in minority neighborhood and were rejected for questionable reasons, and (2) lender rejected higher percentage of conventional mortgage loan applications originating from integrated or minority neighborhoods than from white neighborhoods over 6-year period, because plaintiffs have presented evidence from which reasonable minds could find that lender's actions were motivated by intent to discriminate. Old West End Asso. v Buckeye Federal Sav. & Loan (1987, ND Ohio) 675 F Supp 1100.

Discrimination and conspiracy claims against mortgage loan arranger must fail, even though arranger which assisted in completion of mortgage loan application and transmission to lender affirmed lender's allegedly discriminatory policy which led to rejection of plaintiffs' application, because discriminatory policy was lender's and loan was rejected by lender, not arranger. Old West End Asso. v Buckeye Federal Sav. & Loan (1987, ND Ohio) 675 F Supp 1100.

Summary judgment denying black couple's 42 USCS § 3605 claim is inappropriate, where couple has presented evidence that their mortgage loan application was rejected even though they were qualified for loan requested, because conflicting inferences from loan file data showing similarly situated applicants of other races both rejected and accepted leave open question as to whether couple was denied loan on basis of race. Watson v Pathway Financial (1988, ND Ill) 702 F Supp 186.

§ 3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

(As amended Sept. 13, 1988, P. L. 100-430, § 6(b)(1), 102 Stat. 1622.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988. Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note), inserted "handicap, familial status,".

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights § 11:212, 357, 358, 360, 501.

§ 3607. Religious organization or private club exemption

(a) Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing—

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2)(B) or (C): Provided, That new occupants of such housing meet the age requirements of subsections (2)(B) or (C); or

(B) unoccupied units: Provided, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2)(B) or (C).

(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(As amended Sept. 13, 1988, P. L. 100-430, § 6(d), 102 Stat. 1623.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988. Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note) designated the existing provisions as subsec. (a); and added subsec. (b).

§ 3608. Administration

(a)-(c) [Unchanged]

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes. All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary. [Introductory matter unchanged]

(1) [Unchanged]

(2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress—

(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which—

(i) investigations are not completed as required by section 810(a)(1)(B) [42 USCS § 3610(a)(1)(B)];

(ii) determinations are not made within the time specified in section 810(g) [42 USCS § 3610(g)]; and

(iii) hearings are not commenced or findings and conclusions are not made as required by section 812(g) [42 USCS § 3612(g)]

(3) [Unchanged]

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices[;]

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title; and

(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).

(f) Provisions of law, etc., to which subsec. (e)(6) applies. The provisions of law and Executive orders to which subsection (e)(6) applies are—

(1) title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.];

(2) title VIII of the Civil Rights Act of 1968;

(3) section 504 of the Rehabilitation Act of 1973 [29 USCS § 794];

(4) the Age Discrimination Act of 1975 [42 USCS §§ 6101 et seq.];

(5) the Equal Credit Opportunity Act [15 USCS §§ 1691 et seq.];

(6) section 1978 of the Revised Statutes (42 U.S.C. 1982);

(7) section 8(a) of the Small Business Act [15 USCS § 637(a)];

(8) section 527 of the National Housing Act [12 USCS § 1735f-5];

(9) section 109 of the Housing and Community Development Act of 1974 [42 USCS § 5309];

(10) section 3 of the Housing and Urban Development Act of 1968 [12 USCS § 1701u];

(11) Executive orders 11063, 11246, 11625, 12250, 12259, and 12432 [42 USCS §§ 1982 and 2000e notes, 15 USCS § 631 note, 42 2000d-1 note, 42 USCS §§ 1982 and 3608 note 15 USCS § 631 note]; and

(12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.

(As amended Sept. 13, 1988, P. L. 100-430, § 7, 102 Stat. 1623.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title" and "Title VIII of the Civil Rights Act of 1968", referred to in this section, are references to Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, which appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Amendments:

1988. Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note), in subsec. (d), inserted "(including any Federal agency having regulatory or supervisory authority over financial institutions)"; in subsec. (e), in para. (2), inserted ", including an annual report to the Congress—" and subparas. (A) and (B), in para. (4), purported to delete "; and" (although this amendment was executed by deleting "and" and bracketing the semicolon to indicate the probable intention of Congress to retain the punctuation), in para. (5), substituted "; and" for the concluding period, and added para. (6); and added subsec. (f).

CODE OF FEDERAL REGULATIONS

This section no longer cited as authority for:
24 CFR Part 100.

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights § 11:212, 357, 358, 462, 501.

INTERPRETIVE NOTES AND DECISIONS

3. Review

1. Generally

Implied private right of action under 42 USCS § 3608(e)(5) is not consistent with purpose of Fair Housing Act (42 USCS §§ 3601 et seq.) to place responsibility for enforcement squarely on Secretary of HUD. NAACP, Boston Chapter v Pierce (1985, DC Mass) 624 F Supp 1083.

3. Duties created

HUD is liable under Fifth Amendment and Title VIII of Civil Rights Act of 1968 (42 USCS §§ 3601 et seq.) to black women who are eligible for admission to city public housing program, where record reveals that for over decade, HUD consistently responded to its own findings of noncompliance in ways that allowed housing authority to continue discriminating on basis of race, since

only reasonable inference that can be drawn is that HUD's actions were motivated at least in part by discriminatory purpose in that it is inconceivable that agency would have so frequently acted to approve authority's actions unless its officials held view that segregation and discrimination were acceptable. Clients' Council v Pierce (1983, CA8 Ark) 711 F2d 1406.

Complaint alleging that HUD took no action to counter deliberate foot-dragging of local governments, despite Department's knowledge that public officials had history of excluding public housing on racial grounds, fails to state claim under 42 USCS § 3608(d) that Department violated its duty to administer programs and activities relating to housing and urban development to further elimination of discrimination. Anderson v Alpharetta (1984, CA11 Ga) 737 F2d 1530.

HUD's affirmative duty under 42 USCS § 3608(d)(5) can subject it to liability in 2 types of situations: (1) when Department has taken discriminatory action itself, such as approving federal assistance for public housing project without considering its effect on racial and social-economic composition of surrounding area; and (2) when Department is aware of grantee's discriminatory practices and has made no effort to force it into compliance by cutting off existing federal financial assistance to agency in question. Anderson v Alpharetta (1984, CA11 Ga) 737 F2d 1530.

Constitutional violation is not prerequisite to violation of Title VIII (42 USCS §§ 3601 et seq.); however, all that is required is proof that HUD failed to carry out its affirmative duty to institute action direct result of which was to be implementation of dual and mutual goals of fair housing and elimination of discrimination in that housing. Little Earth of United Tribes, Inc. v United States Dept. of Housing & Urban Dev. (1983, DC Minn) 584 F Supp 1292.

Neighborhood integration is important goal of Fair Housing Act of 1968 (42 USCS §§ 3601 et seq.). Jorman v Veterans Admin. (1984, ND Ill) 579 F Supp 1407.

Duties created under 42 USCS § 3608(c) apply to Home Mortgage Loan Guaranty Service of Veterans Administration; Service's anti-discrimination efforts cannot alone meet at § 3608(c) obligations if its failure to consider its effects on neighborhood integration is itself violation of § 3608(c); Service is entitled to withhold mortgage guarantees from veterans to promote fair housing. Jorman v Veterans Admin. (1984, ND Ill) 579 F Supp 1407.

Secretary of Housing and Urban Development did not breach duty to administer housing programs in manner to further policies of fair housing where HUD foreclosed on Indian-operated housing project based on continuing loan default and ineffective management, because HUD represents it will continue to operate project in manner which would avoid displacement of low-income tenants, and Secretary is not required to impose low and moderate income use restrictions upon foreclosure. Little Earth of United Tribes, Inc. v U.S. Dept. of Housing & Urban Dev. (1987, DC Minn) 675 F Supp 497.

4. Standing

Black resident of racially integrated community has standing under Fair Housing Act (42 USCS § 3604) to allege that community has developed municipal policies to control racial composition of neighborhood by steering white home buyers to neighborhood and black home buyers away from area, despite fact that resident was not himself steered from area, since community's policies impose badge or label of inferiority on resident based purely on race. Smith v Cleveland Heights (1985, CA6 Ohio) 760 F2d 720.

In action alleging that Veterans Administration, through its Home Loan Guaranty Service, has caused or contributed to actual or threatened systematic racial transition (or "white flight") in part of city community, in violation of Administration's duty to promote fair housing under 42 USCS § 3608(c), material issues of fact preclude judgment on issue of standing of plaintiffs, who reside not in affected area, but in attendant neighborhoods where white flight is also prevalent. Jorman v Veterans Admin. (1984, ND Ill) 579 F Supp 1407.

5. Review

Federal courts have legal authority to review claims that Secretary of Housing and Urban Development failed to administer HUD programs in manner affirmatively to further policies of Federal Fair Housing Act (42 USCS §§ 3601 et seq.) as mandated by 42 USCS § 3608, since agency action was not committed to agency discretion by law within meaning of Administrative Procedure Act (5 USCS §§ 551 et seq.), court could find adequate standards against which to judge lawfulness of HUD's conduct, judicial review would not threaten unwarranted interference with HUD's ability to carry out its basic statutory missions, and court would be able to develop appropriate remedy for such claims. NAACP v Secretary of Housing & Urban Dev. (1987, CA1 Mass) 817 F2d 149.

District Court has jurisdiction to require HUD to carry out mandates of 42 USCS § 3608(e). NAACP, Boston Chapter v Pierce (1985, DC Mass) 624 F Supp 1083.

Review under Administrative Procedure Act (5 USCS §§ 701 et seq.) is not available to redress HUD's failure to take affirmative action to promote fair housing under 42 USCS § 3608(e)(5). NAACP, Boston Chapter v Pierce (1985, DC Mass) 624 F Supp 1083.

Residents' action challenging Department of Housing and Urban Development (HUD) approval of grant for development project in their neighborhood is dismissed, because review of HUD action under 42 USCS §§ 3608 and 5309 can only be brought under Administrative Procedure Act (5 USCS §§ 701 et seq.) Pleune v Pierce (1988, ED NY) 697 F Supp 113, later proceeding (ED NY) 1988 US Dist LEXIS 10714.

§ 3608a. Collection of certain data

(a) In general. To assess the extent of compliance with Federal fair housing requirements (including the requirements established under title VI of Public Law 88-352 and title VIII of Public Law 90-284), the Secretary of Housing and Urban Development and the Secretary of Agriculture shall each collect, not less than annually, data on the racial and ethnic

characteristics of persons eligible for, assisted, or otherwise benefiting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by such Secretary. Such data shall be collected on a building by building basis if the Secretary involved determines such collection to be appropriate.

(b) Reports to Congress. The Secretary of Housing and Urban Development and the Secretary of Agriculture shall each include in the annual report of such Secretary to the Congress a summary and evaluation of the data collected by such Secretary under subsection (a) during the preceding year.

(Feb. 5, 1988, P. L. 100-242, Title V, Subtitle C, § 562, 101 Stat. 1944.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Title VI of Public Law 88-352", referred to in this section, is Title VI of Act July 2, 1964, P. L. 88-352, 78 Stat. 252, which appears as 42 USCS §§ 2000d—2000d-4.

"Title VIII of Public Law 90-284", referred to in this section, is Title VIII of the Civil Rights Act of 1968, Act Apr. 11, 1968, 82 Stat. 81, which appears generally as 42 USCS §§ 3601 et seq. For full classification of such title, consult USCS Tables volumes.

Explanatory notes:

This section was not enacted as part of Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, which generally comprises this chapter.

CODE OF FEDERAL REGULATIONS

Add:

24 CFR Part 121.

§ 3610. Administrative enforcement; preliminary matters

(a) Complaints and answers. (1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint—

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this title;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this title, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation. (1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this title.

(5)(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing—

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements; and

(v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement. Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 814 [42 USCS § 3614] for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information. (1) Nothing said or done in the course of conciliation under this title may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action. (1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this title, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 812 of this title [42 USCS § 8612].

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under sections 814(a) and 814(c) [42 USCS § 3614(a), (c)] or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or local proceedings. (1) Whenever a complaint alleges a discriminatory housing practice—

(A) within the jurisdiction of a State or local public agency; and

(B) as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless—

(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)(A) The Secretary may certify an agency under this subsection only if the Secretary determines that—

(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

(ii) the procedures followed by such agency;

(iii) the remedies available to such agency; and

(iv) the availability of judicial review of such agency's action; are substantially equivalent to those created by and under this title.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on the date of the enactment of the Fair Housing Amendments Act of 1988 [enacted Sept. 13, 1988] and ends 40 months after such date, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this title on the day before such date shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on that date. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable cause determination and effect. (1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 812 [42 USCS § 3612].

(B) Such charge—

(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under section 810(a) [subsec. (a) of this section].

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 814 [42 USCS § 3614], instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h) Service of copies of charge. After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 812(a) [42 USCS § 3612(a)] and the effect of such an election, to be served—

(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) on each aggrieved person on whose behalf the complaint was filed.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 810, as added Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1625.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, which is popularly known as the Fair Housing Act, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Explanatory notes:

A prior § 3610 (Act Apr. 11, 1968, P. L. 90-384, Title VIII, § 82 Stat. 85) was repealed by Act Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note. Such section provided for enforcement by informal methods of conference, conciliation, and persuasion.

Effective date of section:

Act Sept. 13, 1988, P. L. 100-430, § 13(a), 102 Stat. 1636, which appears as 42 USCS § 3601 note, provides that this section is effective on the 180th day beginning after enactment.

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:212, 357, 358, 362, 363, 366, 371-376, 379, 380, 382, 384-387, 389, 392-395, 397-399, 467, 469-471, 479, 489, 501.

Forms:

13A Am Jur Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 46.

Law Review Articles:

National Housing Law Project, 1988 Developments in Federal Housing Law. Clearinghouse Rev 866, January, 1989.

INTERPRETIVE NOTES AND DECISIONS

5.1. —When period of limitations begins
8. Injunctions (§ 3610(d))

2. Relationship with other laws

3. —42 USCS § 3612

Tenant's sexual harassment claim against landlord is not barred on basis of election of remedies, even though tenant initially filed administrative claim with Department of Housing and Urban Development, because 42 USCS §§ 3610 and 3612 contemplate dual contemporaneous remedies available to victims of discriminatory housing practices. Grieger v Sheets (1988, ND Ill) 689 F Supp 835.

5. Resort to federal courts (§ 3610(d))

Plaintiffs must commence action under 42 USCS § 3610 not later than 60 days after filing complaint with HUD. Young v AAA Realty Co. (1972, MD NC) 350 F Supp 1382.

Action under 42 USCS § 3610 must be filed during period beginning 31 days after complaint is filed with HUD and ending 60 days after complaint is filed. Brown v Blake & Banc, Inc. (1975, ED Va) 402 F Supp 621.

Complaint procedures set forth in 42 USCS § 3610 are permissive and not mandatory and are recognized as distinct, separate and alternative remedies to filing of lawsuit in District Court. Royster v Martin (1983, SD Ohio) 562 F Supp 623.

Annotations:

Time for bringing private civil action for discrimination in housing under §§ 810 and 812 of Fair Housing Act (42 USCS §§ 3610 and 3612). 62 ALR Fed 267.

5.1. —When period of limitations begins

Limitations period under 42 USCS § 3610(d) does not begin to run until aggrieved individual receives notice from HUD that it was unable to obtain voluntary compliance. Brown v Ballas (1971, ND Tex) 331 F Supp 1033.

42 USCS § 3610(d) grants right to file civil action only within 60 days from initiation of administrative procedure, since there is nothing in § 3610(d) which expressly or implicitly bars filing of civil action while administrative efforts are proceeding. Johnson v Decker (1971, ND Cal) 333 F Supp 88.

Limitation period in 42 USCS § 3610 does not begin to run until charging party has received notice of administrative failure to obtain voluntary compliance. Logan v Richard E. Carmack & Associates (1973, ED Tenn) 368 F Supp 121.

Thirty-day period in which plaintiff must file suit under 42 USCS § 3610 commences on 31st day after timely complaint has been filed with HUD, regardless of whether action was filed within 30 days after plaintiff received notice that HUD terminated efforts to resolve dispute. Morgan v Parcener's, Ltd. (1978, WD Okla) 493 F Supp 180.

8. Injunctions (§ 3610(d))

Injunctive relief under 42 USCS § 3610(d) should be structured to achieve twin goals of insuring that Fair Housing Act (42 USCS §§ 3601 et seq.) is not violated in future and removing any lingering effects of past discrimination; also, relief must be tailored in each instance to needs of particular situation; injunction issued against landlord found in violation of Act was insufficient where order failed to require any affirmative act by landlord to correct lingering effect of past discriminatory policies. Marable v Walker (1983, CA11 Ala) 704 F2d 1219.

New interim injunction must be entered ordering Department of Housing and Urban Development (HUD) affirmatively to use its power, authority and discretion in supervision and operation of all federal housing programs to remedy past, current and future segregation in traditional low-rent public housing in East Texas, and since intricate and complex order entails continuing consideration of economic, demographic and logistical factors, Rule 53 special master's role of investigating HUD's activities, monitoring HUD's compliance, and advising HUD's implementation of affirmative action plan becomes even more essential, because HUD's voluntary compliance over last 2 years with desegregation order has been unsatisfactory. Young v Pierce (1988, ED Tex) 685 F Supp 975.

§ 3611. Subpoenas; giving of evidence

(a) In general. The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this title. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

(b) Witness fees. Witnesses summoned by a subpoena under this title shall be entitled to the same witness and mileage fees as witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Secretary.

(c) Criminal penalties. (1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a), shall be fined not more than $100,000 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this title—

(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a);

(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence;

shall be fined not more than $100,000 or imprisoned not more than one year, or both.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 811, as added Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1628.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, which is popularly known as the Fair Housing Act, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Explanatory notes:

A prior § 3611 (Act Apr. 11, 1968, P. L. 90-384, Title VIII, § 82 Stat. 87) was repealed by Act Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note. Such section provided for evidence.

Effective date of section:

Act Sept. 13, 1988, P. L. 100-430, § 13(a), 102 Stat. 1636, which appears as 42 USCS § 3601 note, provides that this section is effective on the 180th day beginning after enactment.

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:212, 357, 358, 383, 417, 427, 429, 431, 501.

§ 3612. Enforcement by Secretary

(a) Election of judicial determination. When a charge is filed under section 810 [42 USCS § 3610], a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) in lieu of a hearing under subsection (b). The election must be made not later than 20 days after the receipt by the electing person of service under section 810(h) [42 USCS § 810(h)] or, in the case of the Secretary, not later than 20 days after such service. The

(n) Entry of decree. The clerk of the court of appeals in which a petition for enforcement is filed under subsection *(l)* or (m) shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

(o) Civil action for enforcement when election is made for such civil action. (1) If an election is made under subsection (a), the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28, United States Code [42 USCS §§ 1391 et seq.].

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 813 [42 USCS § 3613]. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 813 [42 USCS § 3613] shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's fees. In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section 812 [42 USCS § 3612], the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5, United States Code, or by section 2412 of title 28, United States Code.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 812, as added Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1629.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, which is popularly known as the Fair Housing Act, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Explanatory notes:

A prior § 3612 (Act Apr. 11, 1968, P. L. 90-384, Title VIII, § 82 Stat. 88) was repealed by Act Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note. Such section provided for enforcement by private persons.

Effective date of section:

Act Sept. 13, 1988, P. L. 100-430, § 13(a), 102 Stat. 1636, which appears as 42 USCS § 3601 note, provides that this section is effective on the 180th day beginning after enactment.

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:44, 124, 132, 212, 220, 223, 226, 227, 357, 358, 379, 400, 404, 407, 408, 414, 417, 435, 447-451, 454-461, 463, 464, 473-478, 501.

Forms:

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 74.

13A Am Jur Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Forms 41, 43.

INTERPRETIVE NOTES AND DECISIONS

4. Limitation of actions

Housing discrimination action is not time-barred, where action was brought 180 days after facial date of newspaper containing last pictorial advertisement of series claimed to be racially discriminatory against blacks, because language and legislative history of 42 USCS § 3612(a) indicate that triggering date of filing period should be interpreted to be facial date of newspaper containing advertisement, as opposed to previous day, when numerous copies of newspaper were released, or previous week, when order to run advertisement was placed and was final. Ragin v Steiner, Clateman & Associates, Inc. (1989, SD NY) 714 F Supp 709.

§ 3613. Enforcement by private persons

(a) Civil action. (1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 810(a) [42 USCS § 3610(a)] and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this title with respect to such charge.

(b) Appointment of attorney by court. Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief which may be granted. (1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on certain sales, encumbrances, and rentals. Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this title.

(e) Intervention by Attorney General. Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 814(c) [42 USCS § 3614(c)] in a civil action to which such section applies.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 813, as added Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1633.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, popularly known as the Fair Housing Act, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Explanatory notes:

A prior § 3613 (Act Apr. 11, 1968, P. L. 90-384, Title VIII, § 82 Stat. 88) was repealed by Act Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note. Such section provided for enforcement by the Attorney General.

Effective date of section:

Act Sept. 13, 1988, P. L. 100-430, § 13(a), 102 Stat. 1636, which appears as 42 USCS § 3601 note, provides that this section is effective on the 180th day beginning after enactment.

RESEARCH GUIDE

Federal Procedure L Ed:
6 Fed Proc L Ed, Civil Rights §§ 11:129, 212, 357, 358, 467, 478, 484, 485, 487-491, 493-498, 501.

Forms:
13A Am Jur Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 41.

INTERPRETIVE NOTES AND DECISIONS

1. Generally

On review of Federal Court of Appeals' decision in action under § 812 of the Fair Housing Act (former 42 USCS § 3612) brought by, among other parties, municipal corporation alleging certain violations of § 804 of Act (42 USCS § 3604), question of whether municipal corporation is "private person" as referred to in caption to § 812, and accordingly whether it can sue under that provision, is not properly before United States Supreme Court where contention that corporation lacked standing was rejected by Court of Appeals after being raised only briefly at oral argument and not having been briefed, and question presented to Supreme Court was variant of question raised belatedly in Court of Appeals, since no argument was made before the Supreme Court that municipal corporation was not person, it having been argued instead that municipal corporation was not "private person." Gladstone, Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

District court erred in dismissing suit based on former 42 USCS §§ 3610, 3612 for alleged racial discrimination in refusal to rent apartment, where only basis for applicant's unacceptability was flimsy evidence of "offensive odor," trademark of racial prejudice. Stevens v Dobs, Inc. (1973, CA4 NC) 483 F2d 82, later app (ED NC) 373 F Supp 618.

Fact that state housing discrimination law was not substantially equivalent to federal Fair Housing Act (42 USCS §§ 3601 et seq.) does not necessarily mean that state law does not contain most appropriate statute of limitations for federal claims relating to housing discrimination, but only means that state law is not viewed to be sufficiently adequate to require that HUD complaints be first referred to state housing agency. Green v Ten Eyck (1978, CA8 Mo) 572 F2d 1233 (disagreed with on other grounds Swan v Stoneman (CA2 Vt) 635 F2d 97).

Former 42 USCS § 3612 is designated to vindicate private rights violated by some identifiable act of discrimination; in order to prevail, party must demonstrate some act of discrimination. Player v Alabama Dept. of Pensions & Secur. (1975, MD Ala) 400 F Supp 249, affd without op (CA5 Ala) 536 F2d 1385.

Exhaustion of administrative remedies is not prerequisite to action under former 42 USCS § 3612. Knutzen v Nelson (1985, DC Colo) 617 F Supp 977.

Construing vague policy language against drafter, insurer has duty to defend owner and manager of apartment complex against rejected tenants' claims of housing discrimination under 42 USCS §§ 1981, 1982 and 3601 et seq., where "comprehensive business liability" policy explicitly covers personal injuries arising out of "wrongful entry or eviction, or other invasion of right of private occupancy," because construction excluding coverage of liability for discriminating against potential tenants and like claims would render phrase "other invasion of right of private occupancy" meaningless. Gardner v Romano (1988, ED Wis) 688 F Supp 489.

In action brought under 42 USCS §§ 1981, 1982 and 3601 et seq. and New York Real Property Law alleging failure to rent to dark-skinned Puerto Rican woman, defendant's counterclaims for libel, prima facie tort, malicious abuse of process, and punitive damages were permissive in nature, and, as such, had to be dismissed for lack of subject matter jurisdiction where they lacked independent jurisdictional predicate. Quinones v Nescie ('986, ED NY) 110 FRD 346.

2. Relation to other laws

Failure to assert timely claim under Fair Housing Act (42 USCS §§ 3601 et seq.) has no effect on whatever cause of action may be available under 42 USCS § 1982. Hickman v Fincher (1973, CA4 SC) 483 F2d 855.

Action brought under 42 USCS § 1982 is not barred by 180-day limitation period of former 42 USCS §§ 3610 or 3612. Warren v Norman Realty Co. (1975, CA8 Neb) 513 F2d 730, cert den 423 US 855, 46 L Ed 2d 81, 96 S Ct 105.

While amount of punitive damages under 42 USCS § 1982 is not restricted by $1,000 limitation in former 42 USCS § 3612(c), case is remanded for new trial on issue of punitive damages where district court did not instruct jury that limitation expressed in former § 3612(c), although not binding, may be taken into account as indication of what might constitute reasonable and appropriate award. Fountila v Carter (1978, CA9 Cal) 571 F2d 487.

Test of ability to pay, applied in determining attorney's fees under 42 USCS §§ 3601 et seq., is inapplicable to awards of fees under Civil Rights Attorney's Fees Awards Act amending 42 USCS § 1988. Hughes v Repko (1978, CA3 Pa) 578 F2d 483, on remand (WD Pa) 471 F Supp 43.

Motion to dismiss action brought under Fair Housing Act of 1968 as barred by 180-day statute of limitations in former 42 USCS § 3612 is denied since 180-day statute of limitations is not applicable to civil actions brought under former 42 USCS § 3617. United States General, Inc. v Joliet (1977, ND Ill) 432 F Supp 346.

District Court had power to decide dark-skinned Puerto Rican woman's state law claim under Real Property Law of New York proscribing discrimination in housing against tenants with children, where federal claims under 42 USCS §§ 1981, 1982, and 3601 et seq. were substantial enough to confer jurisdiction on court, federal and state claims derived from common nucleus of operative fact in failure to rent apartment, and interests of judicial economy, convenience and fairness to litigants determined that court should exercise its pendant jurisdiction over state law claim. Quinones v Nescie (1986, ED NY) 110 FRD 346.

3. —42 USCS § 3610

Former 42 USCS §§ 3610 and 3612 provide alternative remedies available to precisely same class of plaintiffs. Gladstone, Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

Filing of complaint with Secretary under former 42 USCS § 3610 is not such election of remedies as to deny right of filing court complaint under former 42 USCS § 3612. Johnson v Decker (1971, ND Cal) 333 F Supp 88.

Remedies of former 42 USCS §§ 3610 and 3612 are separate, distinct and in alternative; plaintiffs have right to bring suit in district court alleging racial discrimination in rental of housing under former § 3612, before exhausting or attempting to exhaust remedies provided for in former § 3610. Crim v Glover (1972, SD Ohio) 338 F Supp 823.

Result of administrative proceeding brought pursuant to former 42 USCS § 3610 will not be given res judicata effect in action instituted under former 42 USCS § 3612(a). Miller v Poretsky (1976, DC Dist Col) 409 F Supp 837.

Two avenues provided by Fair Housing Act through which persons aggrieved by alleged violations may seek redress in District Courts, through HUD administrative procedures under former 42 USCS § 3610, or directly under former 42 USCS § 3612, are clearly in alternative. Howard v W. P. Bill Atkinson Enterprises (1975, WD Okla) 412 F Supp 610.

Two methods of enforcing Title VIII set forth at former 42 USCS § 3610 (complaint procedure with HUD) and former 42 USCS § 3612 (civil action in district court) are alternative paths to relief for person injured by discrimination in housing; language of former § 3610 is permissive and not mandatory, and inclusion of both sections is itself best evidence that Congress intended to provide alternate paths to relief. Fair Housing Council, Inc. v Eastern Bergen County Multiple Listing Service, Inc. (1976, DC NJ) 422 F Supp 1071.

Use of procedures in former 42 USCS § 3610 is not prerequisite to filing suit under former 42 USCS § 3612. Concerned Tenants Asso. of Indian Trails Apartments v Indian Trails Apartments (1980, ND Ill) 496 F Supp 522.

Exhaustion of administrative remedies is not prerequisite to claim in federal court based on former 42 USCS § 3612; party may institute civil action on administrative level under former 42 USCS § 3610 as well as commence civil action in federal court under former § 3612 since each of these are independent remedies. Oliver v Foster (1981, SD Tex) 524 F Supp 927, 33 FR Serv 2d 896.

Tenant's sexual harassment claim against landlord is not barred on basis of election of remedies, even though tenant initially filed administrative claim with Department of Housing and Urban Development, because former 42 USCS §§ 3610 and 3612 contemplate dual contemporaneous remedies available to victims of discriminatory housing practices. Grieger v Sheets (1988, ND Ill) 689 F Supp 835.

4. Limitation of actions

Complaint under Fair Housing Act (42 USCS §§ 3604, 3606) filed 224 days after last act of alleged discrimination is barred by 180 day period of limitations contained in former 42 USCS § 3612(a). Hickman v Fincher (1973, CA4 SC) 483 F2d 855.

180-day period must run from date of first refusal in order to avoid circumvention of limitation; if futile attempts at settlement or negotiation by alleged injured party are allowed to breathe life into claim long dead, 180-day limitation would have little significance and such tactics would enable victim of alleged discrimination to circumvent statute of limitations merely by provoking his adversary into another refusal to sell or rent. Meyers v Pennypack Woods Home Ownership Asso. (1977, CA3 Pa) 559 F2d 894, 23 FR Serv 2d 979.

Failure to comply with jurisdictional prerequisite of commencing civil action within 180 days after alleged discriminatory housing practice is fatal. James v Hafler (1970, ND Ga) 320 F Supp 397, affd without op (CA5 Ga) 457 F2d 511 and affd without op (CA5 Ga) 457 F2d 511.

Action alleging racial discrimination in housing in violation of former 42 USCS § 3612 is barred where plaintiff files complaint more than 180 days after date on which discriminatory practice occurred. Warren v Norman Realty Co. (1974, DC Neb) 375 F Supp 478, affd (CA8 Neb) 513 F2d 730, cert den 423 US 855, 46 L Ed 2d 81, 96 S Ct 105.

Action against housing development and advertising agency alleging that advertisement campaigns of defendants in newspaper featuring exclusively white models indicated racial preference in violation of 42 USCS § 3604(a) and (c) is dismissed, where plaintiffs did not file complaint within 180 days after alleged discriminatory housing practice, and neither defendants' ads nor ad campaigns indicated racially discriminatory preference. Spann v Colonial Village, Inc. (1987, DC Dist Col) 662 F Supp 541.

Plaintiff's complaint is timely although filed over year after events, where there is no hiatus because plaintiffs filed civil case against defendant in United States district court on same claim for relief well within 180 day period. Re Moore (1979, BC CD Cal) 1 BR 52.

5. —Continuing violations

Complaint is timely under former 42 USCS § 3612 when filed within 180 days of last alleged unlawful practice when plaintiff asserts unlawful practice, as opposed to single incident, that continues into limitations period, since theory of continuing violations is applicable in actions under former § 3612(a). Havens Realty Corp. v Coleman (1982) 455 US 363, 71 L Ed 2d 214, 102 S Ct 1114.

Alleged violation of 42 USCS § 3604, that housing association refused to place black applicant on waiting list, is not continuing one for purposes of 180-day limitation of former § 3612(a); association's rejection of plaintiff's demands for redress three years after initial refusal to sell house did not extend 180-day limitation. Meyers v Pennypack Woods Home Ownership Asso. (1977, CA3 Pa) 559 F2d 894, 23 FR Serv 2d 979.

Aggrieved party is entitled to receive all Fair Housing Act (42 USCS §§ 3601 et seq.) claims against violator simply by reapplying for housing with violator since violations continue to occur by continued policy of denying minority applicants housing. Coles v Havens Realty Corp. (1980, CA4 Va) 633 F2d 384, affd in part and revd in part on other grounds 455 US 363, 71 L Ed 2d 214, 102 S Ct 1114.

In determining timeliness of complaint filed under Fair Housing Act (42 USCS §§ 3601 et seq.) against real estate agency and its agents who allegedly conducted unlawful "racial steering" practices in violation of Act, District Court did not err in finding that numerous violations which occurred outside 180 day time limit were sufficiently connected to violation that occurred within limit so as to constitute continuing practice, and thus complaint which was filed within 180 days of last violation is sufficient to reach all violations. Heights Community Congress v Hilltop Realty, Inc. (1985, CA6 Ohio) 774 F2d 135.

Where plaintiffs allege what amounts to continuing conspiratorial practice of discrimination in sale or rental of housing by multiple defendants, such continuing discriminatory pattern satisfies 180-day requirement of former 42 USCS § 3612 within which action must be brought. Fair Housing Council, Inc. v Eastern Bergen County Multiple Listing Service, Inc. (1976, DC NJ) 422 F Supp 1071.

Cause of action was filed within 180 days allowed by former 42 USCS § 3612, despite fact that more than 180 days elapsed since lending institution's filing of foreclosure action, since violation of 42 USCS § 3605 which plaintiffs alleged involved continuing injury, and 180 days had not elapsed from time tortious conduct ceased at date upon which plaintiffs would have been dispossessed by virtue of defendant's order of foreclosure. Harper v Union Sav. Asso. (1977, ND Ohio) 429 F Supp 1254.

Plaintiff failed to comply with jurisdictional time limit contained in former 42 USCS § 3612 where litigation was not commenced until period considerably in excess of 180 days after alleged discriminatory housing practice occurred, and such failure to meet 180 day jurisdictional requirement may not be avoided by claiming that wrong was continuing one. Stingley v Lincoln Park (1977, ED Mich) 429 F Supp 1379.

Complaint alleging continuing violation of 42 USCS § 3604 was filed within 180 days of alleged discriminatory housing practice where plaintiff alleged that practices of defendant amounted to pattern of failing to provide same kind of services at housing project as were afforded white tenants in early 1970's and these actions occurred up until present time. Concerned Tenants Asso. of Indian Trails Apartments v Indian Trails Apartments (1980, ND Ill) 496 F Supp 522.

Reapplication for housing by one plaintiff may not serve to revive another plaintiff's claim of violation of Title VIII under continuing violation theory unless 2 plaintiffs are working together to determine whether defendant is violating Title VIII. Espinoza v Hillwood Square Mut. Asso. (1981, ED Va) 522 F Supp 559.

Alleged acts of racial steering by real estate agents that occurred more than 180 days prior to filing suit would not be time barred if plaintiffs could show that alleged incidents violated Fair Housing Act and constituted unlawful practice which continued into 180-day limitations period. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Tenant's action against landlord for sexual harassment is not time-barred under 180-day limitation of former 42 USCS § 3612(a), where complaint alleges landlord's demand for sexual favors as condition of home repairs began in 1986 and continues to present, because complaint filed in 1987 was timely filed given continuing nature of wrongful act alleged. Grieger v Sheets (1988, ND Ill) 689 F Supp 835.

Annotations:

Time for bringing private civil action for discrimination in housing under §§ 810 and 812 of Fair Housing Act (42 USCS §§ 3610 and 3612). 62 ALR Fed 267.

6. —Tolling

Pursuit of federal administrative remedies under former 42 USCS § 3610 does not toll running of statute of limitations under former 42 USCS § 3612(a). James v Hafler (1970, ND Ga) 320 F Supp 397, affd without op (CA5 Ga) 457 F2d 511, affd without op (CA5 Ga) 457 F2d 511; Morgan v Parcener's, Ltd (1978, WD Okla) 493 F Supp 180.

Statute of limitation set forth in former 42 USCS § 3612 was not tolled during period of time that person who suffered discrimination in housing was pursuing administrative remedy authorized by former 42 USCS § 3610. Jefferson v Mentzell (1976, ND Tex) 409 F Supp 1; Smith v Woodhollow Apartments (1978, WD Okla) 463 F Supp 16.

Suit under 42 USCS §§ 3601 et seq., claiming racial discrimination in sale of property, is barred by 180-day limitation period of former 42 USCS § 3612, and doctrine of fraudulent concealment did not toll statute of limitations; unawareness of facts or law does not itself justify suspending operation of limitations statute, for question is whether plaintiff knew, or by exercise of due diligence could have known, that he might have cause of action. Humphrey v J. B. Land Co. (1979, SD Tex) 478 F Supp 770.

6.5. Ripeness

Not ripe for adjudication is action under Fair Housing Act (42 USCS §§ 3601 et seq.) by developers who had arranged to finance housing development for low to moderate income families, and who alleged that rights of their future inhabitants were violated by city resolution which authorized one year delay in financing of project, since only direct injury alleged by plaintiffs is speculation costs that have been expended in devising, planning and arranging financing for project, and since alleged injury is due to proper exercise of governmental discretion in that municipal resolution was based upon state act which allows governmental subdivisions to take such action. Meadows of West Memphis v West Memphis (1985, ED Ark) 625 F Supp 457.

7. Standing

With regard to standing to bring suit under § 812 of Fair Housing Act of 1968 (former 42 USCS § 3612)—which provides for civil actions to enforce rights guaranteed by § 804 of Act (former 42 USCS § 3614)—to enforce right to have one's community protected from harms of racial segregation, central issue is not who possesses legal rights protected by § 804, but rather whether parties bringing suit were genuinely injured by conduct that violates someone's rights and thus are entitled to seek redress of that harm under § 812; since standing under § 812 extends to the limits provided by Article III of the Federal Constitution, normal prudential rules governing standing do not apply, and as long as plaintiff suffers actual injury as result of defendant's conduct, he is permitted to prove that rights of another were infringed. Gladstone, Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

Sole requirement for standing to sue under former 42 USCS § 3612 is Article 3 minimum of injury-in-fact, that is, that plaintiff allege that as result of defendant's actions he has suffered distinct and palpable injury. Havens Realty Corp. v Coleman (1982) 445 US 363, 71 L Ed 2d 214, 102 S Ct 1114.

Landowners who challenged action of defendant municipality which rezoned their property from multifamily residential to single-family residential, lack standing under Fair Housing Act (42 USCS §§ 3601 et seq.) where landowners suffered economic injury only in diminution in value of their property as result of defendant's conduct. Nasser v Homewood (1982, CA11 Ala) 671 F2d 432.

Local residents have standing to challenge HUD's decision approving neighborhood low-income housing project as being contrary to 42 USCS § 3608(b)(5) since residents are within zone of interests to be protected by Fair Housing Act (42 USCS §§ 3601 et seq.). Alschuler v Department of Housing & Urban Development (1982, CA7) 686 F2d 472.

Plaintiffs who seek federal funding to construct multi-family housing project in municipality have standing to challenge municipality's zoning ordinance, which zoned particular tract in question for single-family residential units on one-acre lots, as discriminatory and thus violative of Fair Housing Act (42 USCS §§ 3601 et seq.), even though Section 8 (42 USCS § 1437f) federal funds were not currently available to finance project since availability of Section 8 monies in subsequent years cannot be excluded. Huntington Branch, NAACP v Huntington (1982, CA2 NY) 689 F2d 391.

Black former insurance agent has standing under Fair Housing Act (42 USCS §§ 3601 et seq.) to challenge insurer's alleged practice of "redlining," defined as arbitrary refusal to underwrite risks of persons residing in predominantly black neighborhoods. Mackey v Nationwide Ins. Cos. (1984, CA4 NC) 724 F2d 419, 33 CCH EPD ¶ 34048, 1984-1 CCH Trade Cases ¶ 65795.

Black resident of racially integrated community has standing under Fair Housing Act (42 USCS § 3604) to allege that community has developed municipal policies to control racial composition of neighborhood by steering white home buyers to neighborhood and black home buyers away from area, despite fact that resident was not himself steered from area, since community's policies impose badge or label of inferiority on resident based purely on race. Smith v Cleveland Heights (1985, CA6 Ohio) 760 F2d 720.

Residents of predominantly white neighborhood have standing to sue under former 42 USCS § 3612 where complaint alleged that residents were deprived of right to important social, professional, business and economic, political and esthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices. Fair Housing Council, Inc. v Eastern Bergen County Multiple Listing Service, Inc. (1976, DC NJ) 422 F Supp 1071.

Association of neighborhood residents, and individual white and black homeowners in neighborhood, have standing to sue for violation of former 42 USCS § 3612 by realtors allegedly promoting racial segregation by steering practices, even though homeowners were not themselves directly injured. Wheatley Heights Neighborhood Coalition v Jenna Resales Co. (1977, ED NY) 429 F Supp 486.

Congress intended to confer standing in suits brought pursuant to former 42 USCS §§ 3610 and 3612 to fullest extent permitted by Article III of United States Constitution; thus, so-called "prudential limitations" which require plaintiff to show particularized injury not shared by all or large class of citizen do not apply in cases involving housing discrimination, and instead all that need be shown is that the plaintiff personally has suffered some actual or threatened injury as result of putatively illegal conduct of defendant. Sherman Park Community Asso. v Wauwatosa Realty Co. (1980, ED Wis) 486 F Supp 838.

Injury in fact is sole criterion to assert standing under former 42 USCS § 3612. Gordon v Cartersville (1981, ND Ga) 522 F Supp 753.

Residents of community do not have standing to challenge discriminatory housing practices at apartment complex where (1) none of residents have ever been in apartment complex, (2) none of them could say they knew anyone who lived there, (3) resident who lives nearest to apartment complex lives one mile from it, and (4) only connection residents have with apartment complex is that they live, work, shop, attend church, send children to school, and recreate in community. Bond v Regal (1982, ED Wis) 530 F Supp 707, 33 FR Serv 2d 1733.

Developers who seek to provide housing to persons of low income have standing under former 42 USCS § 3612 to challenge allegedly discriminatory actions of defendants where plaintiffs alleged that they have suffered financial loss because of defendant's actions. Bendetson v Payson (1982, DC Mass) 534 F Supp 539.

Developer who seeks to build low-income housing in city has standing to sue mayor and other city officials under former 42 USCS § 3612 because of defendants' alleged racial discrimination which is preventing developer from proceeding with construction. West Zion Highlands v Zion (1982, ND Ill) 549 F Supp 673.

Not-for-profit corporation with purpose of promoting formation and continuation of integrated community and provision of housing on non-discriminatory basis, does not have standing in either representative capacity or on its own behalf in action under Fair Housing Act (42 USCS §§ 3601

and 1982, where black couple were victims of racial discrimination by real estate broker, manager, and one of its salesmen, who refused to negotiate with couple for sale of dwelling in white area, defendants were "systematically engaged" in unlawful discrimination, and ample cause exists for granting award of $1,000 punitive damages against each of three defendants. Seaton v Sky Realty Co. (1974, CA7 Ill) 491 F2d 634.

Appropriate consideration in deciding issue of punitive damages under 42 USCS §§ 3601 et seq. is motive and attitude of defendant in refusing to grant housing in question to plaintiff; although punitive damages are not to be allowed for every violation, in each case court should consider whether or not defendant acted wantonly and willfully, or was motivated in his actions by ill will, malice, or desire to injure plaintiff. Jeanty v McKey & Poague, Inc. (1974, CA7 Ill) 496 F2d 1119.

Punitive damages can be assessed against principal not personally liable under Fair Housing Act under doctrine of respondeat superior if he knew of or ratified discriminatory acts of his employees or agents. Marr v Rife (1974, CA6 Ohio) 503 F2d 735, later app (CA6 Ohio) 545 F2d 554.

In civil rights action against realtor who managed some 1500 apartment units, district court properly refused to award punitive damages where evidence established that two building superintendents (employees of defendant) showed and rented apartments in racially discriminatory manner, but there was no evidence that anyone else in defendant's organization was aware of unlawful behavior, and there is no evidence that anyone in defendant's company had similar policies. Fort v White (1976, CA2 Conn) 530 F2d 1113.

Merely because wrong is intentionally permitted, punitive damages are not, as matter of law, compelled; certain degree of malevolence must be present to warrant award of punitive damages. Crumble v Blumthal (1977, CA7 Ill) 549 F2d 462, 38 ALR Fed 152.

Fair Housing Act is independent of other civil rights statutes and $1,000 punitive damages limitation contained in former 42 USCS § 3612(c) does not act as limit upon punitive damages award otherwise available under those acts, although it may be considered when determining amount of punitive damages in such suits. Dillon v AFBIC Development Corp. (1979, CA5 Ala) 597 F2d 556.

$1,000 punitive damage limitation contained in former 42 USCS § 3612(c) is to be read in conjunction with 42 USCS §§ 1982 and 1988, which do not impose such limitations in action brought under Fair Housing Act and 42 USCS § 1982 alleging racial discrimination in sale of real estate. McDonald v Verble (1980, CA6 Ohio) 622 F2d 1227.

There is no ceiling on award of punitive damages in action in which concurrent liability is established under 42 USCS § 3612 (former) and § 1982. Miller v Apartments & Homes, Inc. (1981, CA3 NJ) 646 F2d 101, 59 ALR Fed 918

Language used by defendant, referring to plaintiffs' guest as "nigger trash" amounts to willful and gross disregard of plaintiffs' rights under Fair Housing Act. Woods-Drake v Lundy (1982, CA5 Miss) 667 F2d 1198.

In action against landlord under 42 USCS §§ 1981 and 1982 and Fair Housing Act (42 USCS §§ 3601 et seq.) court properly ordered new trial on punitive damage issue, where court in first trial had denied defendant instructions pointing out $1,000 cap on punitive damages in Fair Housing Act, and at second trial court instructed jury of limitation of $1,000 on punitive damages, where court explicitly stated that statutory limitation under Fair Housing Act was to be considered by jury for guidance only, and that there was no limitation on award under 42 USCS §§ 1981 and 1982. Wadsworth v Clindon (1988, CA4 Va) 846 F2d 265.

Landlord was properly liable for punitive damages in racial discrimination in housing action under 42 USCS § 1982 and 42 USCS §§ 3601 et seq. under theory that landlord himself engaged in discriminatory conduct by establishing rental policies, procedures, and rules, or under theory that landlord authorized or ratified discriminatory conduct of employee when employee refused rental or rental information to black applicant, where landlord refused to apologize or remedy situation after personally investigating applicant's claim of discrimination. Asbury v Brougham (1989, CA10 Kan) 866 F2d 1276.

In cases involving vindication of rights under Fair Housing Act (former 42 USCS § 3612), punitive damages can only be awarded where defendant has engaged in willful, wanton or other similar conduct in course of discriminating in housing contrary to provisions of act. Stevens v Dobs, Inc. (1974, ED NC) 373 F Supp 618.

While former 42 USCS § 3612(c) $1,000 limitation does not pre-empt court's power to award punitive damages in 42 USCS § 1982 cases, former § 3612(c) should be given appropriate consideration in determining amount of punitive damages in § 1982 action in which plaintiff alleges defendant refused to sell plaintiffs residential property because they were black. Hughes v Dyer (1974, WD Mo) 378 F Supp 1305.

Landlady's willful disregard of rights of others by discriminating in rentals on basis of race is subject to liability for punitive damages under former 42 USCS § 3612(c); punitive damages are usually given where defendant's conduct is willful or wanton, or where deterrant effect would be accomplished. Walker v Fox (1975, SD Ohio) 395 F Supp 1303.

Punitive damages should be granted in those cases in which court finds that defendant acted willfully and in wanton and malicious disregard for rights of plaintiffs; thus, defendant is liable for $5,000 in punitive damages for refusing to rent apartment to plaintiffs in violation of 42 USCS § 3604 and § 1982. Bishop v Peesok (1976, ND Ohio) 431 F Supp 34.

Punitive damages of $2,500 are assessed against employee of mortgage company for violating provisions of 42 USCS §§ 3604, 3605, and 3617; employer mortgage company is not assessed punitive damages, even though it is required to make plaintiff whole because duty violated was non-delegable, since there was no showing of intent or willfulness on its part. Harrison v Otto G. Henzeroth Mortg. Co. (1977, ND Ohio) 430 F Supp 893.

No punitive damages are awarded under former 42 USCS § 3612(c) where there was no evidence of malicious and willful conduct. Morehead v Lewis (1977, ND Ill) 432 F Supp 674, affd without op (CA7 Ill) 594 F2d 867.

Award of punitive damages against real estate broker under former 42 USCS § 3612 is proper where real estate salesman discouraged prospective buyers from inspecting dwelling because of race of prospective buyers and real estate broker ratified and approved action of his salesman. Bradley v John M. Drabham Agency, Inc. (1978, DC SC) 463 F Supp 27.

Plaintiff's claim for exemplary or punitive damages in amount of $5,000 will not be dismissed since claim for punitive damages is authorized by 42 USCS § 1982 which does not limit amount of punitive damages recoverable. Oliver v Foster (1981, SD Tex) 524 F Supp 927, 33 FR Serv 2d 896.

Owners and operators of apartment complex, along with rental agents employed by complex, are liable to prospective black tenants for appropriate injunctive relief, actual and punitive damages, along with costs and attorney fees, where defendants willfully engaged in systematic practice of discrimination against black applicants and homeseekers that frustrated counseling and referral services, drained resources and hindered mission of non-profit corporation organized to further goals of Fair Housing Act; defendants are also liable to non-profit corporation for both actual and punitive damages. Davis v Mansards (1984, ND Ind) 597 F Supp 334.

One thousand dollar limitation on punitive damages under former 42 USCS § 3612(c) does not apply where plaintiff brings suit under both 42 USCS §§ 1982 and former 3612. Williams v Adams (1985, ND Ill) 625 F Supp 256.

14. Attorneys' fees

Amount of attorneys fees set pursuant to former 42 USCS § 3612(c) is within discretion of district court, and will not be disturbed on appeal absent abuse. Marr v Rife (1976, CA6 Ohio) 545 F2d 554.

In class action under Title VIII of Civil Rights Act of 1968 (42 USCS §§ 3601 et seq.) in which plaintiffs successfully established that housing authority maintained admission policy that limited number of black occupants in housing authority projects, District Court, in determining reasonable attorney fees to non-profit legal services organization which represented plaintiffs, committed error by explicitly determining hourly rate by reference to fees awarded to organization in another case, rather than making findings as to prevailing market rates; court did not err in refusing to increase lodestar even though case involved complex constitutional issues. Burney v Housing Authority of County of Beaver (1984, CA3 Pa) 735 F2d 113.

Indigency should not be sole test of whether attorney's fees should be awarded under 42 USCS §§ 3601 et seq.; rather, requirement of financial inability should be designed to mean homeowner or prospective homeowner of limited financial ability who clearly lacks resources to cite legal battle under "anti-blockbusting" act without endangering his status as homeowner or potential homeowner, and includes widow with minor dependent, who receives only modest annual income by way of pension. Sanborn v Wagner (1973, DC Md) 354 F Supp 291.

Awards of attorney's fees may be made in housing discrimination actions pursuant to former 42 USCS § 3612(c) in discretion of trial court. Adams v Hempstead Health Co. (1977, ED NY) 426 F Supp 1141.

Plaintiffs are not financially able to pay attorney, despite contention that plaintiffs are able to pay their attorneys because they earn $9,000 and $10,000 per year; in determining amount of fees that are reasonable, hours claimed or spent on civil rights case are not sole basis for court's decision, and court must not simply accept attorneys' account of value of their services, nor should they be compensated for unnecessary work. Morehead v Lewis (1977, ND Ill) 432 F Supp 674, affd without op (CA7 Ill) 594 F2d 867.

Attorney's fees will not be awarded under former 42 USCS § 3612 where there is no showing that plaintiffs are financially unable to assume attorney's fees. Bradley v John M. Drabham Agency, Inc. (1978, DC SC) 463 F Supp 27.

In action under 42 USCS § 1982 and Fair Housing Act (42 USCS §§ 3601 et seq.) award of nominal damages based on finding of liability can trigger award of reasonable attorney's fees. Nicholson v Bates (1982, ED Tex) 544 F Supp 256.

Although attorney fees under former § 3612 may not be awarded to prevailing plaintiff where plaintiff is financially able to resume attorney fees, recovery may be had under 42 USCS § 1988. Rogers v 66-36 Yellowstone Blvd. Cooperative Owners, Inc. (1984, ED NY) 599 F Supp 79.

15.—Awarded

Test of whether attorney fees should be allowed under statute is not limited to present ability of plaintiff to pay, but whether he is financially able to assume burden; evidence justified award of $2,000 in attorney fees to black teacher denied right to rent apartment on ground that he was black. Steele v Title Realty Co. (1973, CA10 Utah) 478 F2d 380.

In action under 42 USCS §§ 3601 et seq. against owner and exclusive rental agent of apartment housing, $400 in attorney's fees awarded to plaintiff must be reconsidered in view of substantial time spent by plaintiff's highly qualified counsel in bringing action and in several hearings; attorney's fees for appeal are awarded to encourage private litigation to enforce Civil Rights Act of 1964. Jeanty v McKey & Poague, Inc. (1974, CA7 Ill) 496 F2d 1119.

Plaintiff is entitled to award of attorneys' fees of $1,250 for services of counsel on appeal and to reasonable additional allowance for attorneys' fees related to pursuit of injunctive relief in trial court where trial court's refusal to grant injunctive relief was reversed as abuse of discretion on appeal. Sandford v R. L. Coleman Realty Co. (1978, CA4 NC) 573 F2d 173.

Prevailing plaintiff in action under Federal Fair Housing Act (42 USCS §§ 3601 et seq.) is entitled to attorney's fees, and it was abuse of discretion by trial court to deny fees on basis that plaintiff perjured herself, where evidence undisputedly showed that defendants violated Act by refusing to rent to plaintiff because she was black. Price v Pelka (1982, CA6 Ohio) 690 F2d 98.

In action in which black plaintiffs successfully established that housing authority violated Title VIII of Civil Rights Act (42 USCS §§ 3601 et seq.) by maintaining admission policy that limited number of black occupants in housing authority projects, District Court did not err in awarding 25 percent of attorney fees against state human relations commission which intervened on behalf of housing authority. Burney v Housing Authority of County of Beaver (1984, CA3 Pa) 735 F2d 113.

District Court did not abuse its discretion in assessing attorney fees against defendant in housing discrimination action under 42 USCS §§ 3601 et seq., despite alleged understanding between defendant and plaintiff's attorneys that no judgment would be sought against defendant, since filing of suit is sufficient notice to defendant that, at least, he or she may be liable for costs and attorney's fees. Stewart v Crosson (1985, CA6 Tenn) 774 F2d 158.

Plaintiffs who successfully litigated Fair Housing Act claim and whose family incomes were $12,000 and $14,000 per year were prevailing parties and entitled to attorneys' fees under former 42 USCS § 3612. Keith v Volpe (1988, CA9 Cal) 858 F2d 467.

Community organization meets financial inability condition of former 42 USCS § 3612(c) and is thus entitled to award of reasonable attorney fees as prevailing party in housing discrimination case, because organization has no guaranteed funding source and is dependent on contributions, leaving it without surplus funds to finance lawsuit, and fact that organization had contingent fee arrangement with attorneys does not bar such award. Heights Community Congress v Hilltop Realty, Inc. (1985, ND Ohio) 643 F Supp 8.

Attorney's fees are awarded to prevailing plaintiffs in housing discrimination suit, where basis of discrimination is plaintiff's low-income status, present financial status makes it unreasonable to expect plaintiffs to bear full cost of litigation, and policy considerations require that private parties have access to competent counsel to protect fair housing rights. Keith v Volpe (1986, CD Cal) 644 F Supp 1317.

16. —Denied

Denial of attorneys' fees to prevailing plaintiff is proper where plaintiff entered contingent fee agreement with private attorney prior to litigation under former 42 USCS § 3612. Samuel v Benedict (1978, CA9 Cal) 573 F2d 580.

In action alleging racial discrimination in sale of housing lot, plaintiffs who earn in excess of $30,000 per year are financially able to assume their attorney fees and thus fees will not be awarded under former 42 USCS § 3612(c). Clemons v Runck (1975, SD Ohio) 402 F Supp 863.

Plaintiffs are not "prevailing parties" so as to permit award of attorney fees where, even though plaintiffs were granted temporary restraining order and preliminary injunction preventing defendants-landlords from renting any apartments until plaintiffs surveyed complex, defendants were found not to have violated any of plaintiffs' rights. Parks v Grayton Park Associates (1982, ED Mich) 531 F Supp 77.

City is financially able to assume its attorney fees in housing discrimination case and thus is not entitled to award of fees under former 42 USCS § 3612(c), because city has taxing power and also receives federal funds; city may, however, recover costs under 28 USCS § 1920. Heights Community Congress v Hilltop Realty, Inc. (1985, ND Ohio) 643 F Supp 8.

17. Costs

Plaintiffs, prevailing parties in civil rights action, are entitled to recover their costs from defendant. Morehead v Lewis (1977, ND Ill) 432 F Supp 674, affd without op (CA7 Ill) 594 F2d 867.

18. Moot questions

Class suit on behalf of plaintiffs and another unidentified family, alleging 42 USCS § 3604 violations, is moot where plaintiff arbitrated settlement with landlord. Cash v Swifton Land Corp. (1970, CA6 Ohio) 434 F2d 569, 14 FR Serv 2d 956.

Where original complaint sought damages as well as injunctive relief, settlement as to rental of apartment and awarding of costs and waiver of fees and security does not render moot question of damages. Cash v Swifton (1970, CA6 Ohio) 434 F2d 569, 14 FR Serv 2d 956; Rogers v Loether (attorney's fees) (1972, CA7 Wis) 467 F2d 1110, 16 FR Serv 2d 956, affd 415 US 189, 39 L Ed 2d 260, 94 S Ct 1005, 18 FR Serv 2d 189.

Claims of class consisting of low and moderate persons who are on waiting list for proposed public housing, and who alleged constitutional and statutory violations in connection with 2 municipal referendum votes which repealed city ordinances granting housing authority authority to construct sewer extensions to proposed housing sites, are not moot on grounds that court could not order relief because city had spent federal funds on comparable unit on scattered sites and no federal funds were currently available, since plaintiffs still have claim for damages if they can establish violation of Title VIII of Civil Rights Act (42 USCS §§ 3601 et seq.). Arthur v Toledo (1986, CA6 Ohio) 782 F2d 565.

Claim for equitable relief is not mooted under former 42 USCS § 3612 by fact that agents who allegedly committed discriminatory acts are no longer employed by defendants, and therefore court will not dismiss action. Dyer v Schecter (1977, ND Ohio) 77 FRD 696.

§ 3614. Enforcement by the Attorney General

(a) Pattern or practice cases. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement.

(1)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 810(g) [42 USCS § 3610(g)].

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 810(c) [42 USCS § 3610(c)].

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 810(c) [42 USCS § 3610(c)].

(c) Enforcement of subpoenas. The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this title, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief which may be granted in civil actions under subsections (a) and (b). (1) In a civil action under subsection (a) or (b), the court—

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

(i) in an amount not exceeding $50,000, for a first violation; and

(ii) in an amount not exceeding $100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28, United States Code.

(e) Intervention in civil actions. Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 813 [42 USCS § 3613].

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 814, as added Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1634.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, which is popularly known as the Fair Housing Act, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Explanatory notes:

A prior § 3614 (Act Apr. 11, 1968, P. L. 90-384, Title VIII, § 814, 82 Stat. 88) was repealed by Act Nov. 8, 1984, P. L. 98-620, Title IV, Subtitle A, § 402(40), 98 Stat. 3360. It related to the expedition of proceedings.

Effective date of section:

Act Sept. 13, 1988, P. L. 100-430, § 13(a), 102 Stat. 1636, which appears as 42 USCS § 3601 note, provides that this section is effective on the 180th day beginning after enactment.

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Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:212, 357, 358, 465-468, 471, 472, 479-482, 501.

INTERPRETIVE NOTES AND DECISIONS

1. Generally

Upon finding facts sufficient to support violation of Fair Housing Act (42 USCS §§ 3601 et seq.), district court did not err, after remand, in refusing to refer case to Attorney General for another determination of whether "reasonable cause" existed pursuant to former 42 USCS § 3613. United States v Northside Realty Associates, Inc. (1974, CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Whether Attorney General has reasonable cause

for belief is not proper subject for judicial inquiry or confirmation in Title VIII action. United States v Mitchell (1970, ND Ga) 313 F Supp 299; United States v Hunter (1971, DC Md) 324 F Supp 529, aff (CA4 Md) 459 F2d 205, 22 ALR Fed 339, cert den 409 US 934, 34 L Ed 2d 189, 93 S Ct 235, reh den 413 US 923, 37 L Ed 2d 1045, 93 S Ct 3046.

Summary judgment is inappropriate disposition of "pattern or practice" and "public importance" issues in determining whether Attorney General may proceed on alleged 42 USCS § 3604(e) violations. United States v Mitchell (1971, ND Ga) 327 F Supp 476.

2. Application

Former 42 USCS § 3613 provides for actions against states and political subdivisions as well as actions against private transactions and practices; comprehensive purpose of Fair Housing Act (42 USCS §§ 3601 et seq.) would be diluted if it were to apply only to actions of private individuals and entities. United States v Parma (1981, CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

Both city and city community development authority are "persons" within meaning of former 42 USCS § 3613, and can thus be sued by Attorney General for alleged discriminatory pattern or practice of housing discrimination United States v Yonkers Bd. of Education (1985, SD NY) 624 F Supp 1276.

3. "Pattern or practice"

Phrase, "pattern or practice", is satisfied by admission by landlord that apartment's policy of maintaining segregated apartment continued into 1969, and failure to advise several of post-Act applicants of deposit requirement, and absence of persuasive indications that cessation in admitted pre-Act pattern or practice occurred and, therefore, establish pattern or practice of racial discrimination in renting after effective date of Act (42 USCS §§ 3601 et seq.). United States v West Peachtree Tenth Corp. (1971, CA5 Ga) 437 F2d 221, 13 ALR Fed 269.

Printing of "white home" advertisement, while indicating racial preference in violation of 42 USCS § 3604(c), did not alone suffice to constitute "pattern or practice". United States v Hunter (1972, CA4 Md) 459 F2d 205, 22 ALR Fed 339, cert den 409 US 934, 34 L Ed 2d 189, 93 S Ct 235, reh den 413 US 923, 37 L Ed 2d 1045, 93 S Ct 3046.

Where trial court found that defendant had not participated in "individual pattern or practice" but had participated in "group pattern or practice" when 2 of his agents made forbidden representations to 4 individuals, Attorney General had standing to sue. United States v Bob Lawrence Realty, Inc. (1973, CA5 Ga) 474 F2d 115, cert den 414 US 826, 38 L Ed 2d 59, 94 S Ct 131, reh den 414 US 1087, 38 L Ed 2d 494, 94 S Ct 610.

Single pre-Act incident of discrimination, standing alone, did not justify finding of "pattern or practice" under former 42 USCS § 3613. United States v Northside Realty Associates, Inc. (1973, CA5 Ga) 474 F2d 1164, later app (CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Attorney General's suit was valid under "pattern or practice" provision where allegations were that owners of apartment complex had "steered" blacks into separate section of complex, that 95% of all blacks renting in complex during 2-year period rented apartments in same section comprised of four buildings at remote end of complex, and that 53% of all black tenants were located in same building within this section. United States v Mitchell (1978, CA5 Tex) 580 F2d 789.

Isolated or accidental or peculiar event constituting single act of discrimination does not rise to level of "pattern or practice" required for federal court action; evidence, however, in respect to two instances, does establish "pattern or practice" of discrimination. United States v Gilman (1972, SD NY) 341 F Supp 891.

No "pattern or practice" of violation of former 42 USCS § 3613 is shown where very few agents of realtor made isolated remarks about race of prospective buyers. United States v Saroff (1974, ED Tenn) 377 F Supp 352, affd without op (CA6 Tenn) 516 F2d 902.

To prove pattern and practice of discrimination under 42 USCS § 3613, plaintiff must prove that it was regular (although not necessarily uniform) practice of defendant to act with discriminatory intent; factors that are to be considered in determining whether actions were taken with discriminatory intent include degree of any discriminatory effect, historical background of actions, specific sequence of events leading up to actions, presence or absence of departure from normal procedures or substantive criteria, and legislative history of actions; however, plaintiff is not required to prove that segregative intent was sole or even primary motive underlying defendant's actions, and policy of racial segregation is impermissible even as secondary motive for action, and cannot be justified by good intentions with which other laudable goals are pursued. United States v Yonkers Bd. of Education (1985, SD NY) 624 F Supp 1276.

Judgment is denied to government in action against subdivision homeowners for damages and injunctive relief, where restrictive covenant executed in 1939 excluded all non-Caucasians, homeowners subsequently adopted and recorded disclaimer of covenant, homeowners voted to extend all covenants upon expiration in 1970, and subdivision was in fact highly integrated, because government failed to establish "pattern or practice" of racial discrimination in housing as opposed to isolated or accidental departures from nondiscriminatory norm, since extension of all deed covenants by homeowners, including restrictive one, was isolated in view of homeowners' recorded declaration of invalidity of that covenant, particularly because actual deletion of restrictive covenant was not feasible approach to problem and because no homeowner was party to original restrictive covenant. United States v University Oaks Civic Club (1987, SD Tex) 653 F Supp 1469.

4. "General public importance"

Questions of scope and constitutionality of 42 USCS § 3604(c) raise issue of "general public importance", affording necessary prerequisite for relief hereunder, independent of whether "pattern or practice" of resistance is also shown to exist; Attorney General's attack on "white home" classification is allowed. United States v Hunter (1972, CA4 Md) 459 F2d 205, 22 ALR Fed 339, cert den 405 US 934, 34 L Ed 2d 189, 93 S Ct 235, reh den 413 US 923, 37 L Ed 2d 1045, 93 S Ct 3046.

It is not for district court to determine when issue of public importance justifying intervention of Attorney General is raised; once Attorney General alleges that he has reasonable cause to believe that violation of 42 USCS § 3604(e) denied rights to group of persons and that this denial raised issue of general public importance, he has standing to commence action in district court to obtain injunctive relief. United States v Bob Lawrence Realty, Inc. (1973, CA5 Ga) 474 F2d 115, cert den 414 US 826, 38 L Ed 2d 59, 94 S Ct 131, reh den 414 US 1087, 38 L Ed 2d 494, 94 S Ct 610.

Question of what constitutes issue of general public importance is, absent specific statutory standards, question most appropriately answered by executive branch and attorney general must be given wide discretion to determine whether issue of public importance is raised in regard to violation of Fair Housing Act (42 USCS §§ 3601 et seq.). United States v Northside Realty Associates, Inc. (1973, CA5 Ga) 474 F2d 1164, later app (CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Absent specific statutory standards, question of what constitutes issue of general public importance is most appropriately answered by executive branch. United States v Northside Realty Associates, Inc. (1974, CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Attorney General's suit was proper under provision authorizing bringing of suit which involves issue of general public importance, where allegations were that owners of apartment complex had "steered" blacks into separate section of complex, that 95% of all blacks renting in complex rented apartments in same section comprised of four buildings at remote end of complex, and that 53% of all black tenants were located in same building within this section. United States v Mitchell (1978, CA5 Tex) 580 F2d 789.

Attorney General's determinations of reasonable cause and general public importance are not reviewable. United States v Yonkers Bd. of Education (1985, SD NY) 624 F Supp 1276.

5. Right to jury trial

Defendants prosecuted under former 42 USCS § 3613 have no right to trial by jury because only equitable relief is authorized against them. United States v Bob Lawrence Realty, Inc. (1970, ND Cal) 313 F Supp 870, 14 FR Serv 2d 622.

In action by attorney general under former 42 USCS § 3613 seeking only injunctive relief, defendants have no right to jury trial. United States v Westbanick Corp. (1974, DC Wis) 63 FRD 366.

6. Relief

Violations of Fair Housing Act (42 USCS §§ 3601 et seq.), absent challenge to validity of Act, would alone support granting of injunctive relief to United States. United States v Northside Realty Associates, Inc. (1974, CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Appropriate relief for violation of Fair Housing Act [42 USCS §§ 3601 et seq] is to be determined on case-by-case basis with relief tailored in each instance to needs of particular situation; relief should be aimed toward twin goals of insuring that no future violations of Act occur and removing any lingering effects of past discrimination; district court order enjoining defendants from any future violations of Act and ordering defendants to instruct their employees in provisions of Act and of court order and to open their rental records to governmental inspection for one year was not sufficient relief for practice of discrimination against persons on basis of race in renting apartment; district court must expand affirmative relief provisions of its injunction to include provisions parallel to those of prior appellate decision. United States v Jamestown Center-in-the-Grove Apartments (1977, CA5 Fla) 557 F2d 1079.

Primary purpose of injunction in Fair Housing Act [42 USCS §§ 3601 et seq] cases is to prevent future violations of Act and to eliminate any possible recurrence of discriminatory housing practice; prior to granting injunctive relief, court must determine that cognizable danger of recurrent violations exists; court may consider number of factors in deciding whether injunctive relief is appropriate, or in fashioning relief under decree of injunction once court has determined that such remedy is necessary. United States v Warwick Mobil Home Estates, Inc. (1977, CA4 Va) 558 F2d 194.

Because second alternative of former 42 USCS § 3613 authorizes injunctive relief in favor of government where there has been denial of rights to any group and where Attorney General has determined that such denial raises issue of general public importance, injunctive relief is appropriate on basis of defendants' discriminatory treatment of blacks through their rental agents, where black persons were discriminated against in rental of apartments. United States v Youritan Constr. Co. (1973, ND Cal) 370 F Supp 643, affd in part and remanded in part on other grounds (CA9 Cal) 509 F2d 623, 10 BNA FEP Cas 1438.

Injunctive relief is appropriate in action by Attorney General against children's home which allegedly made dwelling unavailable to black children in violation of Fair Housing Act of 1968 (42 USCS §§ 3601 et seq.). United States v Hughes Memorial Home (1975, WD Va) 396 F Supp 544.

Former 42 USCS § 3613 is designed to provide broad scale relief where discriminatory housing pattern creates problem of "general public importance"; in such case, evidence of individualized acts of discrimination is not required since the focus is on discriminatory policy evidenced by defendant's overall operation and its class-based result. Player v Alabama Dept. of Pensions & Secur. (1975, MD Ala) 400 F Supp 249, affd without op (CA5 Ala) 536 F2d 1385.

Every violation of Fair Housing Act [42 USCS §§ 3601 et seq.] does not justify granting of relief in suits by government; neither suburban black quota nor special financial incentives for black salespeople in suburban offices was appropriate remedy for action against real estate company alleging pattern or practice of discrimination based on race where presently existing pattern of racial assignment resulted more from attitudes of its salespeople, black and white, and from biases of the community than from anything else. United States v Real Estate One, Inc. (1977, ED Mich) 433 F Supp 1140, 13 CCH EPD ¶ 11490.

In action under former 42 USCS § 3613 where city and city community development authority

were found to have engaged in "pattern or practice" of unlawful racial discrimination in selection and siting of subsidized low income housing in predominantly black area of city, liability of defendants under former § 3613 is limited to that portion of discriminatory activity which occurred after effective date of Fair Housing Act (42 USCS §§ 3601 et seq.), which was April 11, 1968. United States v Yonkers Bd. of Education (1985, SD NY) 624 F Supp 1276.

Apartment complex that discriminated against black and Hispanic housing applicants is enjoined from imposing any new requirements on minority class members as conditions to their securing housing under 42 USCS §§ 3613 (former), 1981, and 1982. Huertas v East River Housing Corp. (1987, SD NY) 674 F Supp 440.

7. —Damages for private parties

General monetary damages cannot be awarded to individual victims of discrimination in suit by Attorney General under former 42 USCS § 3613; however, judge may consider awarding any items appropriately characterized as subject to equitable restitution such as discriminatory deposits or overcharges. United States v Long (1975, CA4 SC) 537 F2d 1151, cert den 429 US 871, 50 L Ed 2d 151, 97 S Ct 185.

Attorney General may not recover damages for private parties under former 42 USCS § 3613, since former § 3613 empowers him to seek only equitable remedies. United States v Mitchell (1978, CA5 Tex) 580 F2d 789.

In suit brought by Attorney General under former 42 USCS § 3613, general monetary damages may not be awarded to individual victims of discrimination. United States v Rent-A-Homes Systems, Inc. (1979, CA7 Ill) 602 F2d 795.

"Preventive" relief authorized by former 42 USCS § 3613 does not include availability of compensatory damages. United States v Orlofsky (1981, SD NY) 538 F Supp 450, 34 FR Serv 2d 1201.

§ 3614a. Rules to implement title

The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 815, as added Sept. 13, 1988, P. L. 100-430, § 8(2), 102 Stat. 1635.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, which is popularly known as the Fair Housing Act, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Explanatory notes:

A prior § 815 of Act Apr. 11, 1968, P. L. 90-284, Title VIII, 82 Stat. 89, which appears as 42 USCS § 3615, was redesignated as § 816 of such Act by Act Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note.

Effective date of section:

Act Sept. 13, 1988, P. L. 100-430, § 13(a), 102 Stat. 1636, which appears as 42 USCS § 3601 note, provides that this section is effective on the 180th day beginning after enactment.

§ 3615. Effect on State laws

[Text unchanged]

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 816[815], 82 Stat. 89; Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Redesignation:

This section, enacted as § 815 of Act Apr. 11, 1968, Title VIII, 82 Stat. 89, was redesignated as § 816 of such Act by Act Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note.

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6 Fed Proc L Ed, Civil Rights § 11:212, 357, 358, 361, 501.

§ 3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register

[Text unchanged]

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 817[816], 82 Stat. 89; Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Redesignation:

This section, enacted as § 816 of Act Apr. 11, 1968, Title VIII, 82 Stat. 89, was redesignated as § 817 of such Act by Act Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note.

Other provisions:

Fair housing initiatives program, Act Feb. 5, 1988, P. L. 100-242, Title V, Subtitle C, § 561, 101 Stat. 1942, provides:

"(a) In general. The Secretary of Housing and Urban Development (in this section [this note] referred to as the 'Secretary') may make grants to, or (to the extent of amounts provided in appropriation Acts) enter into contracts or cooperative agreements with, State or local governments or their agencies, public or private nonprofit organizations or institutions, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to develop, implement, carry out, or coordinate—

"(1) programs or activities designed to obtain enforcement of the rights granted by title VIII of the Act of April 11, 1968 (commonly referred to as the Civil Rights Act of 1968) [appearing generally as 42 USCS §§ 3601 et seq. For full classification of such title, consult USCS Tables volumes.], or by State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in such title VIII [appearing generally as 42 USCS §§ 3601 et seq. For full classification of such title, consult USCS Tables volumes.], through such appropriate judicial or administrative proceedings (including informal methods of conference, conciliation, and persuasion) as are available therefor; and

"(2) education and outreach programs designed to inform the public concerning rights and obligations under the laws referred to in paragraph (1).

"(b) Program administration.

(1) Not less than 30 days before providing a grant or entering into any contract or cooperative agreement to carry out activities authorized by this section [this note], the Secretary shall submit notification of such proposed grant, contract, or cooperative agreement (including a description of the geographical distribution of such contracts) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(2) The Secretary shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a quarterly report that summarizes the activities funded under this section [this note] and describes the geographical distribution of grants, contracts, or cooperative agreements funded under this section [this note].

"(c) Regulations.

(1) The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section [this note].

"(2) The Secretary shall, for use during the demonstration authorized in this section [this note], establish guidelines for testing activities funded under the private enforcement initiative of the fair housing initiatives program. The purpose of such guidelines shall be to ensure that investigations in support of fair housing enforcement efforts described in subsection (a)(1) shall develop credible and objective evidence of discriminatory housing practices. Such guidelines shall apply only to activities funded under this section [this note], shall not be construed to limit or otherwise restrict the use of facts secured through testing not funded under this section [this note] in any legal proceeding under Federal fair housing laws, and shall not be used to restrict individuals or entities, including those participating in the fair housing initiatives program, from pursuing any right or remedy guaranteed by Federal law. Not later than 6 months after the end of the demonstration period authorized in this section [this note], the Secretary shall submit to Congress the evaluation of the Secretary of the effectiveness of such guidelines in achieving the purposes of this section [this note].

"(3) Such regulations shall include provisions governing applications for assistance under this section [this note], and shall require each such application to contain—

"(A) a description of the assisted activities proposed to be undertaken by the applicant, together with the estimated costs and schedule for completion of such activities;

"(B) a description of the experience of the applicant in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

"(C) available information, including studies made by or available to the applicant, indicating the nature and extent of discriminatory housing practices occurring in the general location where the applicant proposes to conduct its assisted activities, and the relationship of such activities to such practices;

"(D) an estimate of such other public or private resources as may be available to assist the proposed activities;

"(E) a description of proposed procedures to be used by the applicant for monitoring conduct and evaluating results of the proposed activities; and

"(F) any additional information required by the Secretary.

"(4) Regulations issued under this subsection shall not become effective prior to the expiration of 90 days after the Secretary transmits such regulations, in the form such regulations are intended to be published, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(5) The Secretary shall not obligate or expend any amount under this section [this note], before the effective date of the regulations required under this subsection.

"(d) Authorization of appropriations. There are authorized to be appropriated to carry out the provisions of this section [this note] including any program evaluations, $5,000,000 for fiscal year 1988, and $5,000,000 for fiscal year 1989, of which not more than $3,000,000 in each year shall be for the private enforcement initiative demonstration. Any amount appropriated under this section [this note] shall remain available until expended.

"(e) Sunset. The demonstration period authorized in this section [this note] shall end on September 30, 1989 [September 30, 1990, see note below].".

Fair housing initiatives program demonstration period extended to September 30, 1990. Act Nov. 9, 1989, P. L. 101-144, Title II, 103 Stat. 851, provides: "The demonstration period authorized in section 561(e) of such Act [Act Feb. 5, 1988; note to this section] shall be deemed to be [end] September 30, 1990, except for purposes of construing the last sentence of section 561(c)(2) of such Act [Act Feb. 5, 1988; note to this section].".

CODE OF FEDERAL REGULATIONS

Add:
24 CFR Part 115.

RESEARCH GUIDE

Federal Procedure L Ed:
6 Fed Proc L Ed, Civil Rights § 11:212, 357, 358, 378, 501.

§ 3617. Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 [42 USCS §§ 3603, 3604, 3605, or 3606].

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 818[817], 82 Stat. 89; Sept. 13, 1988, P. L. 100-430, §§ 8(1), 10, 102 Stat. 1625, 1635.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988. Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note) deleted "This section may be enforced by appropriate civil action." following "806.".

Redesignation:

This section, enacted as § 817 of Act Apr. 11, 1968, Title VIII, 82 Stat. 89, was redesignated as § 818 of such Act by Act Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note.

RESEARCH GUIDE

Federal Procedure L Ed:
6 Fed Proc L Ed, Civil Rights §§ 11:106, 212, 357, 358, 360, 501.

Forms:
10A Federal Procedural Forms L Ed, Housing and Urban Development § 39:33.
5 Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 71.
5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 74.
13A Am Jur Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Form 41.

INTERPRETIVE NOTES AND DECISIONS

9. Remedies

2. Relation to other laws

42 USCS § 3617 can be violated absent violation of §§ 3603, 3604, 3605, or 3606. Stackhouse v De Sitter (1985, ND Ill) 620 F Supp 208.

3. Violations, generally

Black man fails to state cause of action against white man under 42 USCS §§ 1981, 1982, 3604, and 3617, where plaintiff alleges that defendant firebombed and caused other damage to plaintiff's automobile, thus causing plaintiff to become apprehensive when parking his automobile in front of his apartment and entering hallway of his apartment building, in violation of plaintiff's housing rights. Stackhouse v De Sitter (1983, ND Ill) 566 F Supp 856.

White part-time secretary, who received applications from, and showed rented apartments to, prospective tenants, and who was discharged by employer, states cause of action against employer under 42 USCS § 3617, where she alleges that it was employer's policy to discriminate on basis of race by depriving black applicants of opportunity to view and rent apartments, and that employer discharged her due to her opposition to and her unwillingness to adhere to such policy. Wilkey v Pyramid Constr. Co. (1985, DC Conn) 619 F Supp 1453, 39 BNA FEP Cas 25, 120 BNA LRRM 3125.

Black neighborhood resident states cause of action under 42 USCS § 3617 against neighboring white resident, where plaintiff alleges that defendant interfered with and intimidated plaintiff with respect to his housing rights by firebombing and otherwise damaging plaintiff's automobile after plaintiff and his family rented apartment in all-white neighborhood. Stackhouse v De Sitter (1985, ND Ill) 620 F Supp 208.

Federal suit brought by tenants under 42 USCS § 3617 will not be dismissed for failure to state claim under that section, where husband and wife tenants complain of landlord's refusal to permit continued tenancy or repair house unless wife has sex with him monthly and landlord's threatening to shoot husband, because complaint properly alleges, in addition to direct discrimination, that landlord intimidated, threatened, or interfered with couple's enjoyment of statutory housing rights. Grieger v Sheets (1988, ND Ill) 689 F Supp 835.

4. —State and local government actions

District Court did not err in deciding that totality of circumstances establishes that city blocked, with racially discriminatory intent, development of racially integrated low-income senior citizen and family housing by private corporation, in light of facts that several residents who opposed project expressed concern about "those people", referring to blacks, coming to city, and that city took action which eventually made it impossible for private corporation to continue negotiations on project. United States v Birmingham (1984, CA6 Mich) 727 F2d 560.

Developers planning multi-family housing project in area zoned for single family residences who contended that delays in processing their housing assistance program contracts resulted in discriminatory impact on prospective tenants in violation of 42 USCS § 3617 failed to introduce any evidence indicating (1) that availability of housing to minorities was at all affected by delays of defendant city or county housing authority, or (2) that developer's race had any bearing on decision or action by city or county housing authority, and evidence suggested that delays in completing contracts were function of location of property rather than race of developer. Burrell v Kankakee (1987, CA7 Ill) 815 F2d 1127.

Where plaintiff in exclusionary zoning case proves violation of 42 USCS § 3604(a) it also proves violation of § 3617; municipality's refusal to zone for multiple use particular property upon which proposed apartment complex is to be built, does not establish cause of action under § 3604(a) or § 3617, since construction of complex would have only de minimis impact on pattern of segregated housing in municipal area, in light of evidence that minorities are significantly underrepresented in particular area, and that substantial majority of residents of proposed complex would be white. Re Malone (1984, ED Mo) 592 F Supp 1135.

5. Practice and procedure, generally

42 USCS § 3617 action against Department of Housing and Urban Development by HUD employee alleging that he was transferred because of his aggressive and successful enforcement of fair housing laws, will be dismissed, since claim is fully cognizable before administrative procedures provided by Civil Service Reform Act of 1978 (5 USCS §§ 1101 et seq.). Watson v U.S. Dept. of Housing & Urban Dev. (1983, ND Ill) 576 F Supp 580.

Pro se complainant will be appointed counsel pursuant to 28 USCS § 1915 and given 45 days to file amended complaint, where 55-page pleading contains detailed allegations of racially motivated violence and intimidation which were intended to and finally did drive him out of his condominium unit, but fails to plead any viable constitutional claims against his former neighbors and mortgagee, because pro se complaint states facts which may give rise to claim under 42 USCS § 3617. Seaphus v Lilly (1988, ND Ill) 691 F Supp 127.

6. Standing

Non-black housing developers have standing under 42 USCS § 3604 and § 3617 to allege that municipality illegally discriminated against prospective black tenants or project on account of race by exclusionary zoning. Re Malone (1984, ED Mo) 592 F Supp 1135.

42 USCS § 3617 is invocable by rental agent or secretary claiming to have been harassed, demoted and ultimately terminated for resisting and refusing to execute her employer's allegedly racially discriminatory housing policies. Wilkey v Pyramid Constr. Co. (1985, DC Conn) 619 F Supp 1453, 39 BNA FEP Cas 25, 120 BNA LRRM 3125.

7. Limitations of actions

Real estate broker's motion to dismiss female plaintiffs' civil rights action under 42 USCS § 3617 is denied where plaintiffs' action is not time-barred, because (1) 42 USCS § 3617 is not included within scope of statute of limitations—42 USCS § 3612—governing 42 USCS §§ 3603-3606, and (2) analagous state limitations period governing state fair housing statute is applicable. New York by Abrams v Merlino (1988, SD NY) 694 F Supp 1101.

9. Remedies

In action under 42 USCS §§ 3604 and 3617 in which it was established that city blocked, with racially discriminatory intent, development of racially integrated low-income senior citizen and family housing by private corporation, District Court exceeded its remedial authority by enjoining city from engaging in "any conduct" that interferes with construction project, since injunction should be limited to prohibition of conduct because of race; however, District Court did not abuse its discretion in permitting private corporation to obtain additional extensions of contract for sale of project site by petitioning court, since condition merely leaves door open to insure that appropriate efforts can be expended to make whole victims of city's discriminatory conduct. United States v Birmingham (1984, CA6 Mich) 727 F2d 560.

§ 3618. Authorization of appropriations

[Text unchanged]

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 819[818], 82 Stat. 89; Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Redesignation:

This section, enacted as § 818 of Act Apr. 11, 1968, Title VIII, 82 Stat. 89, was redesignated as § 819 of such Act by Act Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note.

§ 3619. Separability of provisions

[Text unchanged]

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 820[819], 82 Stat. 89; Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Redesignation:

This section, enacted as § 819 of Act Apr. 11, 1968, Title VIII, 82 Stat. 89, was redesignated as § 820 of such Act by Act Sept. 13, 1988, P. L. 100-430, § 8(1), 102 Stat. 1625, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note.

CODE OF FEDERAL REGULATIONS

Add:

24 CFR Part 111.

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:212, 357, 358, 501.

§ 3631. Violations; bodily injury; death; penalties

[Introductory matter unchanged]

(a) any person because of his race, color, religion, sex, handicap (as such term is defined in section 802 [42 USCS § 3602] of this Act), familial status (as such term is defined in section 802 of this Act [42 USCS § 3602]),[,] or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) [Introductory matter unchanged]

(1) participating, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 802 of this Act [42 USCS § 3602]), familial status (as such term is defined in section 802 of this Act [42 USCS § 3602]), [,] or national origin, in any of the activities, services, organizations or facilities described in subsection 901(a) [subsec. (a) of this section]; or

(2) [Unchanged]

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 802 of this Act [42 USCS § 3602]), familial status (as such term is defined in section 802 of this Act [42 USCS § 3602]), [,] or national origin, in any of the activities, services, organizations or facilities described in subsection 901(a) [subsec. (a) of this section], or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

[Concluding matter unchanged]

(As amended Sept. 13, 1988, P. L. 100-430, § 9, 102 Stat. 1035.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Brackets are inserted around the commas in subsecs. (a), (b)(1), and (c) of this section to indicate the probable intention of Congress to omit such punctuation.

Amendments:

1988. Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note), in subsecs. (a), (b)(1), and (c), inserted ", handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act),".

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:132, 220, 507, 508.

Am Jur Proof of Facts:

Sexual Harassment by Landlord. 3 Am Jur Proof of Facts 3d, p. 581.

Forms:

5 Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 71.

25 Am Jur Pl & Pr Forms (Rev), Zoning and Planning, Form 13.1.

INTERPRETIVE NOTES AND DECISIONS

4. Occupation of dwelling
5. Evidence
6. Severance

1. Generally

Section 3631 was clearly designed to protect individual's right to occupy dwelling of own choice free from racial pressure; however, such right would mean very little if occupant's physical safety inside dwelling was contingent upon his refraining from associating with members of another race. United States v Wood (1986, CA11 Ga) 780 F2d 955.

Fair Housing Act (42 USCS §§ 3601 et seq.), as applied to defendant who allegedly mailed racially derogatory and threatening correspondence to director of adoption organization responsible for placement and adoption of black and Asian children in county in violation of Act was not unconstitutional since (1) statute's requirement of intent, which was question of fact, served to insulate statute from unconstitutional application to protected speech, (2) statute was not vague, where it specifically forbade certain action and proscribed use of force or threat of force, and (3) statute was not overbroad since it regulated conduct, and proscription of force or threat of force was within government's power. United States v Gilbert (1987, CA9 Idaho) 813 F2d 1523.

2. Motive

Section 3631 nowhere mentions that acts must be designed to force individual to move; it merely requires that acts be precipitated by individual's occupation of particular house. United States v Wood (1986, CA11 Ga) 780 F2d 955.

In action under 42 USCS § 3631(c), court's interpretation that "willfully" meant intentionally was not erroneous. United States v Gilbert (1989, CA9 Idaho) 884 F2d 454.

3. Particular acts

Defendants violated 42 USCS § 3631 by throwing rocks through windows of house owned by black family, and by subsequently firebombing family's home, where defendants' racial motivation and intent to interfere was conclusively shown in their contemporaneous shouting of racial epithets at house, and their pronouncement that black family should be "run out" or "burned out." United States v Redwine (1983, CA7 Ind) 715 F2d 315.

Evidence that Ku Klux Klan beat white woman in her residence for associating therein with black persons was sufficient for conviction where it was undisputed that defendants willfully used force against victim to prevent her from asserting her right to associate in her home with members of other races. United States v Wood (1986, CA11 Ga) 780 F2d 955.

Evidence was sufficient to convict defendant of conspiring and aiding and abetting in burning of home of black family which was under construction, where testimony implicated defendant in every stage of conspiracy, other evidence corroborated witnesses testimony, defendant's brother-in-law testified that defendant was concerned about "niggers" moving into neighborhood, defendant told builders that they would be lucky if house stood for 2 months, after fire defendant said to of builder's sons that if that "black sonofabitch" built across street from him he'd burn it down, and fire chief and insurance investigator testified as to facts giving rise to inference of arson. United States v White (1986, CA6 Tenn) 788 F2d 390.

4. Occupation of dwelling

"Occupation" within meaning of § 3631 includes more than mere physical presence within 4 walls and clearly incorporates right to associate in one's home with members of another race; when accused interferes with association rights within home accused also interferes with occupancy of home. United States v Wood (1986, CA11 Ga) 780 F2d 955.

Placement of minority children by director of adoption agency was protected activity under Fair Housing Act (42 USCS §§ 3601 et seq.), since director was aiding or encouraging minorities in occupancy of dwellings, and placement with family necessarily required placement in dwelling, and relationship between adoption agency and occupancy of dwelling was not too remote. United States v Gilbert (1987, CA9 Idaho) 813 F2d 1523.

5. Evidence

Evidence of prior arson by codefendant was directly relevant to defendant's general knowledge that codefendant could and would engage in arson and was admissible as "other bad act" evidence in prosecution for conspiring and aiding and abetting in burning of home of black family. United States v White (1986, CA6 Tenn) 788 F2d 390.

Evidence of check kiting and phony American Express transactions was admissible in prosecution

for conspiring and aiding and abetting in burning of home of black family, where evidence went to question of motive in that it showed defendant's willingness to submit phony American Express charges for codefendant and explained why codefendant could be asked and would—without pay—want to help defendant with his "problem." United States v White (1986, CA6 Tenn) 788 F2d 390.

Evidence of codefendant's attempted arson and arson of building subsequent to burning of home of black family which was subject of conspiracy prosecution directed at defendant, was inadmissible as to defendant. United States v White (1986, CA6 Tenn) 788 F2d 390.

Evidence was sufficient to support finding that political extremist literature sent to white woman who was founder and employee of adoption agency that among other things placed minority children with white families involved force or threat of force within meaning of 42 USCS § 3631(c), where literature was obviously from extremist who espoused ideas of traditionally violent group condemning actions of agency, and a letter was accompanied by posters calling for revolution and advocating lynch mobs, shooting of black miscegenists and hanging of whites, notwithstanding fact that mailings did not plainly state "we are going to hurt you". United States v Gilbert (1989, CA9 Idaho) 884 F2d 454.

6. Severance

District Court did not err in denying severance in prosecutions for conspiring and aiding and abetting in burning of home of black family where all evidence introduced at trial was admissible against both defendants, except for evidence of subsequent arsons admissible only against codefendant which did not prejudice defendant in light of overwhelming evidence of guilt. United States v White (1986, CA6 Tenn) 788 F2d 390.

AN INDEX FOR TITLE 42 APPEARS IN A SEPARATE VOLUME

CHAPTER 45. FAIR HOUSING

GENERALLY

PREVENTION OF INTIMIDATION

CODE OF FEDERAL REGULATIONS

Fair housing home loan data system, 12 CFR Part 27.
Federal Home Loan Bank System, nondiscrimination requirements, 12 CFR Part 528.
Federal Home Loan Bank System, statements of policy, 12 CFR Part 531.
Civil Rights, Title VI program and related statutes—implementation and review procedures, 23 CFR Part 200.
Fair housing, 24 CFR Part 105.
Fair housing advertising, 24 CFR Part 109.

CROSS REFERENCES

This chapter is referred to in 42 USCS § 5304.

GENERALLY

CROSS REFERENCES

This subchapter is referred to in 23 USCS § 117; 31 USCS § 1242; 42 USCS § 6727; 49 USCS §§ 1604, 1716.

§ 3601. Declaration of policy

It is the policy of the United States to provide, within constitu limitations, for fair housing throughout the United States.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 801, 82 Stat. 81.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Federally protected activities; penalties. For the provision that pena ties for violations respecting federally protected activities are no applicable to and do not affect activities under 42 USCS §§ 3601 seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Sta 75, which appears as 18 USCS § 245 note.

CODE OF FEDERAL REGULATIONS

Nondiscrimination in federally assisted programs, 10 CFR Part 1040.
Fair housing home loan data system, 12 CFR Part 27.
Federal Home Loan Bank System, nondiscrimination requirements, 12 C Part 528.
Federal Home Loan Bank System, statements of policy, 12 CFR Part 531
Organization and operation of Federal credit unions, 12 CFR Part 701.
Civil Rights, Title VI program and related statutes—implementation review procedures, 23 CFR Part 200.
Fair housing, 24 CFR Part 105.
Fair housing administrative meetings under Title VIII of the Civil Ri Act of 1968, 24 CFR Part 106.
Fair housing advertising, 24 CFR Part 109.
Fair housing assistance program, 24 CFR Part 111.

RESEARCH GUIDE

Federal Procedure L Ed:

Fed Proc, L Ed §§ 11:88, 11:247, 11:249, 11:252, 11:253, 11:254 11:256, 11:258, 11:259, 11:264, 11:276, 11:277, 11:280, 11:281, 11:282 11:284, 11:295, 11:296, 11:297, 11:299, 11:520, 11:538, 11:560.

Am Jur:

15 Am Jur 2d, Civil Rights §§ 3, 12, 27, 249, 251, 253, 255, 256, 489.

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Forms:

11 Federal Procedural Forms L Ed, Housing and Urban Development §§ 39:2, 39:3, 39:33, 39:34, 39:43, 39:44, 39:58.

15 Federal Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits § 61:32.

25 Am Jur Pl and Pr Forms (Rev), Zoning and Planning, Form 50.

Federal Regulation of Employment Service:
FRES, Job Discrimination § 3:127.

Annotations:

Punitive damages in actions for violations of Federal Civil Rights Acts. 14 ALR Fed 608.

What constitutes "pattern or practice" of racial discrimination in sale or rental of housing within meaning of provision of Fair Housing Act of 1968 (42 USCS § 3613) authorizing attorney general to bring civil action for preventive relief against such conduct. 13 ALR Fed 285.

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Law Review Articles:

Open housing: Title VIII of the 1968 Civil Rights Act. (1969) 10 Boston Col Industrial & Commercial L Rev 688.

Federal Fair Housing Requirements: Title VIII of the 1968 Civil Rights Act. (1969) 1969 Duke LJ 733.

Effects of Racial Concentration in Renewal Area. (1971) 10 Duquesne L Rev 289.

The Statute of Limitations in the Fair Housing Act. 5 Florida State Univ L Rev 128, Winter 1977.

Advent of a Right to Housing: A Current Appraisal. (1970) 5 Harvard Civil Rights L Rev 207.

Fair Housing Laws: A Critique. (1973) 24 Hast LJ 159.

Cappelletti, Governmental and Private Advocates for the Public Interest in Civil Litigation: A Comparative Study. 73 Mich L Rev 793.

Silverman, Homeownership for the Poor: Subsidies and Racial Segregation. 48 New York University L Rev 72.

McGee, Illusion and Contradiction in the Quest for a Desegregated Metropolis. 1976 U Ill L F 948.

Perry, The Disproportionate Impact Theory of Racial Discrimination. 125 U Pa L Rev 540.

Horowitz, Affirmative Action and Equal Protection. 60 Va L Rev 955.

Fair Housing: A Legislative History and a Prospective. (1969) 8 Washburn LJ 149.

Constitutional and Statutory Rights to Open Housing. (1968) 44 Wash L Rev 1.

INTERPRETIVE NOTES AND DECISIONS

1. Generally

Administrative interpretation of Title VIII of Civil Rights Act of 1968 (42 USCS §§ 3601 et seq.) by Department of Housing and Urban Development, federal agency primarily assigned to implement and administer such Title, commands considerable deference. Gladstone, Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

District court determination that United States is entitled to relief for violation of Fair Housing Act (42 USCS §§ 3601 et seq.) and specifically finding that its determination that act had been

violated was not based on impermissible ground that defendant challenged act constitutionally, is not clearly erroneous. United States v Northside Realty Associates, Inc. (1974, CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Threat of violence cannot justify deprivation of civil rights granted under 42 USCS §§ 3601 et seq. Resident Advisory Board v Rizzo (1977, CA3 Pa) 564 F2d 126, cert den 435 US 908, 55 L Ed 2d 499, 98 S Ct 1457, 98 S Ct 1458 and later proceeding (ED Pa) 503 F Supp 383.

Policy in favor of settlement of suits can be found in Fair Housing Act (42 USCS §§ 3601 et seq.), and in provisions for voluntary conciliation in 42 USCS §§ 3610 and 3612. Metropolitan Housing Development Corp. v Arlington Heights (1980, CA7 Ill) 616 F2d 1006.

Mayor's and housing agency's administrator's refusal to process application for financing construction of housing project designed to open housing in white, middle-income neighborhoods to ghetto residents, due to community opposition, was not shown to be rooted in purposeful racial discrimination or to result in constitutionally invalid discriminatory effect. Citizens Committee for Faraday Wood v Lindsay (1973, SD NY) 362 F Supp 651, affd (CA2 NY) 507 F2d 1065, cert den 421 US 948, 44 L Ed 2d 102, 95 S Ct 1679.

Allegation by residents of black ghetto that HUD's failure to assess racial impact of its decision to exclude further subsidized housing in development plans for last 36-acre tract of 121-acre urban renewal project violated such residents' rights under Fifth and Fourteenth Amendments and under Title VI of Civil Rights Act [42 USCS §§ 2000d et seq.] and Title VIII of Civil Rights Act [42 USCS §§ 3601 et seq.] was without merit where plaintiffs failed to demonstrate that procedures utilized by HUD in making such decision were inadequate means of marshaling appropriate legislative facts or that HUD failed to consider all relevant facts, thereby making its decision irrational. Marin City Council v Marin County Redevelopment Agency (1976, ND Cal) 416 F Supp 707.

Municipality cannot be immunized from complying with provisions of Fair Housing Act (42 USCS §§ 3601 et seq.) solely because other localities may have violated Act. United States v Parma (1980, ND Ohio) 494 F Supp 1049, app dismd without op (CA6 Ohio) 633 F2d 218 and later op (ND Ohio) 504 F Supp 913, affd in part and revd in part on other grounds (CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

2. Purpose

Fair Housing Act of 1968 (42 USCS
et seq.) which prohibits discrimination
ing market based on race, color,
national origin, was enacted so as to
racial discrimination, private as well as
sale and rental of real property. United
Henshaw Bros., Inc. (1974, ED Va) 401
399.

Fair Housing Act (42 USCS §§ 3601
designed to provide fair housing
nation. Smith v Woodhollow Apartments
WD Okla) 463 F Supp 16.

3. Constitutionality

Fair Housing Act of 1968 (42 USCS
et seq.) is constitutional exercise of congress
power under Thirteenth Amendment to ba
crimination in housing; Act implements poli
which Congress has accorded highest
priority, and is to be construed liberall
accordance with that purpose. United
Hughes Memorial Home (1975, WD Va)
Supp 544.

Fair Housing Act (42 USCS §§ 3601 et
valid exercise of congressional power under
teenth Amendment to eliminate badges and
dents of slavery. Smith v Woodhollow A
ments (1978, WD Okla) 463 F Supp 16.

4. Duties created

City housing authority has duty under
Housing Act of 1968 (42 USCS §§ 3601 et
to act affirmatively to achieve integratio
housing. Otero v New York City Housing
thority (1973, CA2 NY) 484 F2d 1122.

Neither state and local government nor fe
government has affirmative duty to con
particular type of housing pursuant to 40
§ 490 or 42 USCS §§ 3601 et seq., and failu
complete plans to construct low income ho
that would have especially benefited min
groups although plans for senior citizens ho
that did especially benefit white persons
carried out, is not violative of equal prote
clause of Fourteenth Amendment. Acevе
Nassau County (1974, CA2 NY) 500 F2d 1

Federal Department of Housing and
Development, city, and its housing and re
opment authorities violated their affirmative
to promote integration in all federally as
housing programs by attempting to termina
delay construction of low income housing p
in predominantly white neighborhood. Re
Advisory Board v Rizzo (1976, ED Pa) 4
Supp 987, mod on other grounds (CA3 Pa
F2d 126, cert den 435 US 908, 55 L Ed 2d
98 S Ct 1457, 98 S Ct 1458 and later proce
(ED Pa) 503 F Supp 383

Government has obligation under 42 USCS § 3601 to act affirmatively to promote integration in all federally assisted housing programs. Resident Advisory Board v Rizzo (1977, ED Pa) 429 F Supp 222.

HUD has affirmative duty to promote racial integration through its housing policy, and this duty is mandated by stated policies of Fair Housing Act of 1968 (42 USCS §§ 3601 et seq.), Housing and Development Act of 1974 (42 USCS §§ 5301 et seq.), Section 8 Housing Assistance Payments Program (42 USCS § 1437f), and by National Environmental Policy Act of 1969 (42 USCS §§ 4321 et seq.). King v Harris (1979, ED NY) 464 F Supp 827, affd without op (CA2 NY) 614 F2d 1288, vacated on other grounds 446 US 905, 64 L Ed 2d 256, 100 S Ct 1828 and affd without op (CA2 NY) 636 F2d 1202.

Municipality which displaces residents of its community by affirmative act of building code enforcement is under no duty to assist those persons through relocation within municipality. Rowe v Pittsgrove Township (1980) 172 NJ Super 209, 411 A2d 720.

5. Standing

Organization which represented many members who were eligible to live in proposed housing project and two individuals who were current public housing tenants had standing to challenge attempt by federal Department of Housing and Urban Development, city, and its housing and redevelopment authorities to terminate or delay construction of low income housing project under 42 USCS § 3601 et seq.; Title VIII standing is as broad as Article III permits. Resident Advisory Board v Rizzo (1977, CA3 Pa) 564 F2d 126, cert den 435 US 908, 55 L Ed 2d 499, 98 S Ct 1457, 98 S Ct 1458 and later proceeding (ED Pa) 503 F Supp 383.

6. Remedies

Where it is not clear whether District Court based its grant of injunctive relief on finding (1) that defendant engaged in pre-act pattern or practice of violating Fair Housing Act (42 USCS §§ 3601 et seq.) that was continued after effective date of Act; or (2) that 2 post-act incidents violated Act and evidenced pattern or practice of violating Act; or (3) that 2 post-act incidents violated Act and denied rights protected by Act to group of persons, or (4) that one of defendants (vice-president of corporate defendant) verbally challenged constitutionality of Fair Housing Act and thereby evidenced intent to violate Act that was carried out in the 2 post-act incidents, case must be remanded for fresh findings of fact and conclusions of law since trial court's findings are clearly erroneous if based on belief that claimed intention to test constitutionality of Act showed intent to violate Act. United States v Northside Realty Associates, Inc. (1973, CA5 Ga) 474 F2d 1164, later app (CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Award of punitive damages under Fair Housing Act (42 USCS §§ 3601 et seq.) is within discretion of trial court. Crumble v Elumthal (1977 CA7 Ill) 549 F2d 462, 38 ALR Fed 152.

§ 3602. Definitions

As used in this title—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code [11 USCS §§ 101 et seq.], receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806 [42 USCS §§ 3604, 3605, or 3606].

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 802, 82 Stat. 81; Nov. 6, 1978, P. L. 95-598, Title III, § 331, 92 Stat. 2679.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Amendments:

1978. Act Nov. 6, 1978 (effective Oct. 1, 1979, as provided by § 402(a) of this Act, which appears as an Effective date note proceeding 11 USCS § 101), in subsec. (d), substituted "cases under title 11 of the United States Code" for "bankruptcy".

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CODE OF FEDERAL REGULATIONS

Nondiscrimination in federally assisted programs, 10 CFR Part 1040.
Organization and operation of Federal credit unions, 12 CFR Part 701.

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Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Forms:

11 Federal Procedural Forms L Ed, Housing and Urban Development § 39:3.

Annotations:

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

INTERPRETIVE NOTES AND DECISIONS

1. "Dwelling"

"Dwelling", as defined in 42 USCS § 3602(b), encompasses mobile home site. United States v Grooms (1972, MD Fla) 348 F Supp 1130.

By definition of "dwelling" as used in 42 USCS § 3602, county's discriminatory housing practices are violations of 42 USCS § 3604 only if directed toward particular projects or proposed developments. Planning for People Coalition v County of Du Page (1976, ND Ill) 70 FRD 38.

"Dwelling" as defined in 42 USCS § 3602(b) does not include motel, which is commercial public accomodation not occupied, designed or intended for occupancy as residence. Patel v Holley House Motels (1979, SD Ala) 483 F Supp 374.

Petitioner protesting suspension of his real estate license did not violate 42 USCS § 3604 by refusing to show advertised property to black couple, though racial motivation for refusal was apparent, property was acreage, there was no evidence that petitioner intended to market it for home sites, and property thus was not "dwelling" within meaning of 42 USCS § 3602 and § 3604. Ryan v Brown (1976, Fla App D2) 326 So 2d 70.

2. "Person"

"Person" as defined in 42 USCS § 3602(d) includes municipal corporation. Bellwood v Gladstone Realtors (1978, CA7 Ill) 569 F2d 1013 affd, in part 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

3. "Residence"

Since term "residence" is not specifically defined in 42 USCS §§ 3601 et seq., this term must be accorded its ordinary meaning, which is temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from place of temporary sojourn or transient visit. United States v Hughes Memorial Home (1975, WD Va) 396 F Supp 544.

§ 3603. Effective dates of certain prohibitions

(a) Application to certain described dwellings. Subject to the provisions of subsection (b) and section 807 [42 USCS § 3607], the prohibitions against discrimination in the sale or rental of housing set forth in section 804 [42 USCS § 3604] shall apply:

(1) Upon enactment of this title [enacted April 11, 1968], to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to the date of enactment of this title [enacted April 11, 1968];

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to the date of enactment of this title [enacted April 11, 1968]: Provided, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum

clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b).

(b) Exemptions. Nothing in section 804 [42 USCS § 3604] (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: Provided, That such private individual owner does not own more than three such single-family houses at any one time: Provided further, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: Provided further, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 804(c) of this title [42 USCS § 3604(c)]; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) Business of selling or renting dwellings defined. For the purposes of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 803, 82 Stat. 82.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CODE OF FEDERAL REGULATIONS

Nondiscrimination in federally assisted programs, 10 CFR Part 1040.
Organization and operation of Federal credit unions, 12 CFR Part 701.

CROSS REFERENCES

This section is referred to in 42 USCS §§ 3604, 3605, 3612, 3617.

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Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Forms:

11 Federal Procedural Forms L Ed, Housing and Urban Development § 39:3.

Annotations:

Validity, construction, and application of § 804(c) of Civil Rights Act of 1968 (Fair Housing Act) (42 USCS § 3604(c)) prohibiting discriminatory notice, statement, or advertisement with respect to sale or rental of dwelling. 22 ALR Fed 359.

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Amount of attorneys' compensation in matters involving real estate. 58 ALR3d 201.

Law Review Articles:

Calhoun, The Thirteenth and Fourteenth Amendments: Constitutional Authority for Federal Legislation Against Private Sex Discrimination. 61 Minn L Rev 313.

INTERPRETIVE NOTES AND DECISIONS

42 USCS § 3603(b)(2) exemption is inapplicable to claim based on section 1982 of Civil Rights Act of 1866 [42 USCS § 1982] declaring that all United States citizens shall have same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. Morris v Cizek (1974, CA7 Ill) 503 F2d 1303.

42 USCS § 3603(b)(1) does not exempt rental of single-family houses from obligations of 42 USCS § 3604(a) when services of real estate broker or any person in business of renting dwellings are involved in rental transaction. Singleton v Gendason (1976, CA9 Cal) 545 F2d 1224.

Tenants of dwelling could not claim single-family exemption protection afforded by 42 USCS § 3603(b)(1) since that exemption was only available to owners; contention that rental organization was not real estate broker or organization in "business of renting dwellings" within meaning of 42 USCS § 3603(b)(1) was without merit where such organization received notices of available housing from various landlords and compiled list which it then sold for fee to persons seeking housing. Singleton v Gendason (1976, CA9 Cal) 545 F2d 1224.

Blockbusting representations are not exempt from discrimination strictures under 42 USCS 3603 (b)(1). United States v Mitchell (1971, ND Ga) 327 F Supp 476.

Exemptions in 42 USCS § 3603(b)(2), which exclude coverage of quarters which contain less than 4 families, would require dismissal of action brought under Title VIII if building contained less than 4 units, but exemption does not apply to actions brought under § 1982 as statutes are concurrent; victim of racial discrimination in rental of housing has claim under both 1982 and Title VIII. Johnson v Zeremba (1974, ND Ill) 381 F Supp 165.

§ 3604. Discrimination in the sale or rental of housing

As made applicable by section 803 [42 USCS § 3603] and except as exempted by sections 803(b) and 807 [42 USCS §§ 3603(b), 3607], it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 804, 82 Stat. 83; Aug. 22, 1974, P. L. 93-383, Title VIII, § 808(b)(1), 88 Stat. 729.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1974. Act Aug. 22, 1974, in subsecs. (a)–(e), inserted ", sex".

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CODE OF FEDERAL REGULATIONS

Nondiscrimination in federally assisted programs, 10 CFR Part 1040.
Organization and operation of Federal credit unions, 12 CFR Part 701.

CROSS REFERENCES

This section is referred to in 42 USCS §§ 3602, 3603, 3612, 3617.

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Federal Procedure L Ed:

Fed Proc, L Ed §§ 11:65, 11:263, 11:266, 11:276, 11:280.

Am Jur:

15 Am Jur 2d, Civil Rights §§ 249, 250, 251, 481, 489, 496.

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Forms:

11 Federal Procedural Forms L Ed, Housing and Urban Development §§ 39:3, 39:8, 39:31, 39:35–39:38, 39:51–39:53.

Annotations:

Applicability to advertisements of First Amendment's guarantee of free speech and press—Federal cases. 37 L Ed 2d 1124.

Racial discrimination involving recreational facilities. 29 L Ed 2d 1028.

What constitutes reverse or majority discrimination on basis of sex or race violative of Federal Constitution or statutes. 26 ALR Fed 13.

Validity, construction, and application of § 804(c) of Civil Rights Act of 1968 (Fair Housing Act) (42 USCS § 3604(c)) prohibiting discriminatory notice, statement, or advertisement with respect to sale or rental of dwelling. 22 ALR Fed 359.

What constitutes "pattern or practice" of racial discrimination in sale or rental of housing within meaning of provision of Fair Housing Act of 1968 (42 USCS § 3613) authorizing attorney general to bring civil action for preventive relief against such conduct. 13 ALR Fed 285.

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Validity and construction of anti-blockbusting regulations designed to prevent brokers from inducing sales of realty because of actual or rumored entry of racial growth into neighborhood. 34 ALR3d 1432.

Law Review Articles:

Advertising for the "Discriminating" Landlord: The Media and Fair Housing Legislation. (1973) 58 Iowa L Rev 638.

Calhoun, The Thirteenth and Fourteenth Amendments: Constitutional Authority for Federal Legislation Against Private Sex Discrimination. 61 Minn L Rev 313.

A Last Stand on Arlington Heights: Title VIII and the Requirement of Discriminatory Intent. 53 New York University L Rev 150 April, 1978.

McGee, Illusion and Contradiction in the Quest for a Desegregated Metropolis. 1976 U Ill L F 948.

Discrimination in the Sale of Private Property. (1968) 23 U Miami L Rev 225.

Non-discrimination in the Sale or Rental of Real Property. (1969) 22 Vanderbilt L Rev 455.

Prohibition of Private Discrimination in the Rental or Sale of Real Property. (1970) 7 Wake Forest L Rev 88.

Ellickson, Suburban Growth Controls: An Economic and Legal Analysis. 86 Yale L J 385.

INTERPRETIVE NOTES AND DECISIONS

I. IN GENERAL

II. PARTICULAR PRACTICES AS DISCRIMINATORY

III. PRACTICE AND PROCEDURE

I. IN GENERAL

1. Generally

42 USCS § 3604(c) prohibits recorder of deeds from accepting for filing instruments which contain racially restrictive covenants. Mayers v Ridley (1972) 151 App DC 45, 465 F2d 630.

City ordinance, which prohibits display of "For Sale," "Sold," or similar signs on premises located in residential areas of city is not contrary to policies and provisions of Fair Housing Act, but entirely consistent with such policies; ordinance represents effort to accomplish same end to which "blockbusting" federal statute is directed. Barrick Realty, Inc. v Gary (1974, CA7 Ind) 491 F2d 161.

Discrimination on basis of occupation is no basis for redress under 42 USCS § 3604. Lee v Minnock (1976, WD Pa) 417 F Supp 436, aff'd without op (CA3 Pa) 556 F2d 567.

Contention by municipality that racial discrimination is permissible " secondary" motivation for city's actions, if there were other legitimate bases for actions, is inconsistent with provisions of 42 USCS § 3604. United States v Parma (1980, ND Ohio) 494 F Supp 1049, app dismd without op (CA6 Ohio) 633 F2d 218 and later op (ND Ohio) 504 F Supp 913, affd in part and revd in part on other grounds (CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

There is no federally protected right under 42 USCS § 3604 to housing in particular community.. Schmidt v Boston Housing Authority (1981, DC Mass) 505 F Supp 988.

2. Purpose

Purpose of 42 USCS § 3604(e) is to prevent persons from preying upon fears of property owners in racially transitional areas and from inducing panic selling which results in community instability. Zuch v Hussey (1973, ED Mich) 366 F Supp 553.

Purpose of Fair Housing Act (42 USCS §§ 3601 et seq.) is to provide remedy against individuals who are guilty of unlawful discrimination in rental or sale of housing and is not directed at those who merely are responsible for putting violator in position in which he can act improperly. Hollins v Kraas (1973, ND Ill) 369 F Supp 1355.

3. Constitutionality

Since court gives great deference to congressional determination that 42 USCS § 3604 will effectuate purpose of Thirteenth Amendment by aiding in elimination of "badges and incidents of slavery in the United States", § 3604 is within congressional power under Thirteenth Amendment; § 3604 is aimed only at commercial activity and commercial speech made to gain profit from racial representation and is not unconstitutional prior restraint on free speech. United States v Bob Lawrence Realty, Inc. (1973, CA5 Ga) 474 F2d 115, cert den 414 US 826, 38 L Ed 2d 59, 94 S Ct 131, reh den 414 US 1087, 38 L Ed 2d 494, 94 S Ct 610.

Fair housing provisions are sustainable under Thirteenth Amendment insofar as they are rational means of effectuating stated policy of legislation. United States v Mintzes (1969, DC Md) 304 F Supp 1305.

This Title (42 USCS §§ 3601 et seq.) is appropriate and constitutionally permissible exercise of congressional power under Thirteenth Amendment to bar all racial discrimination, private as well as public, in sale and rental of real property. United States v Yountan Constr. Co. (1973, ND Cal) 370 F Supp 643, affd in part and remanded in part on other grounds (CA9 Cal) 509 F2d 623, 10 BNA FEP Cas 1438.

4. Construction

In light of declaration of congressional intent provided by 42 USCS § 3601 and need to construe Fair Housing Act expansively in order to implement that goal, court declines to take narrow view of phrase "because of race" contained in 42 USCS § 3604(a). Metropolitan Housing Development Corp. v Arlington Heights (1977, CA7) 558 F2d 1283, cert den 434 US 1025, 54 L Ed 2d 772, 98 S Ct 752 and on remand (ND Ill) 469 F Supp 836, affd (CA7 Ill) 616 F2d 1006.

42 USCS § 3604 reflects Congressional intent to extirpate poisonous influence of racial, religious, and ethnic prejudice in nation's housing markets, and courts have spoken with one voice in interpreting mandate broadly. Fair Housing Council, Inc. v Eastern Bergen County Multiple Listing Service, Inc. (1976, DC NJ) 422 F Supp 1071.

Operative provision of Fair Housing Act of 1968 (42 USCS § 3604) is to be interpreted broadly to bar discrimination in sale or rental of housing, including both governmentally and privately operated units, as to both actual sale or rental, as well as to all terms and conditions. Resident Advisory Board v Rizzo (1976, ED Pa) 425 F Supp 987, mod on other grounds (CA3 Pa) 564 F2d 126, cert den 435 US 908, 55 L Ed 2d 499, 98 S Ct 1457, 98 S Ct 1458 and later proceeding (ED Pa) 503 F Supp 383.

Phrase "otherwise make available or deny" in 42 USCS § 3604 is to be construed broadly, and language is to be considered to be as broad as Congress could have made it. Dunn v Midwestern Indem. Mid-American Fire & Casualty Co. (1979, SD Ohio) 472 F Supp 1106.

Congress employed broad language in Fair Housing Act (42 USCS §§ 3601 et seq.) to ensure that purpose of providing for fair housing throughout country would be achieved. United States v Parma (1980, ND Ohio) 494 F Supp 1049, app dismd without op (CA6 Ohio) 633 F2d 218 and later op (ND Ohio) 504 F Supp 913, affd in part and revd in part on other grounds (CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

5. Application

Local governments are not immune from proscriptions of Title VIII, and may be sued. United States v Black Jack (1974, CA8 Mo) 508 F2d 1179, (CA8 Mo) 508 F2d 1179, cert den 422 US 1042, 45 L Ed 2d 694, 95 S Ct 2656, reh den 423 US 884, 46 L Ed 2d 115, 96 S Ct 158.

42 USCS § 3604 provides for actions against states and political subdivisions as well as actions against private transactions and practices; comprehensive purpose of Fair Housing Act (42 USCS §§ 3601 et seq.) would be diluted if it were to apply only to actions of private individuals and entities. United States v Parma (1981, CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

Fair Housing Act (42 USCS §§ 3601 et seq.) applies to appraisers of real estate. United States v American Institute of Real Estate Appraisers etc. (1977, ND Ill) 442 F Supp 1072, 24 FR Serv 2d 880, app dismd (CA7 Ill) 590 F2d 242, 48 ALR Fed 657.

6. "Dwelling"

Petitioner protesting suspension of his real estate license did not violate 42 USCS § 3604 by refusing to show advertised property to black couple where, though racial motivation for refusal was apparent, property was acreage, there was no evidence petitioner intended to market it for home sites, and property thus was not "dwelling" within meaning of this section and 42 USCS § 3602(b). Ryan v Brown (1976, Fla App D2) 326 So 2d 70, cert den (Fla) 339 So 2d 1167.

7. Use of "checkers"

Fact that person who gathered evidence of violation of 42 USCS § 3604 is "checker" does not in and of itself stamp her as lacking in credibility, since use of checkers has been recognized as necessary under similar circumstances. Wharton v Knefel (1977, CA8 Mo) 562 F2d 550.

State statute making it unlawful for any person not having any bona fide intention to avail himself of any rights under legislation to solicit offers, to buy or lease from property owners or lessees or their agents for sole purpose of securing evidence of discriminatory practice, chills exercise of right to equal housing opportunity, conflicts with general scheme of Fair Housing Act (42 USCS §§ 3601 et seq.), and is invalid under Supremacy Clause of Art. VI of United States Constitution. United States v Wisconsin (1975, WD Wis) 395 F Supp 732.

II. PARTICULAR PRACTICES AS DISCRIMINATORY

8. Generally

Conduct that has necessary and foreseeable consequence of perpetuating segregation can be as deleterious as purposefully discriminatory conduct and frustrating national commitment to replace ghettos by truly integrated and balanced living patterns; under some circumstances violation of § 3604(a) can be established by showing of discriminatory effect without showing of discriminatory intent; not every action which produces discriminatory effects is illegal, and courts must use their discretion in deciding whether, given particular circumstances of each case, relief should be granted under statute; four critical factors to be evaluated in determining under what circumstances conduct that produces discriminatory impact but which was taken without discriminatory intent will violate § 3604(a) are: (1) how strong is plaintiff's showing of discriminatory effect, (2) is there some evidence of discriminatory intent, though not enough to satisfy constitutional standard, (3) what is defendant's interest in taking action complained of, and (4) does plaintiff seek to compel defendant affirmatively to provide housing for members of minority groups or merely to restrain defendant from interfering with individual property owners who wish to provide such housing. Metropolitan Housing Development Corp. v Arlington Heights (1977, CA7) 558 F2d 1283, cert den 434 US 1025, 54 L Ed 2d 772, 98 S Ct 752 and on remand (ND Ill) 469 F Supp 836, affd (CA7 Ill) 616 F2d 1006.

42 USCS § 3604 prohibits sophisticated as well as simple-minded modes of discrimination; thus, it prohibits discrimination in housing because of race not only by overt racial rejection of applicants, but by subtle behavior as well. United States v Youritan Constr. Co. (1973, ND Cal) 370 F Supp 643, affd in part and remanded in part on other grounds (CA9 Cal) 509 F2d 623, 10 BNA FEP Cas 1438.

The "otherwise make unavailable or deny" language of 42 USCS § 3604(a) applies to racially exclusionary land use practices by municipality, to "redlining" by financial institutions, to delaying tactics and discouragement of rental applications used by resident managers, rental agents, and top management and owners who failed to set objective reviewable procedures for rental applications, to racial "steering", and to promulgation of standards which cause appraisers and lenders to treat race or national origin as negative factor in determining value of dwellings and in evaluating soundness of home loans. United States v American Institute of Real Estate Appraisers etc. (1977, ND Ill) 442 F Supp 1072, 24 FR Serv 2d 242, app dismd (CA7 Ill) 590 F2d 242, 48 ALR Fed 657.

Sex discrimination is not specifically defined in 42 USCS § 3604, but cases construing similar language in 42 USCS § 2000e-2 have held that discrimination must involve "disparate treatment," and there is no sex discrimination where

males and females receive similar treatment. Braunstein v Dwelling Managers, Inc. (1979, SD NY) 476 F Supp 1323.

Alienage discrimination is not per se violation of 42 USCS § 3604(a) since term "national origin" refers to person's ancestry and not his citizenship; it is factual issue whether denial of housing due to citizenship is pretext for national-origin discrimination. Espinoza v Hillwood Square Mut. Asso. (1981, ED Va) 522 F Supp 559.

9. Refusals to sell

Violation of plaintiff's civil rights did not exist where owner of home sold it to white couple who offered less than plaintiff, because only white couple's offer permitted closing prior to owner's necessary departure from state. Haythe v Decker Realty Co. (1972, CA7 Ill) 468 F2d 336.

Evidence is sufficient to sustain finding that real estate broker, manager, and one of its salesmen refused to negotiate for sale of dwelling in predominantly white area because of racial prejudice against black couple seeking to purchase home where salesman ultimately induced to show property to black couple did so in grudging, uncooperative, and deliberately discouraging manner, and that house eventually sold for substantially less than figure quoted to couple by salesman. Seaton v Sky Realty Co. (1974, CA7 Ill) 491 F2d 634.

In civil rights action brought by citizens of Chinese ancestry allegedly denied opportunity to purchase vacant lot in all-white development because they were not Caucasians, case is not rendered moot by fact that plaintiffs' offer of purchase expired prior to defendants' response thereto where there is at least possibility that plaintiffs' offer was not accepted before it expired or, alternatively, that defendants failed to make acceptable counteroffer because of defendants' reluctance to sell to nonwhites. Wang v Lake Maxinhall Estates, Inc. (1976, CA7 Ind) 531 F2d 832.

Sale of home to white couple does not violate 42 USCS § 3604 where black prospective purchasers injected conditions contrary to vendor's offer to sell them house "as is" at price 25% below original asking price, even though blacks later agreed to drop such conditions, since vendor decided to seek better offer before black prospective purchasers dropped their conditions. Duckett v Silberman (1978, CA2 NY) 568 F2d 1020.

Vice president of corporation which acted as real estate agent for housing development and corporation itself is liable under Fair Housing Act (42 USCS §§ 3601 et seq.), where vice president knew that seller's refusals to sell home were racially motivated, but nonetheless transmitted affirmative misrepresentations about seller's motives to prospective black purchasers. Dillon v AFBIC Development Corp. (1979, CA5 Ala) 597 F2d 556.

42 USCS § 3604 is violated where defendant refused to discuss sale of house offered in newspaper advertisement to black inquirer and subsequently offered appointment to further discuss ad with white inquirer, even though house advertised had been sold prior to appearance of advertisement, where defendant's actions, under all facts of case, can be construed as offer to negotiate made to one person but refused to another on account of race. Howard v W. P. Bill Atkinson Enterprises (1975, WD Okla) 412 F Supp 610.

10. Refusals to rent

Conclusion of district court that landlords' refusal to rent apartment to university student was based upon attitude and mannerisms which led landlords to believe that student would be troublesome tenant, and not upon racial discrimination, is not clearly erroneous. Hamilton v Miller (1973, CA10 Wyo) 477 F2d 908.

Failure of landlord to sign rental agreement with prospective tenant's agent, upon learning that prospective tenant was Negro, violates 42 USCS § 3604. Steele v Title Realty Co. (1973, CA10 Utah) 478 F2d 380.

Exclusive rental agents found to have refused to rent to plaintiffs on basis of their race are liable under 42 USCS §§ 3601 et seq. for their own unlawful conduct even where management agreement states that leases and tenants shall be approved by owner and where their actions are at behest of principal. Jeanty v McKey & Poague, Inc. (1974, CA7 Ill) 496 F2d 1119.

Where defendant landlord has no uniformly applied policy with objective standards of rejecting prospective tenants who are divorced and have teenage children, landlord violated 42 USCS § 3604 by telling prospective black tenant that she had someone who was interested in apartment when no one had yet filled out application or put down deposit on such apartment and later telling white female who represented that she was divorced and had teenage children that such apartment was still available. Wharton v Knefel (1977, CA8 Mo) 562 F2d 550.

Plaintiff is entitled to injunctive relief where flagrant evidence of defendant's discriminatory practices under 42 USCS § 3604 is provided by undisputed "coding" of any black applicant for rental housing followed by denial of his application. Sandford v R. L. Coleman Realty Co. (1978, CA4 NC) 573 F2d 173.

Landlord's failure to rent house to black married couple does not violate 42 USCS § 3604 where both husband and wife were asked to execute job verification forms, landlord has consistent policy of taking into consideration combined income of both spouses to determine eligibility for rental, and where black couple was rejected by reason of their persistent, demanding, harassing, and increasingly rude telephone calls, purpose of which could well have been to force their acceptance prior to completion of rental application process. Normal v St. Louis Concrete Pipe Co. (1978, ED Mo) 447 F Supp 624.

Defendant's undisputed adherence to policies whereby apartments would not be rented to single women without cars, and whereby alimony and child support would not be considered in determining whether divorced women could meet defendant's requirements regarding ability to pay rent constitutes sex discrimination in violation of Fair Housing Act (42 USCS § 3604). United States v Reece (1978, DC Mont) 457 F Supp 43.

There is no sex discrimination under 42 USCS § 3604 where federally-subsidized housing complex restricts female parent with female child and male parent with male child to renting one bedroom apartment while female parent with male child and male parent with female child could receive two bedroom apartments, since composition of family unit and not sex determined allocation. Braunstein v Dwelling Managers, Inc. (1979, SD NY) 476 F Supp 1323.

Refusal by manager of apartment complex to rent apartment to interracial couple constitutes discrimination on basis of race in violation of 42 USCS § 1982 and 42 USCS § 3604. Oliver v Shelly (1982, SD Tex) 538 F Supp 600.

11. —Public housing projects

Duty of city housing authority to effectuate racial integration in public housing prevails over authority regulation entitling former site residents to priority in assignment for rental of apartments in new public housing project, so that authority may limit number of apartments to be made available to white and non-white persons, including minority groups, in order to avoid concentrated racial pockets resulting in segregated community. Otero v New York City Housing Authority (1973, CA2 NY) 484 F2d 1122.

City's housing and redevelopment authorities violated 42 USCS § 3604(a) by making unavailable or denying housing to blacks who were eligible to live in proposed housing projects where such authorities impacted low income housing projects in black neighborhoods while cancelling construction of such project in predominately white neighborhood. Resident Advisory Board v Rizzo (1977, CA3 Pa) 564 F2d 126, cert den 435 US 908, 55 L Ed 2d 499, 98 S Ct 1457, 98 S Ct 1458 and later proceeding (ED Pa) 503 F Supp 383.

City housing authorities, through adoption and application of citizenship requirement providing that only citizens of city are eligible for housing, violated Fair Housing Act (42 USCS §§ 3601 et seq.). United States v Housing Authority of Chickasaw (1980, SD Ala) 504 F Supp 716.

12. Refusals to show

Violation of 42 USCS § 3604 is established by evidence that negro plaintiff and his wife visited real estate office seeking new bilevel home in three suburban communities with few negro residents and were told by salesman that no such properties were available, and that another salesman offered listings for bilevel homes in those communities to two white couples shortly before and after plaintiffs' visit. Johnson v Jerry Pals Real Estate (1973, CA7 Ill) 485 F2d 528.

Prohibition against providing false information under 42 USCS § 3604(d) creates concomitant right to receive correct housing information without regard to race or color. Coles v Havens Realty Corp. (1980, CA4 Va) 633 F2d 384, affd in part and revd in part on other grounds 455 US 363, 71 L Ed 2d 214, 102 S Ct 1114.

Petitioner protesting suspension of his real estate license did not violate 42 USCS § 3604 by refusing to show advertised property to black couple where, though racial motivation for refusal was apparent, property was acreage, there was no evidence petitioner intended to market it for home sites, and property thus was not "dwelling" within meaning of § 3604 and 42 USCS § 3602(b). Ryan v Brown (1976, Fla App D2) 326 So 2d 70, cert den (Fla) 339 So 2d 1167.

13. Preferential advertising

42 USCS § 3604(c) applies to newspaper advertisements indicating racial or other statutorily proscribed preference in the sale or rental of dwelling, such as "white home", and does not violate freedom of the press or due process. United States v Hunter (1972, CA4 Md) 459 F2d 205, 22 ALR Fed 339, cert den 409 US 934, 34 L Ed 2d 189, 93 S Ct 235, reh den 413 US 923, 37 L Ed 2d 1045, 93 S Ct 3046.

Newspaper advertisement of landlords and sellers expressing preference for Polish-speaking tenants in purchases was unlawful despite fact that persons who placed the ads stated their intention was to foster communication rather than discriminate on the basis of national origin.

Holmgren v Little Village Community Reporter (1972, ND Ill) 342 F Supp 512.

Multiple listing service is not required by 42 USCS § 3604(c) to prevent misuses of otherwise unobjectionable listings. Wheatley Heights Neighborhood Coalition v Jenna Resales Co. (1978, ED NY) 447 F Supp 838.

14. "Blockbusting"

Despite argument that individual cannot properly be enjoined from making racial representations to obtain business of potential seller when racial statement represents truth, federal government may in some circumstances prohibit purely commercial speech made in connection with conduct which Congress can permissibly regulate or prohibit; any informational value in statements violative of 42 USCS § 3604(e) is clearly outweighed by government's overriding interest in preventing blockbusting. United States v Bob Lawrence Realty, Inc. (1973, CA5 Ga) 474 F2d 115, cert den 414 US 826, 38 L Ed 2d 59, 94 S Ct 131, reh den 414 US 1087, 38 L Ed 2d 494, 94 S Ct 610.

Representations by real estate agent to plaintiff that "blacks are moving in . . . you should sell while you can still get a good price . . . the neighborhood is getting black and would be unsafe to live in . . ." constitute type of representations proscribed by 42 USCS § 3604; it makes no difference under statute that "busting" of "block" where plaintiff lived was not accomplished or even advanced due to plaintiff's subsequent refusal to move, since liability of defendant is not dependent upon success of its unlawful conduct. Sanborn v Wagner (1973, DC Md) 354 F Supp 291.

Words "for profit" in 42 USCS § 3604 mean for purpose of obtaining financial gain in any form; therefore, though pleadings and testimony do not evidence extent of profit made as result of transaction in which real estate agent induced plaintiff to sell property because Negroes were moving into neighborhood, fact that defendant stood to gain 6 percent real estate commission on sale of plaintiff's property sufficiently satisfies statutory requirement that defendant's unlawful inducement or attempted inducement was made "for profit." Sanborn v Wagner (1973, DC Md) 354 F Supp 291.

Uninvited solicitations for sale of homes in racially transitional neighborhood are prohibited under 42 USCS § 3604(e) if they are (1) made for profit, (2) intended to induce sale of dwelling, and (3) convey idea that members of particular race are entering neighborhood even if race is not explicitly mentioned. Zuch v Hussey (1973, ED Mich) 366 F Supp 553.

Realtor does not violate Fair Housing Act (42 USCS § 3604(e)) if he answers in good faith homeowner's question about prospective buyer's race provided answer is not in terms that would encourage owner to sell, and is not made for specific purpose of causing owner to sell. United States v Saroff (1974, ED Tenn) 377 F Supp 352, affd without op (CA6 Tenn) 516 F2d 902.

15. "Steering"

Finding that owners of apartment complex "steered" black into separate section of complex is not clearly erroneous where 95% of all blacks renting in complex during 2-year period were rented apartments in same section comprised of four buildings at remote end of complex and 53% of all black tenants were located in same building within this section. United States v Mitchell (1978, CA5 Tex) 580 F2d 789.

"Steering" or action by real estate agent impeding, delaying, or discouraging prospective home buyer from purchasing housing in particular area on racial basis is unlawful under 42 USCS § 3604(a). Zuch v Hussey (1973, ED Mich) 366 F Supp 553.

Practice of deliberately steering potential renters or buyers to particular area on basis of race violates 42 USCS § 3604(a). United States v Henshaw Bros., Inc. (1975, ED Va) 401 F Supp 399.

Tactics of racial steering, directing white potential home buyers away from Black or interracial neighborhoods, and directing Black potential buyers away from white neighborhoods, are clear violation of 42 USCS § 3604(a) and such tactics render both real estate broker and multiple listing service liable for violation of statute. Fair Housing Council, Inc. v Eastern Bergen County Multiple Listing Service, Inc. (1976, DC NJ) 422 F Supp 1071.

"Otherwise make unavailable or deny" language of 42 USCS § 3604(a) applies to racial "steering". United States v American Institute of Real Estate Appraisers etc. (1977, ND Ill) 442 F Supp 1072, 24 FR Serv 2d 880, app dismd (CA7 Ill) 590 F2d 242, 48 ALR Fed 657.

Racial steering in sale or rental of real estate, defined as use of word, phrase, or act by real estate broker or salesperson which is intended to influence choice of prospective property buyer on racial bases, is violation of 42 USCS § 3604 and may be established by proof of either purpose or effect. Bellwood v Dwayne Realty (1979, ND Ill) 482 F Supp 1321.

Alleged actions of racial steering by realty companies such as encouraging white testers to consider realty listings in predominently white areas while disparaging homes in integrated or predominently black areas, discouraging black tester from considering homes in predominently

white areas and providing black tester with less service than that provided to white testers, are actionable under 42 USCS §§ 1981, 1982 and 3604. Sherman Park Community Asso. v Wauwatosa Realty Co. (1980, ED Wis) 486 F Supp 838.

16. Zoning and land use ordinances

Finding of racially discriminatory action is proper where city officials adopted moratorium on new subdivisions after plans for low-income housing project became viable, and zoned proposed sites as open space and park area. Kennedy Park Homes Asso. v Lackawanna (1970, CA2 NY) 436 F2d 108, cert den 401 US 1010, 28 L Ed 2d 546, 91 S Ct 1256 and (disapproved on other grounds Washington v Davis, 426 US 229, 48 L Ed 2d 597, 96 S Ct 2040, 12 BNA FEP Cas 1415, 11 CCH EPD ¶ 10958).

City zoning ordinance prohibiting construction of housing designed to meet needs of families earning between $5000 and $10000 per year had discriminatory effect on blacks, notwithstanding that class included 32 per cent of black and 29 per cent of white population in metropolitan area, where ultimate effect of ordinance was to foreclose 85% of blacks living in metropolitan area from obtaining housing in city at time when 40 per cent of them were living in substandard or overcrowded units, and segregated housing in metropolitan area was result of inexorable process of deliberate racial discrimination in housing by real estate industry and by agencies of federal, state, and local governments. United States v Black Jack (1974, CA8 Mo) 508 F2d 1179, cert den 422 US 1042, 45 L Ed 2d 694, 95 S Ct 2656, reh den 423 US 884, 46 L Ed 2d 115, 96 S Ct 158.

Suit charging discriminatory zoning against low-cost and multi-family housing project is inapplicable under 42 USCS § 3604. Southern Alameda Spanish Speaking Organization v Union City (1970, ND Cal) 314 F Supp 967, affd (CA9) 424 F2d 291 (disapproved on other grounds Washington v Davis, 426 US 229, 48 L Ed 2d 597, 96 S Ct 2040, 12 BNA FEP Cas 1415, 11 CCH EPD ¶ 10958).

Zoning ordinance, effect of which is to regulate and restrict housing density in certain hilly and mountainous areas of city, and which does not, on its face or as applied, discriminate against anyone on racial, ethnic or income grounds, does not violate 42 USCS § 3604. Confederacion De La Raza Unida v Morgan Hill (1971, ND Cal) 324 F Supp 895.

Where county acquired approximately half of abandoned military base, upon which it proposed land use patterns, including construction of educational, cultural, and civil center, commercial and light industrial buildings, recreational facilities, convention center, natural reserve, bus depot, and senior citizen housing, but complainants sought injunction requiring county to establish land use patterns calling for construction of low income housing on nondiscriminatory basis on same property, 42 USCS § 3604 was not violated and proof of racial discrimination in land use patterns was not established by proof of purpose or effect of county's intention to preclude construction of housing, except for senior citizens, on acquired property, since proposed land use had rational and legitimate governmental purpose. Acevedo v Nassau County (1974, ED NY) 369 F Supp 1384, affd (CA2 NY) 500 F2d 1078.

17. Miscellaneous practices

Violation of 42 USCS § 3604 exists when white landlord evicts white tenants because they have entertained black guests in their apartment. Woods-Drake v Lundy (1982, CA5 Miss) 667 F2d 1198.

Municipality's withdrawal from multi-municipality housing authority, which effectively blocked construction of 50 units of low-income housing adversely affected black population within community and was motivated by community's deeply-felt, intentional racial animus, and thus was in violation of both Fourteenth Amendment and Fair Housing Act (42 USCS § 3604). Smith v Clarkton (1982, CA4 NC) 682 F2d 1055.

Offer by seller-builder to build identical house for blacks in another part of town, demand by defendant that blacks find other buyers before they could avoid payment of closing costs, and placing of "sold" signs in front of houses, in order to foreclose right of petitioners to contract for houses constituted "discrimination because of color" but damages should not be awarded where none were pleaded and proven and issue was not inserted until after trial. United States v Pelzer Realty Co. (1974, ND Ala) 377 F Supp 121, 19 FR Serv 2d 381, affd (CA5 Ala) 537 F2d 841.

Home buyer who allegedly suffered racial discrimination in housing by actions of defendant savings and loan association in "redlining" loan applications, in that plaintiffs were denied home loan due to racial composition of neighborhood in which home was located, states cause of action within meaning of 42 USCS §§ 3604, 3605, and 3617. Laufman v Oakley Bldg. & Loan Co. (1976, SD Ohio) 408 F Supp 489, later proceeding (SD Ohio) 72 FRD 116, 23 FR Serv 2d 849.

Allegation that white person attempting to purchase home in predominantly black neighborhood was refused mortgage loan with terms and

conditions equivalent to those imposed on mortgages for homes in predominantly white neighborhood due solely to racial composition of black neighborhood states cause of action within meaning of Fair Housing Act [42 USCS §§ 3601 et seq.]. Harrison v Otto G. Heinzeroth Mortg. Co. (1976, DC Ohio) 414 F Supp 66.

Discriminatory failure or refusal to provide property insurance on dwellings violates 42 USCS § 3604. Dunn v Midwestern Indem. Mid-American Fire & Casualty Co. (1979, SD Ohio) 472 F Supp 1106.

Complaint that town government attempted to withdraw from participation in federally-funded community development block grant program in order to perpetuate segregated conditions and to continue discriminatory housing practices states cause of action under 42 USCS § 3604. Angell v Zinsser (1979, DC Conn) 473 F Supp 488.

City's rejection of fair housing resolution, consistent refusal to sign cooperation agreement with local housing authority, adamant and long-standing opposition to any form of public or low-income housing, denial of building permit for low-income housing, passage of 35-foot height restriction ordinance, passage of ordinance requiring voter approval for low-income housing, and refusal to submit adequate housing assistance plan in Community Block Development Grant application violate Fair Housing Act (42 USCS § 3604). United States v Parma (1980, ND Ohio) 494 F Supp 1049, app dismd without op (CA6 Ohio) 633 F2d 218 and later op (ND Ohio) 504 F Supp 913, affd in part and revd in part on other grounds (CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

Although effect of private landlord's action removing housing from open market fell disproportionately on individual minority tenants and on minority community, this alone is not sufficient to constitute violation of 42 USCS § 3604. Dreher v Rana Management, Inc. (1980, ED NY) 493 F Supp 930.

City is chargeable with racially discriminatory intent in its failure to carry forward with racially integrated low-income senior citizen and family housing project where city commissioners felt bound by results of advisory referendum not to proceed with housing project and commissioners were aware that significant number of opponents of housing project were motivated in part by desire to exclude black people from city. United States v Birmingham (1982, ED Mich) 538 F Supp 819.

County's veto of proposed low-income housing development which was to participate in federal Section 8 HAP program for rent subsidies for low-income families under 42 USCS § 1437f violated 42 USCS §§ 3604 and 3617 even without conclusion that race was motivating factor behind county's decision. Atkins v Robinson (1982, ED Va) 545 F Supp 852.

III. PRACTICE AND PROCEDURE

18. Generally

District court properly denies motions for directed verdict and judgment notwithstanding verdict in action under 42 USCS § 3604, where reasonable minds could differ on question whether defendant's house had already been rented prior to time that alleged discriminatory refusal to rent occurred, as defendant alleged. Fountila v Carter (1978, CA9 Cal) 571 F2d 487.

Claim arising under 42 USCS § 3604 could be interposed as defense in forcible entry and detainer action brought by landlord against tenants who alleged that termination of lease was based on racial discrimination. Marine Park Associates v Johnson (1971) 1 Ill App 3d 464, 274 NE2d 645.

19. Sufficiency of complaint

Complaint alleging operation of apartment complexes in racially discriminatory manner in statutory language of 42 USCS § 3604 is sufficient to give defendants fair notice of claim and enable them to frame responsive pleadings. United States v Metro Development Corp. (1973, ND Ga) 61 FRD 83.

Claim for relief is stated under 42 USCS § 3604, where plaintiffs allege that they are not getting services and facilities in rental unit that were available to tenants when project was predominantly white. Concerned Tenants Asso. of Indian Trails Appartment v Indian Trails Apartments (1980, ND Ill) 496 F Supp 522.

Allegation that actions taken which have effect of housing discrimination on basis of race states claim under 42 USCS § 3604; plaintiffs stated such claim, where they alleged that destruction of one apartment hotel, eviction of all black tenants in another apartment building, and rezoning of development site were done for unlawful reasons and with unlawful effects. Avery v Chicago (1978, ND Ill) 501 F Supp 1.

20. Standing

In consolidated actions against real estate brokerage firms for violations of rights guaranteed by 42 USCS § 3604 through "racial steering" in sale and rental of housing municipal corporation has standing to challenge legality of sales practices in question on ground that such conduct robs it of its racial balance and stability by effectively manipulating housing market in speci-

fied "target" area; in similar action individual residents of "target" area have standing to challenge legality of sales practices on basis that "target" area is losing its integrated character because of brokerage firms' practices. Gladstone Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

White tenant has standing under Fair Housing Act (42 USCS § 3604) to assert claim that he was denied apartment because of policy that allegedly infringes upon rights of blacks and Hispanics even though standing does not exist under Fourteenth Amendment since tenant is not asserting his own rights but rights and interests of third parties. Halet v Wend Invest. Co. (1982, CA9 Cal) 672 F2d 1305.

Residents of changing neighborhood face significant social, professional, and economic losses that are real, concrete, and sufficient to confer standing under 42 USCS § 3604, where plaintiffs allege that defendants are steering white home seekers away from area while enouraging sales to blacks; while such residents may not have standing to complain of housing patterns which exist throughout entire city area, they do have standing to complain of patterns which exist in their neighborhoods. Sherman Park Community Asso. v Wauwatosa Realty Co. (1980, ED Wis) 486 F Supp 838.

Plaintiffs who allege they had or would be forced to leave integrated neighborhood and live in segregated communities due to city officials' actions permitting termination of all low-cost housing in neighborhood, have standing under 42 USCS § 3604 to seek injunctive relief requiring city to construct low-cost housing. Avery v Chicago (1978, ND Ill) 501 F Supp 1.

Individuals who claim to live in inadequate housing, and non profit corporations of which they are members, have standing to seek invalidation of zoning ordinances of four municipalties that are allegedly discriminatory. Urban League of Essex County v Mahwah (1977) 147 NJ Super 28, 370 A2d 521.

21. Burden of proof

Plaintiff alleging violations of 42 USCS §§ 3604 and 3617 need make no showing whatsoever that governmental defendant's action resulting in racial discrimination in housing was racially motivated; once plaintiff has established prima facie case by demonstrating racially discriminatory effect, burden shifts to governmental defendant to demonstrate that its conduct was necessary to promote compelling governmental interest. United States v Black Jack (1974, CA8 Mo) 508 F2d 1179, cert den 422 US 1042, 45 L Ed 2d 694, 95 S Ct 2656, reh den 423 US 884, 46 L Ed 2d 115, 96 S Ct 158.

Burden of proof on plaintiff in action under Fair Housing Act [42 USCS §§ 3601 et seq.] is not that refusal to rent was due solely to fact plaintiff was black, but that race was significant factor in owner's action. Burris v Wilkins (1977, CA5 Tex) 544 F2d 891.

Heavy burden to show "compelling interest" should be reserved not for Title VIII defendants but for those who seek to justify denials of equal protection by purposeful discrimination; under 42 USCS § 3604 justification must serve, in theory and practice, legitimate bona fide interest of defendant, and defendant must show that no alternative course of action could be adopted that would enable interest to be served with less discriminatory impact; if defendant does introduce evidence that no such alternative course of action can be adopted, burden will once again shift to plaintiff to demonstrate that other practices are available. Resident Advisory Board v Rizzo (1977, CA3 Pa) 564 F2d 126, cert den 435 US 908, 55 L Ed 2d 499, 98 S Ct 1457, 98 S Ct 1458 and later proceeding (ED Pa) 503 F Supp 383.

Plaintiff who claims that he as individual has been victim of discriminatory denial of housing in violation of 42 USCS § 3604 may establish prima facie case by proving (1) that he is black, (2) that he applied for and was qualified to rent or purchase housing in question, (3) that he was rejected, and (4) that housing opportunity in question remained available; burden then shifts to defendant to come forward with evidence to show that his actions were not motivated by considerations of race. Robinson v 12 Lofts Realty, Inc. (1979, CA2 NY) 610 F2d 1032.

In racial discrimination action concerning rental of housing, burden of proof is clearly upon plaintiff. Smith v Anchor Bldg. Corp. (1975, ED Mo) 397 F Supp 256, revd on other grounds (CA8 Mo) 536 F2d 231.

Plaintiff fails to meet burden of proof under Title VIII of Civil Rights Act of 1968 [42 USCS §§ 3601–3619] and is not entitled to recovery where she does not establish prima facie case that she has been discriminated against and where defendant city and public housing project have shown valid non-discriminatory reason for its action in refusing to accept application for housing. Stingley v Lincoln Park (1977, ED Mich) 429 F Supp 1379.

Landlord's defense that he rejected plaintiffs' application on basis of objective standards employed across-the-board to all applicants without regard to race is without merit where landlord fails to carry his burden of proving his criteria neutral because of unablity to establish that criteria furnish reasonable measure of whether

applicant will be successful tenant. Bishop v Pecsok (1976, ND Ohio) 431 F Supp 34.

Under Fair Housing Act (42 USCS § 3601 et seq), plaintiffs need not show that defendants' discriminatory acts were done intentionally. Fox v United States Dept. of Housing & Urban Development (1979, ED Pa) 468 F Supp 907.

Plaintiff need prove no more than that conduct of defendant actually or predictably resulted in racial discrimination and need make no showing whatsoever that action resulting in racial discrimination in housing was racially motivated; once plaintiffs have established prima facie violation of Fair Housing Act (42 USCS §§ 3601 et seq.), burden shifts to defendants to present evidence in support of their assertion actions taken were not motivated by racial prejudice but by valid business considerations. McHaney v Spears (1981, WD Tenn) 526 F Supp 566.

22. Evidence

In consolidated actions against real estate brokerage firms by individual residents of certain section of community under § 812 of Fair Housing Act of 1968 (42 USCS § 3612) for violations of § 804 of Act (42 USCS § 3604) resulting from alleged racially discriminatory practices in sale and rental of housing in that section of community—individuals having alleged injury to their right to live in integrated area—nature and extent of business of brokers, including inquiry into extent of their participation in purchase, sale and rental of residences in particular area concerned, number and race of their customers, and type of housing desired by customers, is relevant evidence to establish necessary causal connection between alleged conduct and asserted injury, and also relevant is evidence concerning size, population, and character of community to which injury is claimed. Gladstone, Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

There is no requirement that plaintiff in action brought under 42 USCS § 3604 show that he placed his present residence for sale before seeking new home; otherwise, real estate agent may use such artifice to avoid selling white properties to blacks despite contrary Congressional mandate. Johnson v Jerry Pals Real Estate (1973, CA7 Ill) 485 F2d 528.

Evidence with regard to occupancy by other racial minorities is admissible in cases where housing discrimination is alleged but such evidence should be weighed along with all relevant evidence in determining basic issue of black minority discrimination; such evidence, though relevant, is not conclusive that no discrimination exists. Weathers v Peters Realty Corp. (1974, CA6 Ohio) 499 F2d 1197.

"Because of race" language in 42 USCS § 3604 does not require proof of intent; proof of discriminatory effect will establish prima facie Title VIII case. Resident Advisory Board v Rizzo (1977, CA3 Pa) 564 F2d 126, cert den 435 US 908, 55 L Ed 2d 499, 98 S Ct 1457, 98 S Ct 1458 and later proceeding (ED Pa) 503 F Supp 383.

Plaintiffs' good faith or lack of it is pertinent to claims under 42 USCS § 3604. Grant v Smith (1978, CA5 Ga) 574 F2d 252.

Bona fide offer need not be shown before violation of 42 USCS § 3604, in regard to negotiations about or inspections of dwellings, may be proved. Grant v Smith (1978, CA5 Ga) 574 F2d 252.

Significant discriminatory effect flowing from rental decisions is sufficient to demonstrate violation of 42 USCS § 3604; statistics, although not dispositive, have critical if not decisive significance. United States v Mitchell (1978, CA5 Tex) 580 F2d 789.

HUD fair housing pamphlet, intended as guideline for layman, is not conclusive as to definition of "block-busting" representations; summary judgment is denied considering factual queries posed by alleged 42 USCS § 3604(e) infractions. United States v Mitchell (1971, ND Ga) 327 F Supp 476.

Evidence that black couple's application to purchase apartment was placed on waiting list and steadily moved up list until couple was offered apartment, which they purchased and thereafter moved into, refuted complaint that housing co-operative had refused to negotiate with couple for purchase of co-operative apartment because they were black. Stressel v Parkside Development Co. (1973, SD NY) 358 F Supp 802.

Testimony concerning substance of telephone conversation in which real estate agent allegedly made overt racial representations in violation of 42 USCS § 3604(e) was inadmissible as proof of defendant's actions, where circumstantial evidence could not reliably identify caller, but was admissible for limited purpose of showing that uninvited solicitations of residential real estate listings was being made by some person or persons. Zuch v Hussey (1973, ED Mich) 366 F Supp 553.

Showing of discriminatory intent is necessary in order for plaintiff to make out prima facie case for violation of 42 USCS § 3604. Angell v Zinsser (1979, DC Conn) 473 F Supp 488.

Intention to keep blacks out and whites in need not be proved to show violation of 42 USCS § 3604, where plaintiffs alleged that they are not getting services and facilities that were

available to tenants when project was predominantly white. Concerned Tenants Asso. of Indian Trails Apartments v Indian Trails Apartments (1980, ND Ill) 496 F Supp 522.

To prevail on claim that county's past actions amounted to pattern or practice of discrimination or resistance to full enjoyment of rights served by 42 USCS § 3604, plaintiffs must establish that unlawful discrimination was regular procedure followed by county. Atkins v Robinson (1982, ED Va) 545 F Supp 852.

23. Vicarious liability

Complaint by black couple against owner of apartment building and bank holding it in trust is dismissed where discrimination against black couple was perpetrated by rental agents for building and where uncontroverted evidence clearly demonstrates that owner and bank never authorized rental agents to act as their agents or to do any act in violation of any federal statute or regulation; owner of piece of realty or bank holding in it trust is not liable for damages under 42 USCS § 3604, absent actual and personal involvement in act of discrimination. Hollins v Kraas (1973, ND Ill) 369 F Supp 1355.

Under 42 USCS § 3604, all practices which have effect of denying dwellings on prohibited grounds are unlawful; therefore, imposition of more burdensome application procedures, of delaying tactics, and of various forms of discouragement by resident managers and rental agents constitutes violation of § 3604 not only by those who impose these procedural roadblocks, but also by top management and owners who fail to set forth objective and reviewable procedures for apartment application and rental. United States v Youritan Constr. Co. (1973, ND Cal) 370 F Supp 643, affd in part and remanded in part on other grounds (CA9 Cal) 509 F2d 623, 10 BNA FEP Cas 1438.

Finding that employee of defendant mortgage company is liable to plaintiff for violations of 42 USCS §§ 3604, 3605, and 3617 impels same judgment against mortgage company and its president, for their duty not to discriminate is nondelegable and corporation and its officers are responsible for acts of subordinate employee, even though these acts are neither directed nor authorized. Harrison v Otto G. Heinzeroth Mortg. Co. (1977, ND Ohio) 430 F Supp 893.

Multiple listing service is not vicariously liable for "racial steering" practices of real estate brokers under 42 USCS 3604 where brokers did not act on behalf, at behest or for benefit of multiple listing service and where such service exercised control only with regard to terms upon which services provided by it would be made available to broker. Wheatley Heights Neighborhood Coalition v Jenna Resales Co. (1978, ED NY) 447 F Supp 838.

Real estate broker is liable under 42 USCS § 3604 where real estate salesman acting as broker's agent with authority to contract refused to contract with prospective buyer because of race; real estate broker is liable under 42 USCS § 3604 where salesman discouraged prospective buyers from inspecting dwelling because of race of prospective buyers and real estate broker ratified salesman's actions by approving of salesman's actions in later discussion with salesman. Bradley v John M. Brabham Agency, Inc. (1978, DC SC) 463 F Supp 27.

In applying imputed or vicarious liability theories in housing discrimination cases under 42 USCS § 3604, finding that agent or employee acted with corporate defendant's approval or at his specific direction is not necessary to hold owner liable where owner has been found to have power to control acts of his agents or employees; imputed liability may be found where license of real estate broker or agent inures to benefit of corporation and enables it to engage in business of selling real estate, and acts of sales agent or employee clearly carried out within scope of his employment and for benefit of corporate employer are properly imputed to corporate defendant; requisite elements of control of and intent to benefit from acts of licensee of real estate company are absent where, although company has right to exercise certain amount of control over licensee, including right to conduct annual audit, there is no provision for any direct input into licensee marketing activities; there is in such case no basis for imputing liability to licensor in housing discrimination action under 42 USCS § 3604. Whitfield v Century 21 Real Estate Corp. (1979, SD Tex) 484 F Supp 984.

Defendant as overall manager of development company managing apartments is responsible for acts of agents and employees, even though he did not personally engage in racial discrimination practiced by resident managers. Re Moore (1979, BC CD Cal) 1 BR 52.

24. Relief

Trial court properly ordered specific performance of sale of house to black purchasers where sales agent negotiated agreement for purchase of house and subsequently broke off that agreement, based in part upon race of purchasers, and where owner was responsible for actions of sales agent. Moore v Townsend (1975, CA7 Ill) 525 F2d 482.

Punitive damages may be recoverable, as well as injuctive relief obtained, upon proper show-

ings in action under 42 USCS § 3604. Wharton v Knefel (1977, CA8 Mo) 562 F2d 550.

Federal equitable relief must be carefully tailored to be no more intrusive than is necessary to remedy proved statutory violation; district court did not venture outside permissible boundaries by requiring that construction of proposed housing project proceed as planned without further interference, in action under 42 USCS § 3604. Resident Advisory Board v Rizzo (1977, CA3 Pa) 564 F2d 126, cert den 435 US 908, 55 L Ed 2d 499, 98 S Ct 1457, 98 S Ct 1458 and later proceeding (ED Pa) 503 F Supp 383.

Plaintiff is entitled to injunctive relief where flagrant evidence of defendant's discriminatory practices under 42 USCS § 3604 is provided by undisputed "coding" of any black applicant for rental housing followed by denial of his application. Sandford v R. L. Coleman Realty Co. (1978, CA4 NC) 573 F2d 173.

Plaintiffs who prevail on their individual claims under both 42 USCS § 1982 and 42 USCS § 3604 should be allowed to benefit from more liberal recovery provisions applicable to violations of 42 USCS § 1982. Dillon v AFBIC Development Corp. (1979, CA5 Ala) 597 F2d 556.

Relief normally granted under 42 USCS § 3604 in exclusionary zoning cases is site-specific relief, that is, opening up of particular parcel to low- or moderate-income multiple housing on case-by-case basis; such relief ordinarily runs counter to local zoning or other legislation, but given national open housing policy established by Congress, state or local legislation must yield to that policy. Metropolitan Housing Development Corp. v Arlington Heights (1980, CA7 Ill) 616 F2d 1006.

Where municipality violated 42 USCS § 3604 by withdrawing from multi-municipality housing authority, which effectively blocked construction of 50 units of low-income housing, District Court exceeded traditional scope of its equity power in ordering municipality itself to construct and maintain 50 public housing units from its own locally-generated funds. Smith v Clarkton (1982, CA4 NC) 682 F2d 1055.

First Amendment does not necessarily prohibit rendering of injunction to enforce 42 USCS § 3604(e). United States v Mitchell (1971, ND Ga) 327 F Supp 476.

Consent decree which enjoins discrimination in rental or dwelling units and proscribes use of quotas or racial or religious criteria in rentals is approved; provision for adjustment period during which percentage goals of white to non-white tenants will be achieved aids to application of underlying principle of nondiscrimination at end of such period. Williamsburg Fair Housing Committee v New York City Housing Authority (1978, SD NY) 450 F Supp 602.

Further injunctive relief against city whose zoning ordinance violates 42 USCS § 3604 by impeding instruction of low-income housing project is improper, even though delay involved in adjudicating validity of ordinance results in increased construction costs to point where it is no longer feasible to construct proposed project, where plaintiffs submitted no evidence as to feasibility or efficacy of various forms of suggested further injunctive relief. Park View Heights Corp. v Black Jack (1978, ED Mo) 454 F Supp 1223.

25. Moot questions

Appeal on denial of preliminary injunction is rendered moot upon showing that plaintiff, who subsequently purchased property anyway, never contacted company's representative by telephone, visited company's office, or made actual offer to purchase prior to filing suit. Pegues v Bakane (1971, CA5 Ala) 445 F2d 1140.

In civil rights action brought by citizens of Chinese ancestry allegedly denied opportunity to purchase vacant lot in all-white development because they were not Caucasians, case is not rendered moot by fact that plaintiffs' offer of purchase expired prior to defendants' response thereto where there is at least possibility that plaintiffs' offer was not accepted before it expired or, alternatively, that defendants failed to make acceptable counteroffer because of defendants' reluctance to sell to nonwhites. Wang v Lake Maxinhall Estates, Inc. (1976, CA7 Ind) 531 F2d 832.

§ 3605. Discrimination in the financing of housing

After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against

him in the fixing of the amount, interest rate, duration, or other terms c conditions of such loan or other financial assistance, because of the rac color, religion, sex, or national origin of such person or of any perso associated with him in connection with such loan or other financi assistance or the purposes of such loan or other financial assistance, or the present or prospective owners, lessees, tenants, or occupants of th dwelling or dwellings in relation to which such loan or other financi assistance is to be made or given: Provided, That nothing contained in th section shall impair the scope or effectiveness of the exception contained i section 803(b) [42 USCS § 3603(b)].

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 805, 82 Stat. 83; Aug. 22, 1974 P. L. 93-383, Title VIII, § 808(b)(2), 88 Stat. 729.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

Act Aug. 22, 1974, inserted ", sex"

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CODE OF FEDERAL REGULATIONS

Nondiscrimination in federally assisted programs, 10 CFR Part 1040.
Fair housing, 12 CFR Part 338.
Organization and operation of Federal credit unions, 12 CFR Part 701.

CROSS REFERENCES

This section is referred to in 42 USCS §§ 3602, 3612, 3617.

RESEARCH GUIDE

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Forms:

11 Federal Procedural Forms L Ed, Housing and Urban Development §§ 39:3, 39:33.

Annotations:

What constitutes "pattern or practice" of racial discrimination in sale or rental of housing within meaning of provision of Fair Housing Act of 1968 (42 USCS § 3613) authorizing attorney general to bring civil action for preventive relief against such conduct. 13 ALR Fed 285.

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Law Review Articles:

Silverman, Homeownership for the Poor: Subsidies and Racial Segregation. 48 New York University L Rev 72.

INTERPRETIVE NOTES AND DECISIONS

Home buyer who allegedly suffered racial discrimination in housing by actions of defendant savings and loan association in "redlining" loan applications so that plaintiffs were denied home-loan due to racial composition of neighborhood in which home was located state cause of action within meaning of 42 USCS §§ 3604, 3605, and 3617. Laufman v Oakley Bldg. & Loan Co. (1976, SD Ohio) 408 F Supp 489, later proceeding (SD Ohio) 72 FRD 116, 23 FR Serv 2d 849.

Unqualified words "terms or conditions" in 42 USCS § 3605 are entitled to broadest possible construction; mortgage loans are within contemplation of § 3605; prohibitions of § 3605 proscribe discrimination in manner in which lending institution forecloses delinquent or defaulted mortgage, and racially discriminatory foreclosure is violation of § 3605; plaintiffs failed to raise even prima facie case of violation of § 3605 where evidence showed overwhelmingly that lending institution, which granted 90% financing to plaintiffs to make it possible for them to purchase home, foreclosed mortgage solely for justifiable business reasons, and race played no reason in foreclosure decision. Harper v Union Sav. Asso. (1977, ND Ohio) 429 F Supp 1254.

42 USCS § 3605 does not contemplate proscription of insurance redlining by insurance company not engaged in making real estate loans. Dunn v Midwestern Indem. Mid-American Fire & Casualty Co. (1979, SD Ohio) 472 F Supp 1106.

§ 3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, or national origin.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 806, 82 Stat. 84; Aug. 22, 1974, P. L. 93-383, Title VIII, § 808(b)(3), 88 Stat. 729.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

Act Aug. 22, 1974, inserted ", sex"

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CODE OF FEDERAL REGULATIONS

Nondiscrimination in federally assisted programs, 10 CFR Part 1040.
Organization and operation of Federal credit unions, 12 CFR Part 701.

CROSS REFERENCES

This section is referred to in 42 USCS §§ 3602, 3612, 3617.

RESEARCH GUIDE

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Annotations:

What constitutes "pattern or practice" of racial discrimination in sale or rental of housing within meaning of provision of Fair Housing Act of 1968 (42 USCS § 3613) authorizing attorney general to bring civil action for preventive relief against such conduct. 13 ALR Fed 285.

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Procurement of real-estate broker's license subsequent to execution of contract for services as entitling broker to compensation for services. 80 ALR3d 318.

§ 3607. Religious organization or private club exemption

Nothing in this title shall prohibit a religious organization, association, o society, or any nonprofit institution or organization operated, supervised o controlled by or in conjunction with a religious organization, associatio or society, from limiting the sale, rental or occupancy of dwellings which owns or operates for other than a commercial purpose to persons of th same religion, or from giving preference to such persons, unless membe ship in such religion is restricted on account of race, color, or nationa origin. Nor shall anything in this title prohibit a private club not in fac open to the public, which as an incident to its primary purpose or purpose provides lodgings which it owns or operates for other than a commercia purpose, from limiting the rental or occupancy of such lodgings to it members or from giving preference to its members.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 807, 82 Stat. 84.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et

seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CODE OF FEDERAL REGULATIONS

Nondiscrimination in federally assisted programs, 10 CFR Part 1040.
Organization and operation of Federal credit unions, 12 CFR Part 701.

CROSS REFERENCES

This section is referred to in 42 USCS §§ 3603, 3604.

RESEARCH GUIDE

Am Jur Proof of Facts:
Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.
Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Annotations:
Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

INTERPRETIVE NOTES AND DECISIONS

Existence of limited exemption for religious organizations by 42 USCS § 3607 demonstrates that charitable agencies not embraced by exemption are covered by Fair Housing Act of 1968. (42 USCS §§ 3601 et seq.) United States v Hughes Memorial Home (1975, WD Va) 396 F Supp 544.

§ 3608. Administration

(a) Authority and responsibility. The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary. The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of hearing examiners; location of conciliation meetings; administrative review. The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code [5 USCS §§ 3105, 3344, 5372, 7521]. Insofar as possible, conciliation meetings shall be held in the cities

or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes. All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary. The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 808(a), (b) in part, (c)–(e), 82 Stat. 84; Oct. 13, 1978, P. L. 95-454, Title VIII, § 801(a)(3)(J), 92 Stat. 1222.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 73. For full classification of such Act, consult USCS Tables volumes.

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Explanatory notes:

The first sentence of § 808(b) of Act Apr. 11, 1968, appears as subsec. (b) of this section. The second sentence of § 808(b) of Act Apr. 11, 1968, provided for the amendment of 42 USCS §§ 3533, 3535.

Amendments:

1978. Act Oct. 13, 1978 (effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978", as provided by § 801(a)(4)(A) of Act Oct. 13, 1978, which appears as 5 USCS § 5361 note) in subsec. (c), substituted "5372," for "5362,".

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

Reference to hearing examiner deemed reference to administrative law judge. Act Mar. 27, 1978, P. L. 95-251, § 3, 92 Stat. 184, provided: "Any reference in any law, regulation, or order to a hearing examiner appointed under section 3105 of title 5, United States Code [5 USCS § 3105], shall be deemed to be a reference to an administrative law judge.".

Leadership and coordination of fair housing in Federal programs. Ex. Or. No. 12259 of Dec. 31, 1980, 46 Fed. Reg. 1253, provides:

"By the authority vested in me as President by the Constitution of the United States of America, and in order to provide under the leadership of the Secretary of Housing and Urban Development, in accordance with Section 808 of the Act of April 11, 1968, as amended (sometimes referred to as the Federal Fair Housing Act or as Title VIII of the Civil Rights Act of 1968), 42 U.S.C. 3608 [this section], for the administration of all Federal programs and activities relating to housing and urban development in a manner affirmatively to further fair housing throughout the United States, it is hereby ordered as follows:

"1-1. Administration of Programs and Activities Relating to Housing and Urban Development.

"1-101. All programs and activities of Executive agencies, including agencies which exercise regulatory responsibility, relating to housing and urban development shall be administered in a manner affirmatively to further fair housing.

"1-2. Responsibilities of Executive Agencies.

"1-201. The authority and responsibility for administering the Federal Fair Housing Act [42 USCS §§ 3601 et seq.] is vested in the Secretary of Housing and Urban Development.

"1-202. The head of each Executive agency is responsible for ensuring that its programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing as required by Section 808 of the Act of April 11, 1968, as amended (Title VIII of the Civil Rights Act of 1968) [this section], and for cooperating with the Secretary of Housing and Urban Development who shall be responsible for exercising leadership in furthering the purposes of the Act [Act Apr. 11, 1968, P. L. 90-284, Title VIII, 82 Stat. 81; for full classification, consult USCS Tables volumes]. As used in this Order [this note], the terms 'programs and activities' include programs and activities operated, administered or undertaken by the

Federal government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility.

"1-203. In carrying out the responsibilities in this Order [this note] the head of each Executive agency shall take appropriate steps to require that all persons or other entities who are applicants for, or participants in, or who are supervised or regulated under, agency programs and activities relating to housing and urban development comply with this Order [this note].

"1-3. Specific Responsibilities.

"1-301. In implementing the responsibilities under Section 1-2 the Secretary of Housing and Urban Development shall:

"(a) Develop guidelines for determining the categories of programs and activities relating to housing and urban development which are operated, administered, undertaken, controlled or regulated by Executive agencies.

"(b) Promulgate regulations regarding programs and activities of Executive agencies related to housing and urban development which shall:

"(1) describe an institutionalized method for analyzing the impact of housing and urban development programs and activities in promoting the goal of fair housing;

"(2) describe the responsibilities and obligations in assuring that programs and activities are administered and executed in a manner affirmatively to further fair housing; and

"(3) describe the responsibilities and obligations of applicants, participants and other persons and entities involved in housing and urban development programs and activities affirmatively to further the goal of fair housing.

"(c) Coordinate Executive agency implementation of the requirements of this Order [this note] and issue standards and procedures regarding the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing.

"1-302. Upon publication of guidelines by the Secretary of Housing and Urban Development under Section 1-301(a), each Executive agency shall provide the Secretary with a description of all programs and activities relating to housing and urban development within its jurisdiction.

"1-303. Within 180 days of the publication of final regulations by the Secretary of Housing and Urban Development under Section 1-301(a) the head of each Executive agency shall publish proposed regulations providing for the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing, consistent with the Secretary of Housing and Urban Development regulations, and with the standards and procedures issued pursuant to Section 1-301(c). As soon as practicable, each Executive agency shall issue its final regulations. All Executive agencies shall formally submit all such proposed and final regulations, and any related issuances or standards to the Secretary of Housing and Urban Development at least 30 days prior to public announcement.

"1-304. The Secretary of Housing and Urban Development shall review regulations, standards and actions under Sections 1-302 and 1-303 to

ensure conformity with the purposes of the Federal Fair Housing Act [Act Apr. 11, 1968, P. L. 90-284, Title VIII, 82 Stat. 81; for full classification, consult USCS Tables volumes] and consistency among the operations of the various Executive agencies and shall make any comments with respect thereto on a timely basis.

"1-305. In addition to the regulations and guidelines described in Section 1-301, the Secretary of Housing and Urban Development shall implement the Secretary's authority and responsibility for administering the Federal Fair Housing Act [Act Apr. 11, 1968, P. L. 90-284, Title VIII, 82 Stat. 81; for full classification, consult USCS Tables volumes] by promulgating regulations describing the nature and scope of coverage and the conduct prohibited.

"1-4. Cooperative Efforts.

"1-401. The Secretary of Housing and Urban Development shall:

"(a) Cooperate with, and render assistance to, the heads of all Executive agencies in the formulation of policies and procedures to implement this Order [this note] and to provide information and guidance on the affirmative administration of programs and activities relating to housing and urban development and the protection of rights accorded persons by the Federal Fair Housing Act [Act Apr. 11, 1968, P. L. 90-284, Title VIII, 82 Stat. 81; for full classifiation, consult USCS Tables volumes]; and

"(b) initiate cooperative efforts, including the development of memoranda of understanding between Executive agencies designed to provide for consultation and the coordination of Federal efforts to further fair housing through the affirmative administration of programs and activities relating to housing and urban development.

"1-402. In connection with carrying out functions u der this Order [this note] the Secretary of Housing and Urban Development is authorized to request from any Executive agency such information and assistance deemed necessary. Each agency shall, to the extent permitted by law, furnish such information and assistance to the Secretary.

"1-5. Administrative Enforcement.

"1-501. Each Executive agency shall be responsible for enforcement of this Order [this note] and, to the extent permitted by law, shall cooperate and provide records, data and documentation in connection with any other agency's investigation of compliance with provisions of this Order [this note].

"1-502. If any Executive agency concludes that any person or entity (including any State or local public agency) applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this Order [this note] or any applicable rule, regulation or procedure issued or adopted pursuant to this Order [this note], it shall endeavor to end and remedy such violation by informal means, including conference, conciliation and persuasion. An Executive agency need not pursue informal resolution of matters where similar efforts made by another Executive agency have been unsuccessful. In event of failure of such informal means, the Executive agency, in conformity with rules, regulations, procedures or policies issued or adopted by it pursuant to Section 1-3

hereof, shall impose such sanctions as may be authorized by law. To the extent authorized by law, such sanctions may include:

"(a) cancellation or termination of agreements or contracts with such person, entity, or State or local public agency;

"(b) refusal to extend any further aid under any program or activity administered by it and affected by this Order [this note] until it is satisfied that the affected person, entity, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this Order [this note];

"(c) refusal to grant supervisory or regulatory approval to such person, entity, or State or local public agency under any program or activity administered by it which is affected by this Order [this note] or revoke such approval if previously given;

"(d) any other action as may be appropriate under its governing laws.

"1-503. Findings of any violation under Section 1-502 shall be promptly reported to the Secretary of Housing and Urban Development. The Secretary of Housing and Urban Development shall forward this information to all other Executive agencies.

"1-504. Any Executive agency shall also consider invoking appropriate sanctions against any person or entity where any other Executive department or agency has initiated action against that person or entity pursuant to Section 1-502 of this Order [this note].

"1-505. Each Executive agency shall seek the advice of the Secretary of Housing and Urban Development in this regard prior to a decision to initiate actions to invoke sanctions. Each such decision and the reasons therefor, shall be documented and shall be provided to the Secretary of Housing and Urban Development in a timely manner.

"1-6. General Provisions.

"1-601. Nothing in this Order [this note] shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250 [42 USCS § 2000d-1 note].

"1-602. All provisions of regulations, guidelines and procedures proposed to be issued by Executive agencies pursuant to this Order [this note] which implement nondiscrimination requirements of laws covered by Executive Order No. 12250 [42 USCS § 2000d-1 note] shall be submitted to the Attorney General for review in accordance with that Executive Order. In addition, the Secretary will consult with the Attorney General regarding all regulations, guidelines and procedures proposed to be issued under Sections 1-301, 1-302 and 1-303 of this Order [this note] to assure consistency with coordinated Federal efforts to enforce nondiscrimination requirements in programs of Federal financial assistance pursuant to Executive Order No. 12250 [42 USCS § 2000d-1 note].

"1-603. Nothing in this Order [this note] shall affect the authority and responsibility of the Attorney General to commence civil actions in cases involving a pattern or practice of discrimination or raising an issue of general public importance under the Federal Fair Housing Act [Act Apr. 11, 1968, P. L. 90-284, Title VIII, 82 Stat. 81; for full classification, consult USCS Tables volumes].

"1-604. (a) Part IV and Sections 501 and 503 of Executive Order No. 11063 [42 USCS § 1982 note] are revoked. The activities and functions of the President's Commission on Equal Opportunity in Housing described in that Executive Order shall be performed by the Secretary of Housing and Urban Development.

"(b) Sections 101 and 502(a) of Executive Order No. 11063 [42 USCS § 1982 note] are revised to apply to discrimination because of 'race, color, religion (creed), sex or national origin.' All departments and agencies shall revise regulations, guidelines and procedures issued pursuant to Part II of Executive Order No. 11063 [42 USCS § 1982 note] to reflect this amendment to coverage.

"(c) Section 102 of Executive Order No. 11063 [42 USCS § 1982 note] is revised by deleting the term 'Housing and Home Finance Agency' and inserting in lieu thereof the term 'Department of Housing and Urban Development.'

"1-605. Nothing in this Order [this note] shall affect any rquirement imposed under the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) [15 USCS §§ 1691 et seq.], the Home Mortgage Disclosure Act (12 U.S.C. 2901 et seq.) [Act Dec. 31, 1975, P. L. 94-200, Title III, 89 Stat. 1125; for full classification, consult USCS Tables volumes] or the Community Reinvestment Act (12 U.S.C. 2810 et seq.) [Act Oct. 12, 1977, P. L. 95-128, Title VIII, 91 Stat. 1147; for full classification, consult USCS Tables volumes].

"1-7. Report.

"1-701. The Secretary of Housing and Urban Development shall submit to the President an annual report commenting on the progress the Department of Housing and Urban Development and other Executive agencies have made in carrying out requirements and responsibilities under this Executive Order [this note].".

CODE OF FEDERAL REGULATIONS

Fair housing, 12 CFR Part 338.
Organization and operation of Federal credit unions, 12 CFR Part 701.
Fair Housing, racial, sex, and ethnic data, 24 CFR Part 100.

RESEARCH GUIDE

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Annotations:

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Law Review Articles:

HUD has Affirmative Duty to Consider Low Income Housing's Impact upon Racial Concentration. (1972) 85 Harvard L Rev 870.

HUD Must Institutionalize Procedures for Determining Racial and Socio-economic Effects of Site Location for Federally Assisted Housing Projects. (1971) 46 NYU L Rev 560.

Silverman, Homeownership for the Poor: Subsidies and Racial Segregation. 48 New York University L Rev 72.

HUD's Project Selection Criteria—A Cure for "Impermissible Color Blindness"? (1972) 48 Notre Dame L 92.

McGee, Illusion and Contradiction in the Quest for a Desegregated Metropolis. 1976 U Ill L F 948.

From Capitol Hill: The Impact of Civil Rights Litigation on HUD Policy. (1972) 4 Urban Lawyer 112.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Relation to other laws
3. Duties created
4. Standing

1. Generally

Upon consideration of impact of low-cost housing project for elderly on area's racial concentration and evaluation of need for such project, HUD may construct such housing in compliance with balanced program requirement. Croskey Street Concerned Citizens v Romney (1971, ED Pa) 335 F Supp 1251, affd (CA3 Pa) 459 F2d 109.

Under fair housing provisions, it is impermissible for governmental agencies to confine and isolate low income blacks to racially compacted and concentrated areas. Sadler v 218 Housing Corp. (1976, ND Ga) 417 F Supp 348.

Private right of action exists against HUD for violation of its affirmative duties under 42 USCS § 3608(d)(5) since failure to perform such duties constitutes discriminatory housing practice in itself. Young v Pierce (1982, ED Tex) 544 F Supp 1010.

2. Relation to other laws

Complaint and enforcement procedures of this Act (42 USCS §§ 3610–3613, 2000d-1) do not pertain to Secretary of HUD's affirmative duties under 42 USCS § 3608. Shannon v United States Dept. of Housing & Urban Development (1970, CA3 Pa) 436 F2d 809, on remand (ED Pa) 387 F Supp 5.

3. Duties created

City housing authority has duty under Fair Housing Act of 1968 (42 USCS §§ 3601 et seq.) to act affirmatively to achieve integration in housing; such duty prevails over authority regulation entitling former site residents to priority in assignment for rental of apartments in new public housing project, so that authority may limit number of apartments to be made available to white and non-white persons including minority groups, in order to avoid concentrated racial pockets resulting in segregated community. Otero v New York City Housing Authority (1973, CA2 NY) 484 F2d 1122.

As part of HUD's duty under Fair Housing Act (42 USCS §§ 3601 et seq.), approved housing project must not be located in area of undue minority concentration, which would have effect of perpetuating racial segregation. Alschuler v Department of Housing & Urban Development (1982, CA7) 686 F2d 472.

Metropolitan housing authority has affirmative duty to desegregate all aspects of its public housing program, including population of presently existing units and planning of future site selections. Banks v Perk (1972, ND Ohio) 341 F Supp 1175, affd in part without op and revd in part without op (CA6 Ohio) 473 F2d 910.

42 USCS § 3608(d)(5) places affirmative duty on HUD to promote fair housing opportunities; that duty extends to prospective situations as well as to past or continuing practices in private and public sector; § 3608(d)(5) also requires that consideration be given to impact of proposed project on racial concentration in impact area. Munoz-Mendoza v Pierce (1981, DC Mass) 520 F Supp 180.

4. Standing

Where inaction on part of federal agencies may have created breach of their affirmative duties under Fair Housing Act (42 USCS §§ 3601 et seq.) individuals who continue to live in urban ghetto communities have standing as to those federal agencies to challenge grants that in effect contribute to continuation of segregated living patterns. Evans v Lynn (1975, CA2 NY) 537 F2d 571, cert den 429 US 1066, 50 L Ed 2d 784, 97 S Ct 797.

Named plaintiffs, former residents of suburbs who were denied opportunity to remain in those areas because existing low-income housing was located only in racially segregated neighborhoods in central city, have standing to bring action to compel HUD to approve and implement metropolitan disbursed-housing plan because they alleged immediate and personal injury to themselves resulting from asserted illegal action or inaction of HUD; HUD has statutory obligation to provide public housing on non-discriminatory basis. Jaimes v Toledo Metropolitan Housing Authority (1977, ND Ohio) 432 F Supp 25.

Residents who claim that Veterans Administration is administering its home loan program in such manner as to cause massive resegregation of their neighborhood, thus lowering property values and interfering with their right to live in racially balanced community, have standing to maintain cause of action under 42 USCS § 3608.. Jorman v Veterans Administration of United States (1980, ND Ill) 500 F Supp 460.

§ 3609. Education and conciliation; conferences and consultation; reports

Immediately after the enactment of this title [enacted April 11, 1968] the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this title. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5 of the United States Code [5 USCS § 5703]. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this title. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 809, 82 Stat. 85.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CODE OF FEDERAL REGULATIONS

Organization and operation of Federal credit unions, 12 CFR Part 701.

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Am Jur Proof of Facts:
Racial Discrimination in Sale of Estate, 14 Am Jur Proof of Facts 2d, p. 511.
Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Annotations:
Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

§ 3610. Enforcement

(a) Person aggrieved; complaint; copy; investigation; informal proceedings; violations of secrecy; penalties. Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Complaint; limitations; answers; amendments; verification. A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings;

certification of circumstances requisite for action by Secretary. Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title, the Secretary shall notify the appropriate State or local agency of any complaint filed under this title which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(d) Commencement of civil actions; state or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders. If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c), the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this title, insofar as such rights relate to the subject of the complaint: Provided, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 812 [42 USCS § 3612], enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(e) Burden of proof. In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Trial of action; termination of voluntary compliance efforts. Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 812 [42 USCS § 3612], shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 810, 82 Stat. 85.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CODE OF FEDERAL REGULATIONS

Organization and operation of Federal credit unions, 12 CFR Part 701.
Fair Housing, recognition of substantially equivalent laws, 24 CFR Part 115.

CROSS REFERENCES

This section is referred to in 42 USCS § 3612.

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Federal Procedure L Ed:

Fed Proc, L Ed §§ 11:26, 11:133, 11:247, 11:250, 11:251 11:252, 11:253, 11:262, 11:263, 11:264, 11:265, 11:266, 11:267, 11:276, 11:280.

Am Jur:

15 Am Jur 2d, Civil Rights §§ 249, 478, 479, 480, 483, 487–492, 494, 496.

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Forms:

11 Federal Procedural Forms L Ed, Housing and Urban Development §§ 39:3–39:6, 39:21–39:26, 39:34, 39:36.

15 Federal Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits § 61:32.

Annotations:

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Law Review Articles:

United States May Obtain Affirmative Relief Where There has been Pre-act and Some Post-act Pattern or Practice of Racial Discrimination in the rental of private housing. (1971) 5 Ga L Rev 603.

McGee, Illusion and Contradiction in the Quest for a Desegregated Metropolis. 1976 U Ill L F 948.

Berger, Court Awarded Attorney's Fees: What Is "Reasonable"? 126 U Pa L Rev 281.

Publication of "Mrs. Murphy" Racial Preference Advertisement Violates Fair Housing Act of 1968 but Injunctive Relief Denied. (1972) 18 Wayne L Rev 1101.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Relation with other laws
3. —42 USCS § 3612
4. "Aggrieved persons"
5. Resort to federal courts (§ 3610(d))
6. Resort to state courts
7. Conciliation efforts

1. Generally

District court erred in dismissing suit based on 42 USCS §§ 3610, 3612 for alleged racial discrimination in refusal to rent apartment, where only basis for applicant's unacceptability was flimsy evidence of "offensive odor," itself freighted with trademark of racial prejudice. Stevens v Dobs, Inc. (1973, CA4 NC) 483 F2d 82, later app (ED NC) 373 F Supp 618.

Although state statute provides substantially equivalent rights and remedies to those provided in 42 USCS § 3610, there is independent basis for jurisdiction under 28 USCS § 1343(4). McLaurin v Brusturis (1970, ED Wis) 320 F Supp 190.

Statute of limitations under 42 USCS § 3610 is applicable, where any discriminatory practice is within scope of both 42 USCS §§ 3601 et seq. and 42 USCS § 1983. Warren v Norman Realty Co. (1974, DC Neb) 375 F Supp 478, affd on other grounds (CA8 Neb) 513 F2d 730, cert den 423 US 855, 46 L Ed 2d 81, 96 S Ct 105.

Racially mixed married couple failed to sustain burden of proving that defendant realtors refused to lease apartment to them solely on basis of race within meaning of 42 USCS § 3610(e), where no proof of any plan or pattern of discrimination was presented. Johnson v Albritton (1977, MD La) 424 F Supp 456.

2. Relation with other laws

Complaint and enforcement procedures of this Act (42 USCS §§ 3610–3613, 2000d-1) do not pertain to Secretary of HUD's affirmative duties under 42 USCS § 3608. Shannon v United States Dept. of Housing & Urban Development (1970, CA3 Pa) 436 F2d 809, on remand (ED Pa) 387 F Supp 5.

Action brought under 42 USCS § 1982 is not barred by 180-day limitations period of 42 USCS §§ 3610 or 3612. Warren v Norman Realty Co. (1975, CA8 Neb) 513 F2d 730, cert den 423 US 855, 46 L Ed 2d 81, 96 S Ct 105.

3. —42 USCS § 3612

Independent alternative remedies are provided for housing discrimination by administrative enforcement proceedings under 42 USCS § 3610 and preferential access to federal court contained in 42 USCS § 3612. Bellwood v Gladstone Realtors (1978, CA7 Ill) 569 F2d 1013 affd, in part 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

Filing complaint with Secretary is not such election of remedies as to deny right of filing complaint under 42 USCS § 3612. Johnson v Decker (1971, ND Cal) 333 F Supp 88.

Remedies of 42 USCS § 3610 and 42 USCS § 3612 are separate, distinct and in alternative; plaintiffs have right to bring suit in federal district court alleging racial discrimination in rental of housing under § 3612, before exhausting or attempting to exhaust remedies provided for by § 3610. Crim v Glover (1972, SD Ohio) 338 F Supp 823.

To state cause of action under Fair Housing Act of 1968 plaintiff must bring action, either under 42 USCS § 3612 within 180 days after alleged discrimination, or under § 3610 within 60 days after complaint has been filed with HUD; there is no requirement that HUD give notice to complainant of inability to obtain voluntary compliance. Young v AAA Realty Co. (1972, MD NC) 350 F Supp 1382.

Two avenues provided by Fair Housing Act through which persons aggrieved by alleged violations may seek redress in district courts, through HUD administrative procedures under 42 USCS § 3610, or directly under 42 USCS § 3612, are clearly in alternative. Howard v W. P. Bill Atkinson Enterprises (1975, WD Okla) 412 F Supp 610.

Two methods of enforcing Title VIII set forth at 42 USCS § 3610 (complaint procedure with HUD) and 42 USCS § 3612 (civil action in district court) are alternative paths to relief for

person injured by discrimination in housing; language of 42 USCS § 3610 is permissive and not mandatory, and inclusion of both 42 USCS § 3610 and § 3612 is itself best evidence that Congress intended to provide alternate paths to relief. Fair Housing Council, Inc. v Eastern Bergen County Multiple Listing Service, Inc. (1976, DC NJ) 422 F Supp 1071.

Utilization of procedures in 42 USCS § 3610 is not prerequisite to filing suit under § 3612. Concerned Tenants Asso. of Indian Trails Apartments v Indian Trails Apartments (1980, ND Ill) 496 F Supp 522.

Exhaustion of administrative remedies is not prerequisite to claim in federal court based on 42 USCS § 3612; party may institute civil action on administrative level under 42 USCS § 3610 as well as commence civil action in federal court under 42 USCS § 3612 since each of these are independent remedies. Oliver v Foster (1981, SD Tex) 524 F Supp 927, 33 FR Serv 2d 896.

Congress contemplated private civil actions under 42 USCS § 3612 and administrative claims under 42 USCS § 3610 to be contemporaneous. Green v Ten Eyck (1978, CA8 Mo) 572 F2d 1233 (disagreed with Swan v Stoneman (CA2 Vt) 635 F2d 97).

4. "Aggrieved persons"

Under 42 USCS § 3610(a), which defines "person aggrieved" as "any person who claims to have been injured by a discriminatory housing practice", standing to sue is as broad as is permitted by Article III of the Constitution so that petitioners, one black and one white tenant of apartment complex alleging racial discrimination against nonwhites whereby they lost social benefits of living in integrated community and suffered from being "stigmatized" as residents of white ghetto, had standing to sue under 42 USCS § 3610 to secure statutory remedies for discriminatory practices. Trafficante v Metropolitan Life Ins. Co. (1972) 409 US 205, 34 L Ed 2d 415, 93 S Ct 364.

Low-income minority residents of county who lived in "ghetto conditions" did not have standing against federal agencies to challenge federal grants to municipality for construction of sewer district and recreational park based upon allegation that grants constituted support of town's primarily white, single-family housing pattern in violation of federal government's affirmative duty to eliminate discrimination and encourage fair housing opportunities mandated by 42 USCS § 2000d-1 and 42 USCS § 3608(c)(d)(5) where plaintiffs, who did not reside in town and made no claim that they ever had sought or had been refused housing in town, failed to allege any facts whatsoever indicative of injury suffered by them as result of grants and where they claimed only that had grants not been approved, monies could conceivably have gone to some other, as yet totally imaginary project in county which might have had result of making more housing available to them. Evans v Lynn (1975, CA2 NY) 537 F2d 571, cert den 429 US 1066, 50 L Ed 2d 784, 97 S Ct 797.

Term "person aggrieved" in 42 USCS § 3610(a) includes persons not themselves objects of racial discrimination, where they are injured by loss of important benefits as result of interracial associations. Waters v Heublein, Inc. (1976, CA9 Cal) 547 F2d 466, 13 BNA FEP Cas 1409, 12 CCH EPD ¶ 11238, cert den 433 US 915, 53 L Ed 2d 1100, 97 S Ct 2988, 15 BNA FEP Cas 31, 14 CCH EPD ¶ 7635.

There is no difference between class of plaintiffs with standing to invoke 42 USCS § 3610 and class with standing to invoke 42 USCS § 3612. Bellwood v Gladstone Realtors (1978, CA7 Ill) 569 F2d 1013, affd, in part 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

Nonprofit corporation comprised of approximately 750 blacks and whites residing in certain residential area of city had standing to bring action under Fair Housing Act (42 USCS §§ 3601 et seq.) alleging that real estate agents engaged in pattern of "block-busting" activity with intended effect of steering whites out of and blacks into residential neighborhood. Broadmoor Improv. Asso. v Stan Weber & Associates, Inc. (1979, CA5 La) 597 F2d 568.

Broad definition of "person aggrieved" under 42 USCS § 3610 is clear indication of Congressional intent to permit liberal standing under Fair Housing Act (42 USCS §§ 3601 et seq.). Coles v Havens Realty Corp. (1980, CA4 Va) 633 F2d 384, affd in part and revd in part on other grounds 455 US 363, 71 L Ed 2d 214, 102 S Ct 1114.

Congress intended to confer standing in suits brought pursuant to 42 USCS §§ 3610 and 3612 to fullest extent permitted by Article III of United States Constitution; thus, so-called "prudential limitations" which require plaintiff to show particularized injury not shared by all or large class of citizen do not apply in cases involving housing discrimination, and instead all that need be shown is that the plaintiff personally has suffered some actual or threatened injury as result of putatively illegal conduct of defendant. Sherman Park Community Asso. v Wauwatosa Realty Co. (1980, ED Wis) 486 F Supp 838.

5. Resort to federal courts (§ 3610(d))

Section 810 of Fair Housing Act of 1968 (42 USCS § 3610) is not structured to keep complaints brought under it from reaching federal

courts or even to assure that administrative process runs its full course, and furthermore § 810(d) (42 USCS § 3610(d)) gives complainant right to commence action whether or not Secretary of Department of Housing and Urban Development completes or chooses to pursue conciliation efforts; complainant under § 810 may resort to federal court merely because he is dissatisfied with results or delays of conciliatory efforts of Department of Housing and Urban Development. Gladstone, Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

Under 42 USCS § 3610(d), action must be filed in federal court within 60 days of filing complaint with HUD despite contrary interpretation contained in HUD regulations (24 CFR §§ 105.16(a) and 105.34. Green v Ten Eyck (1978, CA8 Mo) 572 F2d 1233 (disagreed with on other grounds Swan v Stoneman (CA2 Vt) 635 F2d 97).

Civil action brought under Fair Housing Act must be filed, if at all, no sooner than thirty-first day, and no later than sixtieth day, following date plaintiff files complaint with HUD; contention that thirty-day period in which plaintiff may file suit begins to run only when plaintiff receives notice that HUD failed to obtain voluntary compliance is without merit. Sumlin v Brown (1976, ND Fla) 420 F Supp 78.

Under 42 USCS § 3610(d) of Fair Housing Act, 42 USCS §§ 3601 et seq., court is deprived of jurisdiction where plaintiff files complaint with Secretary of Department of Housing and Urban Development within requisite 180 days from alleged incident of discrimination, but waits to commence legal action until sixty day period following filing of his complaint has elapsed and does not commence suit until thirty days after notification by Secretary (more than 120 days later) of his failure to resolve dispute. Tatum v Myrick (1977, MD Fla) 425 F Supp 809.

Thirty-day period under 42 USCS § 3610(d) for filing complaint begins to run without regard to time at which notice is received that Secretary of Housing and Urban Development does not intend to resolve complaint under 42 USCS § 3610(a). Goodman v Platt (1978, ND Okla) 444 F Supp 140.

Administrative complaint procedure set forth in 42 USCS § 3610 is jurisdictional prerequisite to maintenance of civil action under § 3610; in order for action to be maintainable under § 3610, plaintiff must have (1) filed complaint with Secretary of HUD charging violation of Fair Housing Act (42 USCS §§ 3604, 3610 and 3612) within 180 days after discriminatory act allegedly occurred and (2) brought civil action under consideration within 30-day period commencing on 31st day after complaint was filed with Secretary regardless of whether action was filed within 30 days after plaintiff received notice that HUD had terminated its efforts to resolve dispute. Smith v Woodhollow Apartments (1978, WD Okla) 463 F Supp 16.

Under plain language of 42 USCS § 3610(d) plaintiff not only need not wait until administrative conciliation efforts have failed, he must not wait for their resolution prior to filing his civil action; HUD regulation which induces individuals to wait to file court action until after conciliation efforts fail is not entitled to deference where it contradicts clear language of statute and claims of individuals who rely in good faith on such regulations must be dismissed. Waters v Provident Nat. Bank (1981, ED Pa) 521 F Supp 1025.

6. Resort to state courts

States fair housing statutes provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to rights and remedies provided in Title VIII of Civil Rights Act of 1968; plaintiff failed to meet requirements of 42 USCS § 3610(d) by not resorting to state courts after electing to pursue administrative complaint option afforded by statute. Stingley v Lincoln Park (1977, ED Mich) 429 F Supp 1379.

7. Conciliation efforts

Affidavit filed by government in support of motion for preliminary injunction, reciting in detail informal efforts to reconcile rental dispute, was properly stricken from the record due to inclusion of privileged matter. United States v Goldberg (1971, CA5 Fla) 450 F2d 295.

Settlement agreement between parties is culmination of conciliation efforts, and not something "done in the course of such informal endeavors", and is therefore not proscribed under 42 USCS § 3610 (a). James v Hafler (1970, ND Ga) 320 F Supp 397, affd without op (CA5 Ga) 457 F2d 511 and affd without op (CA5 Ga) 457 F2d 511.

Conciliation provisions in respect to private actions for discrimination in housing in no way limit public enforcement provisions, and Attorney General may institute action without attempting conciliation. United States v Luebke (1972, DC Colo) 345 F Supp 179.

Pattern or practice of discrimination need not be shown before HUD can sue through United States to enforce conciliation agreement to which it is party; fact that parties to conciliation agreement were not named in HUD fair housing complaint does not constitute defect in HUD's jurisdiction to negotiate conciliation agreement, especially where parties received notice of complaint. United States v Reece (1978, DC Mont) 457 F Supp 43.

§ 3611. Evidence

(a) Investigations; access to records, documents, and other evidence; copying; searches and seizures; subpenas for Secretary; interrogatories; administration of oaths. In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: Provided, however, That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Secretary may issue subpenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

(b) Subpenas for respondent. Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpeonas by and in the name of the Secretary to the same extent and subject to the same limitations as subpenas issued by the Secretary himself. Subpenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(c) Compensation and mileage fees of witnesses. Witnesses summoned by subpena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpena issued at the request of a respondent shall be paid by him.

(d) Revocation or modification of petition for subpena; good reasons for grant of petition. Within five days after service of a subpena upon any person, such person may petition the Secretary to revoke or modify the subpena. The Secretary shall grant the petition if he finds that the subpena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(e) Enforcement of subpena. In case of contumacy or refusal to obey a subpena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpena was addressed resides, was served, or transacts business.

(f) Violations; penalties. Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpena or lawful order of the Secretary, shall be fined not more than $1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(g) Attorney General to conduct litigation. The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 811, 82 Stat. 87.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 73. For full classification of such Act, consult USCS Tables volumes.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

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Forms:

15 Federal Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits § 61:32.

Annotations:

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

§ 3612. Enforcement by private persons

(a) Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders. The rights granted by section 803, 804, 805, and 806 [42 USCS §§ 3603–3606] may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: Provided, however, That the court shall continue such civil case brought pursuant to this section or section 810(d) [42 USCS § 3610(d)] from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: And provided, however, That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

(b) Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security. Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) Injunctive relief and damages; limitation; court costs; attorney fees. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 812, 82 Stat. 88.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 73. For full classification of such Act, consult USCS Tables volumes.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CROSS REFERENCES

This section is referred to in 15 USCS § 1691e; 42 USCS §§ 3610, 3614.

RESEARCH GUIDE

Federal Procedure L Ed:

Fed Proc, L Ed §§ 11:84, 11:88, 11:122, 11:133, 11:144, 11:145, 11:252, 11:262, 11:263, 11:264, 11:266, 11:267, 11:268, 11:270, 11:271, 11:272, 11:273, 11:274, 11:275, 11:280, 20:342.

Am Jur:

15 Am Jur 2d, Civil Rights §§ 249, 274, 478, 488, 489, 490, 492, 493, 496–498.

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d p 525.

Forms:

11 Federal Procedural Forms L Ed, Housing and Urban Development §§ 39:3–39:6, 39:31, 39:33–39:35, 39:53.

15 Federal Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits § 61:32.

Federal Regulation of Employment Service:

FRES, Job Discrimination § 3:186.

Annotations:

Award of attorneys' fees to prevailing plaintiffs in actions brought pursuant to § 812 of the Fair Housing Act of 1968 (42 USCS § 3612(c)). 38 ALR Fed 164.

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Law Review Articles:

Discrimination in Employment and in Housing: Private Enforcement Provisions of the Civil Rights Acts of 1964 and 1968. (1969) 82 Harvard L Rev 834.

Nussbaum, Attorney's Fees in Public Interest Litigation. 48 NYU L Rev 301.

Fair Housing Act: Standing for the Private Attorney General. (1972) 12 Santa Clara Law 562.

Tunny & Frank, Federal Roles in Lawyer Reform. 27 Stan L Rev 333.

INTERPRETIVE NOTES AND DECISIONS

1. Generally

On review of Federal Court of Appeals' decision in action under § 812 of the Fair Housing Act (42 USCS § 3612) brought by, among other parties, municipal corporation alleging certain violations of § 804 of Act (42 USCS § 3604), question of whether municipal corporation is "private person" as referred to in caption to § 812, and accordingly whether it can sue under that provision, is not properly before United States Supreme Court where (1) contention that municipal corporation lacked standing because it was not "person" under § 802(d) of Act (42 USCS § 3602(d)) was rejected by Court of Appeals after being raised only briefly at oral argument and not having been briefed, and (2) question presented to Supreme Court was variant of question raised belatedly in Court of Appeals, since no argument was made before the Supreme Court that municipal corporation was not person, it having been argued instead that municipal corporation was not "private person." Gladstone, Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

District court erred in dismissing suit based on 42 USCS §§ 3610, 3612 for alleged racial discrimination in refusal to rent apartment, where only basis for applicant's unacceptability was flimsy evidence of "offensive odor," itself freighted with trademark of racial prejudice. Stevens v Dobs, Inc. (1973, CA4 NC) 483 F2d 82, later app (ED NC) 373 F Supp 618.

Fact that state housing discrimination law was not substantially equivalent to federal Fair Housing Act (42 USCS § 3601 et seq.) does not necessarily mean that state law does not contain most appropriate statute of limitations for federal claims relating to housing discrimination, but only means that state law is not viewed to be sufficiently adequate to require that HUD complaints be first referred to state housing agency. Green v Ten Eyck (1978, CA8 Mo) 572 F2d 1233 (disagreed with on other grounds Swan v Stoneman (CA2 Vt) 635 F2d 97).

42 USCS § 3612 is designed to vindicate private rights violated by some identifiable act of discrimination; in order to prevail under § 3612 a party must demonstrate some act of discrimination. Player v Alabama Dept. of Pensions & Secur. (1975, MD Ala) 400 F Supp 249, affd without op (CA5 Ala) 536 F2d 1385.

2. Relation to other laws

Failure to assert timely claim under Fair Housing Act (42 USCS §§ 3601 et seq.) has no effect on whatever cause of action may be available under 42 USCS § 1982. Hickman v Fincher (1973, CA4 SC) 483 F2d 855.

Action brought under 42 USCS § 1982 is not barred by 180-day limitation period of 42 USCS §§ 3610 or 3612. Warren v Norman Realty Co. (1975, CA8 Neb) 513 F2d 730, cert den 423 US 855, 46 L Ed 2d 81, 96 S Ct 105.

While amount of punitive damages under 42 USCS § 1982 is not restricted by $1,000 limitation in 42 USCS § 3612(c), case is remanded for new trial on issue of punitive damages where district court did not instruct jury that limitation expressed in 42 USCS § 3612(c), although not binding, may be taken into account as indication of what might constitute reasonable and appropriate award. Fountila v Carter (1978, CA9 Cal) 571 F2d 487.

Test of ability to pay, applied in determining attorney's fees under 42 USCS §§ 3601 et seq., is inapplicable to awards of fees under Civil Rights Attorney's Fees Awards Act amending 42 USCS § 1988. Hughes v Repko (1978, CA3 Pa) 578 F2d 483, on remand (WD Pa) 471 F Supp 43.

Motion to dismiss action brought under Fair Housing Act of 1968 as barred by 180-day statute of limitations in 42 USCS § 3612 is denied since 180-day statute of limitations is not applicable to civil actions brought under 42 USCS § 3617. United States General, Inc. v Joliet (1977, ND Ill) 432 F Supp 346.

3. —42 USCS § 3610

42 USCS §§ 3610 and 3612 provide alternative remedies available to precisely the same class of plaintiffs. Gladstone, Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

Filing of complaint with Secretary under 42 USCS § 3610 is not such election of remedies as to deny right of filing court complaint under 42 USCS § 3612. Johnson v Decker (1971, ND Cal) 333 F Supp 88.

Remedies of 42 USCS §§ 3610 and 3612 are separate, distinct and in alternative; plaintiffs have right to bring suit in district court alleging racial discrimination in rental of housing under § 3612, before exhausting or attempting to exhaust remedies provided for in § 3610. Crim v Glover (1972, SD Ohio) 338 F Supp 823.

Result of administrative proceeding brought pursuant to 42 USCS § 3610 will not be given res judicata effect in action instituted under 42 USCS § 3612(a). Miller v Poretsky (1976, DC Dist Col) 409 F Supp 837.

Two avenues provided by Fair Housing Act through which persons aggrieved by alleged violations may seek redress in District Courts, through HUD administrative procedures under 42 USCS § 3610, or directly under 42 USCS § 3612, are clearly in alternative. Howard v W. P. Bill Atkinson Enterprises (1975, WD Okla) 412 F Supp 610.

Two methods of enforcing Title VIII set forth at 42 USCS § 3610 (complaint procedure with HUD) and 42 USCS § 3612 (civil action in district court) are alternative paths to relief for person injured by discrimination in housing; language of 42 USCS § 3610 is permissive and not mandatory, and inclusion of both 42 USCS § 3610 and § 3612 is itself best evidence that Congress intended to provide alternate paths to relief. Fair Housing Council, Inc. v Eastern Bergen County Multiple Listing Service, Inc. (1976, DC NJ) 422 F Supp 1071.

Use of procedures in 42 USCS § 3610 is not prerequisite to filing suit under 42 USCS § 3612. Concerned Tenants Asso. of Indian Trails Apartments v Indian Trails Apartments (1980, ND Ill) 496 F Supp 522.

Exhaustion of administrative remedies is not prerequisite to claim in federal court based on 42 USCS § 3612; party may institute civil action on administrative level under 42 USCS § 3610 as well as commence civil action in federal court under 42 USCS § 3612 since each of these are independent remedies. Oliver v Foster (1981, SD Tex) 524 F Supp 927, 33 FR Serv 2d 896.

4. Limitation of actions

Complaint under Fair Housing Act (42 USCS §§ 3604, 3606) filed 224 days after last act of alleged discrimination is barred by 180 day period of limitations contained in 42 USCS § 3612(a). Hickman v Fincher (1973, CA4 SC) 483 F2d 855.

180-day period must run from date of first refusal in order to avoid circumvention of limitation; if futile attempts at settlement or negotiation by alleged injured party are allowed to breathe life into claim long dead, 180-day limitation would have little significance and such tactics would enable victim of alleged discrimination to circumvent statute of limitations merely by provoking his adversary into another refusal to sell or rent. Meyers v Pennypack Woods Home Ownership Asso. (1977, CA3 Pa) 559 F2d 894, 23 FR Serv 2d 979.

Failure to comply with jurisdictional prerequisite of commencing civil action within 180 days after alleged discriminatory housing practice is fatal. James v Hafler (1970, ND Ga) 320 F Supp 397, affd without op (CA5 Ga) 457 F2d 511 and affd without op (CA5 Ga) 457 F2d 511.

Action alleging racial discrimination in housing in violation of 42 USCS § 3612 is barred where plaintiff files complaint more than 180 days after date on which discriminatory practice occurred. Warren v Norman Realty Co. (1974, DC Neb) 375 F Supp 478, affd (CA8 Neb) 513 F2d 730, cert den 423 US 855, 46 L Ed 2d 81, 96 S Ct 105.

Plaintiff's complaint is timely although filed over year after events, where there is no hiatus because plaintiffs filed civil case against defendant in United States district court on same claim for relief well within 180 day period. Re Moore (1979, BC CD Cal) 1 BR 52.

5. —Continuing violations

Alleged violation of 42 USCS § 3604, that housing association refused to place black applicant on waiting list, is not continuing one for purposes of 180-day limitation of § 3612(a); association's rejection of plaintiff's demands for redress three years after initial refusal to sell house did not extend 180-day limitation. Meyers v Pennypack Woods Home Ownership Asso. (1977, CA3 Pa) 559 F2d 894, 23 FR Serv 2d 979.

Aggrieved party is entitled to revive all Fair Housing Act (42 USCS §§ 3601 et seq.) claims against violator simply by reapplying for housing with violator since violations continue to occur by continued policy of denying minority applicants housing. Coles v Havens Realty Corp. (1980, CA4 Va) 633 F2d 384, affd in part and revd in part on other grounds 455 US 363, 71 L Ed 2d 214, 102 S Ct 1114.

Where plaintiffs allege what amounts to continuing conspiratorial practice of discrimination in sale or rental of housing by multiple defendants, such continuing discriminatory pattern satisfies 180-day requirement of 42 USCS § 3612 within which action must be brought. Fair Housing Council, Inc. v Eastern Bergen County Multiple Listing Service, Inc. (1976, DC NJ) 422 F Supp 1071.

Cause of action was filed within 180 days allowed by 42 USCS § 3612, despite fact that more than 180 days elapsed since lending institu-

tion's filing of foreclosure action, since violation of 42 USCS § 3605 which plaintiffs alleged involved continuing injury, and 180 days had not elapsed from time tortious conduct ceased at date upon which plaintiffs would have been dispossessed by virtue of defendant's order of foreclosure. Harper v Union Sav. Asso. (1977, ND Ohio) 429 F Supp 1254.

Plaintiff failed to comply with jurisdictional time limit contained in 42 USCS § 3612 where litigation was not commenced until period considerably in excess of 180 days after alleged discriminatory housing practice occurred, and such failure to meet 180 day jurisdictional requirement may not be avoided by claiming that wrong was continuing one. Stingley v Lincoln Park (1977, ED Mich) 429 F Supp 1379.

Complaint alleging continuing violation of 42 USCS § 3604 was filed within 180 days of alleged discriminatory housing practice where plaintiff alleged that practices of defendant amounted to pattern of failing to provide same kind of services at housing project as were afforded white tenants in early 1970's and these actions occurred up until present time. Concerned Tenants Asso. of Indian Trails Apartments v Indian Trails Apartments (1980, ND Ill) 496 F Supp 522.

6. —Tolling

Statute of limitation set forth in 42 USCS § 3612 was not tolled during period of time that person who suffered discrimination in housing was pursuing administrative remedy authorized by 42 USCS § 3610. Jefferson v Mentzell (1976, ND Tex) 409 F Supp 1; Smith v Woodhollow Apartments (1978, WD Okla) 463 F Supp 16.

Suit under 42 USCS §§ 3601 et seq., claiming racial discrimination in sale of property, is barred by 180-day limitation period of 42 USCS § 3612, and doctrine of fraudulent concealment did not toll statute of limitations; unawareness of facts or law does not itself justify suspending operation of limitations statute, for question is whether plaintiff knew, or by exercise of due diligence could have known, that he might have cause of action. Humphrey v J. B. Land Co. (1979, SD Tex) 478 F Supp 770.

7. Standing

With regard to standing to bring suit under § 812 of Fair Housing Act of 1968 (42 USCS § 3612)—which provides for civil actions to enforce rights guaranteed by § 804 of Act (42 USCS § 3614)—to enforce right to have one's community protected from harms of racial segregation, central issue is not who possesses legal rights protected by § 804, but rather whether parties bringing suit were genuinely injured by conduct that violates someone's rights and thus are entitled to seek redress of that harm under § 812; since standing under § 812 extends to the limits provided by Article III of the Federal Constitution, normal prudential rules governing standing do not apply, and as long as plaintiff suffers actual injury as result of defendant's conduct, he is permitted to prove that rights of another were infringed. Gladstone, Realtors v Bellwood (1979) 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

Sole requirement for standing to sue under 42 USCS § 3612 is Article 3 minimum of injury-in-fact, that is, that plaintiff allege that as result of defendant's actions he has suffered distinct and palpable injury. Havens Realty Corp. v Coleman (1982) 445 US 363, 71 L Ed 2d 214, 102 S Ct 1114.

Landowners who challenged action of defendant municipality which rezoned their property from multifamily residential to single-family residential, lack standing under Fair Housing Act (42 USCS §§ 3601 et seq.) where landowners suffered economic injury only in diminution in value of their property as result of defendant's conduct. Nasser v Homewood (1982, CA11 Ala) 671 F2d 432.

Local residents have standing to challenge HUD's decision approving neighborhood low-income housing project as being contrary to 42 USCS § 3608(b)(5) since residents are within zone of interests to be protected by Fair Housing Act (42 USCS §§ 3601 et seq.). Alschuler v Department of Housing & Urban Development (1982, CA7) 686 F2d 472.

Plaintiffs who seek federal funding to construct multi-family housing project in municipality have standing to challenge municipality's zoning ordinance, which zoned particular tract in question for single-family residential units on one-acre lots, as discriminatory and thus violative of Fair Housing Act (42 USCS §§ 3601 et seq.), even though Section 8 (42 USCS § 1437f) federal funds were not currently available to finance project since availability of Section 8 monies in subsequent years cannot be excluded. Huntington Branch, NAACP v Huntington (1982, CA2 NY) 689 F2d 391.

Residents of predominantly white neighborhood have standing to sue under 42 USCS § 3612 where complaint alleged that residents were deprived of right to important social, professional, business and economic, political and esthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices; contention that 42 USCS § 3612 confers cause of action

on persons much narrower than relief afforded by 42 USCS § 3610 is without merit. Fair Housing Council, Inc. v Eastern Bergen County Multiple Listing Service, Inc. (1976, DC NJ) 422 F Supp 1071.

Association of neighborhood residents, and individual white and black homeowners in neighborhood, have standing to sue for violation of 42 USCS § 3612 by realtors allegedly promoting racial segregation by steering practices, i.e., steering white prospective home buyers to predominantly white neighborhoods, and black prospective home buyers to black neighborhoods, even though homeowners were not themselves directly injured. Wheatley Heights Neighborhood Coalition v Jenna Resales Co. (1977, ED NY) 429 F Supp 486.

Congress intended to confer standing in suits brought pursuant to 42 USCS §§ 3610 and 3612 to fullest extent permitted by Article III of United States Constitution; thus, so-called "prudential limitations" which require plaintiff to show particularized injury not shared by all or large class of citizen do not apply in cases involving housing discrimination, and instead all that need be shown is that the plaintiff personally has suffered some actual or threatened injury as result of putatively illegal conduct of defendant. Sherman Park Community Asso. v Wauwatosa Realty Co. (1980, ED Wis) 486 F Supp 838.

Injury in fact is sole criterion to assert standing under 42 USCS § 3612. Gordon v Cartersville (1981, ND Ga) 522 F Supp 753.

Residents of community do not have standing to challenge discriminatory housing practices at apartment complex where (1) none of residents have ever been in apartment complex, (2) none of them could say they knew anyone who lived there, (3) resident who lives nearest to apartment complex lives one mile from it, and (4) only connection residents have with apartment complex is that they live, work, shop, attend church, send children to school, and recreate in community. Bond v Regal (1982, ED Wis) 530 F Supp 707, 33 FR Serv 2d 1733.

Developers who seek to provide housing to persons of low income have standing under 42 USCS § 3612 to challenge allegedly discriminatory actions of defendants where plaintiffs alleged that they have suffered financial loss because of defendant's actions. Bendetson v Payson (1982, DC Mass) 534 F Supp 539.

8. —Testers

Individual who, without intent to rent or purchase home or apartment, poses as renter or purchaser for purpose of collecting evidence of unlawful steering practices, has suffered injury sufficient to allow standing under 42 USCS § 3612 where individual has been object of unlawful misrepresentation as to availability of dwelling. Havens Realty Corp. v Coleman (1982) 455 US 363, 71 L Ed 2d 214, 102 S Ct 1114.

Individual testers who posed as prospective home buyers have standing under 42 USCS § 3612 to sue real estate brokers, assuming that such brokers engaged in racial steering by leading prospective home buyers to different residential areas on basis of their race, where testers asserted injury in their loss of benefits from living in intergrated community; municipal corporation has standing to challenge illegal manipulation of its housing market to economic and social detriment of its citizens since area targeted as "changing neighborhood" to which minority home seekers may be steered could experience unnaturally rapid population turnover, with destablized and possibly negative effects on property values and thus on its municipal tax base; nonprofit corporation devoted to eliminating housing discrimination does not have standing where it asserts that racial steering hampered and interferred with its mission and cost it money to investigate and attempt to eliminate practice; there is no difference between class of plaintiffs with standing to invoke 42 USCS § 3610 and class with standing to invoke § 3612. Bellwood v Gladstone Realtors (1978, CA7 Ill) 569 F2d 1013 affd, in part 441 US 91, 60 L Ed 2d 66, 99 S Ct 1601.

9. Right to jury trial

Seventh Amendment entitles either party to demand jury trial in action for damages brought under 42 USCS § 3612 for violations of 42 USCS § 3604(a). Curtis v Loether (1974) 415 US 189, 39 L Ed 2d 260, 94 S Ct 1005.

42 USCS § 3612 affords defendant right to jury trial of damage claims; it is error for district court to refuse defendant's request for jury trial on grounds that such damages are merely incidental to prayer for injunctive relief. Rogers v Loether (1972, CA7 Wis) 467 F2d 1110, 16 FR Serv 2d 956, affd 415 US 189, 39 L Ed 2d 260, 94 S Ct 1005, 18 FR Serv 2d 189; Kastner v Brackett (1971, DC Nev) 326 F Supp 1151, 15 FR Serv 2d 447.

In seeking injunction and damages for racially discriminatory rental policy, plaintiff is entitled to jury trial only on the issue of damages. Kelly v Armbrust (1972, DC ND) 351 F Supp 869, 17 FR Serv 2d 355.

Right to jury trial under Seventh Amendment does not exist in money damage action under Fair Housing Act (42 USCS §§ 3601 et seq.). Marr v Rife (1973, SD Ohio) 363 F Supp 1362.

10. Consent decree

Because resolution of disputes by community agreement engenders crucial community support which such solutions must have if they are to succeed, decree developed by community is greatly preferable to ruling of court in action under 42 USCS § 3612. Williamsburg Fair Housing Committee v New York City Housing Authority (1978, SD NY) 450 F Supp 602.

11. Relief, generally

Provisions of 42 USCS § 3612(a) do not bar district court from invalidating leases where relief sought was not solely under provision of Fair Housing Act (42 USCS §§ 3601 et seq.) but under constitutional provisions and civil rights statutes. Otero v New York City Housing Authority (1973, CA2 NY) 484 F2d 1122.

Construed broadly, 42 USCS § 3612(c) gives district court power to fashion affirmative equitable relief calculated to eliminate as far as possible discriminatory effects of violation of Fair Housing Act (42 USCS §§ 3601 et seq.) Parkview Heights Corp. v Black Jack (1979, CA8 Mo) 605 F2d 1033, cert den 445 US 905, 63 L Ed 2d 321, 100 S Ct 1081.

Where plaintiff was induced by real estate agent to enter into 2 contracts to sell her house because blacks were moving into neighborhood, and to buy another house in white area, court has power to provide remedies necessary to effectuate congressional purpose of statute. Sanborn v Wagner (1973, DC Md) 354 F Supp 291.

Where obvious discrimination occurred by steering prospective buyers or renters to particular areas on basis of race, decree is proper (1) prohibiting all discriminatory practices by landlords and others acting in concert with them, (2) requiring landlords to adopt and implement objective, reviewable standards and procedures for selling or renting to blacks no more stringent than those previously applied to members of white race, and (3) directing defendants to take affirmative steps to eliminate effects of past discrimination and to promote equal housing opportunity. United States v Henshaw Bros., Inc. (1974, ED Va) 401 F Supp 399.

District court has authority to order site-specific affirmative relief based on violations of Fair Housing Act of 1968 (42 USCS §§ 3601 et seq.). Metropolitan Housing Development Corp. v Arlington Heights (1979, ND Ill) 469 F Supp 836, affd (CA7 Ill) 616 F2d 1006.

12. Damages

Damages in housing discrimination cases are not limited to out-of-pocket losses, but may include awards for emotional distress and humiliation. Steele v Title Realty Co. (1973, CA10 Utah) 478 F2d 380.

Where evidence demonstrates that real estate broker, manager, and one of its salesmen refused to negotiate for sale of dwelling in predominantly white area of Chicago with black couple, compensatory damages are properly awarded for humiliation suffered by plaintiffs, whether humiliation was inferred from circumstances or established by testimony, and $500 is well within range of reasonable amounts. Seaton v Sky Realty Co. (1974, CA7 Ill) 491 F2d 634.

Damages for humiliation and mental anguish suffered as result of violation of civil rights are contemplated by Fair Housing Act (42 USCS § 3612(c)). Crumble v Blumthal (1977, CA7 Ill) 549 F2d 462, 38 ALR Fed 152.

Compensatory damages for violation of civil rights must be more than nominal; compensatory damages of $5,000 are awarded to plaintiff against mortgage company and employee of company for violations of 42 USCS §§ 3604, 3605, and 3617, by employee. Harrison v Otto G. Henzeroth Mortg. Co. (1977, ND Ohio) 430 F Supp 893.

There is nothing in history of 42 USCS § 3612(c) to suggest that in making provision Congress intended concept of actual damages to be construed differently than it is understood in law of damages; phrase "actual damages" is synonymous with "compensatory damages" and means substantial as distinguished from nominal; in housing discrimination case, compensatory damages include inconvenience, mental anguish, humiliation, embarrassment, expenses, and deprivation of constitutional rights. Morehead v Lewis (1977, ND Ill) 432 F Supp 674, affd without op (CA7 Ill) 594 F2d 867.

13. —Punitive damages

Fair Housing Act does not require finding of actual damages as condition to award of punitive damages. Rogers v Loether (1972, CA7 Wis) 467 F2d 1110, 16 FR Serv 2d 956, affd 415 US 189, 39 L Ed 2d 260, 94 S Ct 1005, 18 FR Serv 2d 189.

Although punitive damages may be awarded under statute where appropriate, Congress did not intend punitive damages to be allowed for every violation of statute. Steele v Title Realty Co. (1973, CA10 Utah) 478 F2d 380.

District court must be satisfied that requisite degree of willful and wanton disregard of plaintiffs' rights had been shown in action where plaintiffs were awarded compensatory and punitive damages against defendant for racially motivated refusal to negotiate for sale of dwelling in predominantly white area contrary to 42 USCS §§ 3604 and 1982, where black couple were

victims of racial discrimination by real estate broker, manager, and one of its salesmen, who refused to negotiate with couple for sale of dwelling in white area, defendants were "systematically engaged" in unlawful discrimination, and ample cause exists for granting award of $1,000 punitive damages against each of three defendants. Seaton v Sky Realty Co. (1974, CA7 Ill) 491 F2d 634.

Appropriate consideration in deciding issue of punitive damages under 42 USCS §§ 3601 et seq. is motive and attitude of defendant in refusing to grant housing in question to plaintiff; although punitive damages are not to be allowed for every violation, in each case court should consider whether or not defendant acted wantonly and willfully, or was motivated in his actions by ill will, malice, or desire to injure plaintiff. Jeanty v McKey & Poague, Inc. (1974, CA7 Ill) 496 F2d 1119.

Punitive damages can be assessed against principal not personally liable under Fair Housing Act under doctrine of respondeat superior if he knew of or ratified discriminatory acts of his employees or agents. Marr v Rife (1974, CA6 Ohio) 503 F2d 735, later app (CA6 Ohio) 545 F2d 554.

In civil rights action against realtor who managed some 1500 apartment units, district court properly refused to award punitive damages where evidence established that two building superintendents (employees of defendant) showed and rented apartments in racially discriminatory manner, but there was no evidence that anyone else in defendant's organization was aware of unlawful behavior, and there is no evidence that anyone in defendant's company had similar policies. Fort v White (1976, CA2 Conn) 530 F2d 1113.

Merely because wrong is intentionally permitted, punitive damages are not, as matter of law, compelled; certain degree of malevolence must be present to warrant award of punitive damages. Crumble v Blumthal (1977, CA7 Ill) 549 F2d 462, 38 ALR Fed 152.

Fair Housing Act is independent of other civil rights statutes and $1,000 punitive damages limitation contained in 42 USCS § 3612(c) does not act as limit upon punitive damages award otherwise available under those acts, although it may be considered when determining amount of punitive damages in such suits. Dillon v AFBIC Development Corp. (1979, CA5 Ala) 597 F2d 556.

$1,000 punitive damage limitation contain in 42 USCS § 3612(c) is to be read in conjunction with 42 USCS §§ 1982 and 1988, which do not impose such limitations in action brought under Fair Housing Act and 42 USCS § 1982 alleging racial discrimination in sale of real estate. McDonald v Verble (1980, CA6 Ohio) 622 F2d 1227.

There is no ceiling on award of punitive damages in action in which concurrent liability is established under 42 USCS § 3612 and § 1982. Miller v Apartments & Homes, Inc. (1981, CA3 NJ) 646 F2d 101, 59 ALR Fed 918.

Language used by defendant, referring to plaintiffs' guest as "nigger trash" amounts to willful and gross disregard of plaintiffs' rights under Fair Housing Act. Woods-Drake v Lundy (1982, CA5 Miss) 667 F2d 1198.

In cases involving vindication of rights under Fair Housing Act (42 USCS § 3612), punitive damages can only be awarded where defendant has engaged in willful, wanton or other similar conduct in course of discriminating in housing contrary to provisions of act. Stevens v Dobs, Inc. (1974, ED NC) 373 F Supp 618.

While 42 USCS § 3612(c) $1,000 limitation does not pre-empt court's power to award punitive damages in 42 USCS § 1982 cases, 42 USCS § 3612(c) should be given appropriate consideration in determining amount of punitive damages in 42 USCS § 1982 action in which plaintiff alleges defendant refused to sell plaintiffs residential property because they were black. Hughes v Dyer (1974, WD Mo) 378 F Supp 1305.

Landlady's willful disregard of rights of others by discriminating in rentals on basis of race is subject to liability for punitive damages under 42 USCS § 3612(c); punitive damages are usually given where defendant's conduct is willful or wanton, or where deterrant effect would be accomplished. Walker v Fox (1975, SD Ohio) 395 F Supp 1303.

Punitive damages of $2,500 are assessed against employee of mortgage company for violating provisions of 42 USCS §§ 3604, 3605, and 3617; employer mortgage company is not assessed punitive damages, even though it is required to make plaintiff whole because duty violated was non-delegable, since there was no showing of intent or willfulness on its part. Harrison v Otto G. Henzeroth Mortg. Co. (1977, ND Ohio) 430 F Supp 893.

Punitive damages should be granted in those cases in which court finds that defendant acted willfully and in wanton and malicious disregard for rights of plaintiffs; thus, defendant is liable for $5,000 in punitive damages for refusing to rent apartment to plaintiffs in violation of 42 USCS § 3604 and 42 USCS § 1982. Bishop v Peesok (1976, ND Ohio) 431 F Supp 34.

No punitive damages are awarded under 42 USCS § 3612(c) where there was no evidence of malicious and willful conduct. Morehead v

Lewis (1977, ND Ill) 432 F Supp 674, affd without op (CA7 Ill) 594 F2d 867.

Award of punitive damages against real estate broker under 42 USCS § 3612 is proper where real estate salesman discouraged prospective buyers from inspecting dwelling because of race of prospective buyers and real estate broker ratified and approved action of his salesman. Bradley v John M. Brabham Agency, Inc. (1978, DC SC) 463 F Supp 27.

Plaintiff's claim for exemplary or punitive damages in amount of $5,000 will not be dismissed since claim for punitive damages is authorized by 42 USCS § 1982 which does not limit amount of punitive damages recoverable. Oliver v Foster (1981, SD Tex) 524 F Supp 927, 33 FR Serv 2d 896.

14. Attorneys' fees

Amount of attorneys fees set pursuant to 42 USCS § 3612(c) is within discretion of district court, and will not be disturbed on appeal absent abuse. Marr v Rife (1976, CA6 Ohio) 545 F2d 554.

Indigency should not be sole test of whether attorney's fees should be awarded under 42 USCS §§ 3601 et seq.; rather, requirement of financial inability should be designed to mean homeowner or prospective homeowner of limited financial ability who clearly lacks resources to cite legal battle under "anti-blockbusting" act without endangering his status as homeowner or potential homeowner, and includes widow with minor dependent, who receives only modest annual income by way of pension. Sanborn v Wagner (1973, DC Md) 354 F Supp 291.

Awards of attorney's fees may be made in housing discrimination actions pursuant to 42 USCS § 3612(c) in discretion of trial court. Adams v Hempstead Health Co. (1977, ED NY) 426 F Supp 1141.

Plaintiffs are not financially able to pay attorney, despite contention that plaintiffs are able to pay their attorneys because they earn $9,000 and $10,000 per year; in determining amount of fees that are reasonable, hours claimed or spent on civil rights case are not sole basis for court's decision, and court must not simply accept attorneys' account of value of their services, nor should they be compensated for unnecessary work. Morehead v Lewis (1977, ND Ill) 432 F Supp 674, affd without op (CA7 Ill) 594 F2d 867.

Attorney's fees will not be awarded under 42 USCS § 3612 where there is no showing that plaintiffs are financially unable to assume attorney's fees. Bradley v John M. Brabham Agency, Inc. (1978, DC SC) 463 F Supp 27.

In action under 42 USCS § 1982 and Fair Housing Act (42 USCS §§ 3601 et seq.) award of nominal damages based on finding of liability can trigger award of reasonable attorney's fees. Nicholson v Bates (1982, ED Tex) 544 F Supp 256.

15. —Awarded

Test of whether attorney fees should be allowed under statute is not limited to present ability of plaintiff to pay, but whether he is financially able to assume burden; evidence justified award of $2,000 in attorney fees to black teacher denied right to rent apartment on ground that he was black. Steele v Title Realty Co. (1973, CA10 Utah) 478 F2d 380.

In action under 42 USCS §§ 3601 et seq. against owner and exclusive rental agent of apartment housing, $400 in attorney's fees awarded to plaintiff must be reconsidered in view of substantial time spent by plaintiff's highly qualified counsel in bringing action and in several hearings; attorney's fees for appeal are awarded to encourage private litigation to enforce Civil Rights Act of 1964. Jeanty v McKey & Poague, Inc. (1974, CA7 Ill) 496 F2d 1119.

Plaintiff is entitled to award of attorneys' fees to of $1,250 for services of counsel on appeal and to reasonable additional allowance for attorneys' fees related to pursuit of injunctive relief in trial court where trial court's refusal to grant injunctive relief was reversed as abuse of discretion on appeal. Sandford v R. L. Coleman Realty Co. (1978, CA4 NC) 573 F2d 173.

Prevailing plaintiff in action under Federal Fair Housing Act (42 USCS §§ 3601 et seq.) is entitled to attorney's fees, and it was abuse of discretion by trial court to deny fees on basis that plaintiff perjured herself, where evidence undisputedly showed that defendants violated Act by refusing to rent to plaintiff because she was black. Price v Pelka (1982, CA6 Ohio) 690 F2d 98.

16. —Denied

Denial of attorneys' fees to prevailing plaintiff is proper where plaintiff entered contingent fee agreement with private attorney prior to litigation under 42 USCS § 3612. Samuel v Benedict (1978, CA9 Cal) 573 F2d 580.

In action alleging racial discrimination in sale of housing lot, plaintiffs who earn in excess of $30,000 per year are financially able to assume their attorney fees and thus fees will not be awarded under 42 USCS § 3612(c). Clemons v Runck (1975, SD Ohio) 402 F Supp 863.

Plaintiffs are not "prevailing parties" so as to permit award of attorney fees where, even though plaintiffs were granted temporary re-

straining order and preliminary injunction preventing defendants-landlords from renting any apartments until plaintiffs surveyed complex, defendants were found not to have violated any of plaintiffs' rights. Parks v Grayton Park Associates (1982, ED Mich) 531 F Supp 77.

17. Costs

Plaintiffs, prevailing parties in civil rights action, are entitled to recover their costs from defendant. Morehead v Lewis (1977, ND Ill) 432 F Supp 674, affd without op (CA7 Ill) 594 F2d 867.

18. Moot questions

Class suit on behalf of plaintiffs and another unidentified family, alleging 42 USCS § 3604 violations, is moot where plaintiff arbitrated settlement with landlord. Cash v Swifton Land Corp. (1970, CA6 Ohio) 434 F2d 569, 14 FR Serv 2d 956.

Where original complaint sought damages as well as injunctive relief, settlement as to rental of apartment and awarding of costs and waiver of fees and security does not render moot question of damages. Cash v Swifton (1970, CA6 Ohio) 434 F2d 569, 14 FR Serv 2d 956; Rogers v Loether (attorney's fees) (1972, CA7 Wis) 467 F2d 1110, 16 FR Serv 2d 956, affd 415 US 189, 39 L Ed 2d 260, 94 S Ct 1005, 18 FR Serv 2d 189.

Claim for equitable relief is not mooted under 42 USCS § 3612 by fact that agents who allegedly committed discriminatory acts are no longer employed by defendants, and therefore court will not dismiss action. Dyer v Schecter (1977, ND Ohio) 77 FRD 696.

§ 3613. Enforcement by the Attorney General; issues of general public importance; civil action; Federal jurisdiction; complaint; preventive relief

[(a)] Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 813(a), 82 Stat. 88.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Explanatory notes:

Brackets are inserted around the subsec. designator "(a)" to denote that this section, as enacted, contained a subsec. (a), but did not contain additional subsections.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not

applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

CROSS REFERENCES

This section is referred to in 42 USCS § 3614.

RESEARCH GUIDE

Federal Procedure L Ed:

Fed Proc, L Ed §§ 11:86, 11:256, 11:257, 11:258, 11:259, 11:260, 11:261.

Am Jur:

15 Am Jur 2d, Civil Rights §§ 249, 418, 480–484, 489, 493.

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Forms:

11 Federal Procedural Forms L Ed, Housing and Urban Development §§ 39:3, 39:8, 39:38.

Annotations:

What constitutes "pattern or practice" of racial discrimination in sale or rental of housing within meaning of provision of Fair Housing Act of 1968 (42 USCS § 3613) authorizing attorney general to bring civil action for preventive relief against such conduct. 13 ALR Fed 285.

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Application
3. "Pattern or practice"
4. "General public importance"
5. Right to jury trial
6. Relief
7. —Damages for private parties

1. Generally

Upon finding facts sufficient to support violation of Fair Housing Act (42 USCS §§ 3601 et seq.), district court did not err, after remand, in refusing to refer case to Attorney General for another determination of whether "reasonable cause" existed pursuant to 42 USCS § 3613. United States v Northside Realty Associates, Inc. (1974, CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Whether Attorney General has reasonable cause for belief is not proper subject for judicial inquiry or confirmation in Title VIII action. United States v Mitchell (1970, ND Ga) 313 F Supp 299; United States v Hunter (1971, DC Md) 324 F Supp 529, affd (CA4) 459 F2d 205, 22 ALR Fed 339, cert den 409 US 934, 34 L Ed 2d 189, 93 S Ct 235, reh den 413 US 923, 37 L Ed 2d 1045, 93 S Ct 3046.

Summary judgment is inappropriate disposition of "pattern or practice" and "public importance" issues in determining whether Attorney General may proceed on alleged 42 USCS § 3604(e) violations. United States v Mitchell (1971, ND Ga) 327 F Supp 476.

2. Application

42 USCS § 3613 provides for actions against states and political subdivisions as well as actions against private transactions and practices; comprehensive purpose of Fair Housing Act (42 USCS §§ 3601 et seq.) would be diluted if it were to apply only to actions of private individuals and entities. United States v Parma (1981, CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

3. "Pattern or practice"

Phrase, "pattern or practice", is satisfied by admission by landlord that apartment's policy of maintaining segregated apartment continued into 1969, and failure to advise several of post-Act applicants of deposit requirement, and absence of persuasive indications that cessation in admitted pre-Act pattern or practice occurred and, therefore, establish pattern or practice of racial discrimination in renting after effective date of Act (42 USCS §§ 3601 et seq.). United States v West Peachtree Tenth Corp. (1971, CA5 Ga) 437 F2d 221, 13 ALR Fed 269.

Printing of "white home" advertisement, while indicating racial preference in violation of 42 USCS § 3604(c), did not alone suffice to constitute "pattern or practice". United States v Hunter (1972, CA4 Md) 459 F2d 205, 22 ALR Fed 339, cert den 409 US 934, 34 L Ed 2d 189, 93 S Ct 235, reh den 413 US 923, 37 L Ed 2d 1045, 93 S Ct 3046.

Where trial court found that defendant had not participated in "individual pattern or practice" but had participated in "group pattern or practice" when 2 of his agents made forbidden representations to 4 individuals, Attorney General had standing to sue. United States v Bob Lawrence Realty, Inc. (1973, CA5 Ga) 474 F2d 115, cert den 414 US 826, 38 L Ed 2d 59, 94 S Ct 131, reh den 414 US 1087, 38 L Ed 2d 494, 94 S Ct 610.

Single pre-Act incident of discrimination, standing alone, did not justify finding of "pattern or practice" under 42 USCS § 3613. United States v Northside Realty Associates, Inc. (1973, CA5 Ga) 474 F2d 1164, later app (CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Attorney General's suit was valid under "pattern or practice" provision where allegations were that owners of apartment complex had "steered" blacks into separate section of complex, that 95% of all blacks renting in complex during 2-year period rented apartments in same section comprised of four buildings at remote end of complex, and that 53% of all black tenants were located in same bulding within this section. United States v Mitchell (1978, CA5 Tex) 580 F2d 789.

Isolated or accidental or peculiar event consituting single act of discrimination does not rise to level of "pattern or practice" required for federal court action; evidence, however, in respect to two instances, does establish "pattern or practice" of discrimination. United States v Gilman (1972, SD NY) 341 F Supp 891.

No "pattern or practice" of violation of 42 USCS § 3613 is shown where very few agents of realtor made isolated remarks about race of prospective buyers. United States v Saroff (1974, ED Tenn) 377 F Supp 352, affd without op (CA6 Tenn) 516 F2d 902.

4. "General public importance"

Questions of scope and constitutionality of 42 USCS § 3604(c) raise issue of "general public importance", affording necessary prerequisite for relief hereunder, independent of whether "pattern or practice" of resistance is also shown to exist; Attorney General's attack on "white home" classification is allowed. United States v Hunter (1972, CA4 Md) 459 F2d 205, 22 ALR Fed 339, cert den 405 US 934, 34 L Ed 2d 189, 93 S Ct 235, reh den 413 US 923, 37 L Ed 2d 1045, 93 S Ct 3046.

It is not for district court to determine when issue of public importance justifying intervention of Attorney General is raised; once Attorney General alleges that he has reasonable cause to believe that violation of 42 USCS § 3604(e) denied rights to group of persons and that this denial raised issue of general public importance, he has standing to commence action in district court to obtain injunctive relief. United States v Bob Lawrence Realty, Inc. (1973, CA5 Ga) 474 F2d 115, cert den 414 US 826, 38 L Ed 2d 59, 94 S Ct 131, reh den 414 US 1087, 38 L Ed 2d 494, 94 S Ct 610.

Question of what constitutes issue of general public importance is, absent specific statutory standards, question most appropriately answered by executive branch and attorney general must be given wide discretion to determine whether issue of public importance is raised in regard to violation of Fair Housing Act (42 USCS §§ 3601 et seq.). United States v Northside Realty Associates, Inc. (1973, CA5 Ga) 474 F2d 1164, later app (CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Absent specific statutory standards, question of what constitutes issue of general public impor-

tance is most appropriately answered by executive branch. United States v Northside Realty Associates, Inc. (1974, CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Attorney General's suit was proper under provision authorizing bringing of suit which involves issue of general public importance, where allegations were that owners of apartment complex had "steered" blacks into separate section of complex, that 95% of all blacks renting in complex rented apartments in same section comprised of four buildings at remote end of complex, and that 53% of all black tenants were located in same building within this section. United States v Mitchell (1978, CA5 Tex) 580 F2d 789.

5. Right to jury trial

Defendants prosecuted under 42 USCS § 3613 have no right to trial by jury because only equitable relief is authorized against them. United States v Bob Lawrence Realty, Inc. (1970, ND Cal) 313 F Supp 870, 14 FR Serv 2d 622.

In action by attorney general under 42 USCS § 3613 seeking only injunctive relief, defendants have no right to jury trial. United States v Westbanick Corp. (1974, DC Wis) 63 FRD 366.

6. Relief

Violations of Fair Housing Act (42 USCS §§ 3601 et seq.), absent challenge to validity of Act, would alone support granting of injunctive relief to United States. United States v Northside Realty Associates, Inc. (1974, CA5 Ga) 501 F2d 181, reh den (CA5 Ga) 518 F2d 884, cert den 424 US 977, 47 L Ed 2d 747, 96 S Ct 1483, reh den 425 US 985, 48 L Ed 2d 810, 96 S Ct 2192.

Appropriate relief for violation of Fair Housing Act [42 USCS §§ 3601 et seq] is to be determined on case-by-case basis with relief tailored in each instance to needs of particular situation; relief should be aimed toward twin goals of insuring that no future violations of Act occur and removing any lingering effects of past discrimination; district court order enjoining defendants from any future violations of Act and ordering defendants to instruct their employees in provisions of Act and of court order and to open their rental records to governmental inspection for one year was not sufficient relief for practice of discrimination against persons on basis of race in renting apartment; district court must expand affirmative relief provisions of its injunction to include provisions parallel to those of prior appellate decision. United States v Jamestown Center-in-the-Grove Apartments (1977, CA5 Fla) 557 F2d 1079.

Primary purpose of injunction in Fair Housing Act [42 USCS § 3601 et seq] cases is to prevent future violations of Act and to eliminate any possible recurrence of discriminatory housing practice; prior to granting injunctive relief, court must determine that cognizable danger of recurrent violations exists; court may consider number of factors in deciding whether injunctive relief is appropriate, or in fashioning relief under decree of injunction once court has determined that such remedy is necessary; factors to be considered are bona fide intention of party found guilty of discrimination presently to comply with law, effective discontinuance of discriminatory practices in question, and character of past violations; where violations are particularly limited in nature, court must carefully adhere to its announced admonition against imposing overly burdensome decrees on defendants; in view of change in policy and limited nature of past violations, district court properly worded injunction to prevent recurrence of violations and to eliminate vestiges of discrimination at mobile home park, while simultaneously avoiding undue burden on defendants. United States v Warwick Mobil Home Estates, Inc. (1977, CA4 Va) 558 F2d 194.

Because second alternative of 42 USCS § 3613 authorizes injunctive relief in favor of government where there has been denial of rights to any group and where Attorney General has determined that such denial raises issue of general public importance, injunctive relief is appropriate on basis of defendants' discriminatory treatment of blacks through their rental agents, where black persons were discriminated against in rental of apartments. United States v Youritan Constr. Co. (1973, ND Cal) 370 F Supp 643, affd in part and remanded in part on other grounds (CA9 Cal) 509 F2d 623, 10 BNA FEP Cas 1438.

Injunctive relief is appropriate in action by Attorney General against children's home which allegedly made dwelling unavailable to black children in violation of Fair Housing Act of 1968 (42 USCS §§ 3601 et seq.). United States v Hughes Memorial Home (1975, WD Va) 396 F Supp 544.

42 USCS § 3613 is designed to provide broad scale relief where discriminatory housing pattern creates problem of "general public importance"; in such case, evidence of individualized acts of discrimination is not required since the focus is on discriminatory policy evidenced by defendant's overall operation and its class-based result. Player v Alabama Dept. of Pensions &

Secur. (1975, MD Ala) 400 F Supp 249, affd without op (CA5 Ala) 536 F2d 1385.

Every violation of Fair Housing Act [42 USCS §§ 3601 et seq.] does not justify granting of relief in suits by government; neither suburban black quota nor special financial incentives for black salespeople in suburban offices was appropriate remedy for action against real estate company alleging pattern or practice of discrimination based on race where presently existing pattern of racial assignment resulted more from attitudes of its salespeople, black and white, and from biases of the community than from anything else; appropriate remedy for racial steering effect of company's advertising policy was to require defendant to maintain its relative dollar volume of advertising and, at same time, counterbalance its specific home advertising with advertising of same specific homes in other newspapers; injunctive relief should be as specific as circumstances permit, but where means of possible violation are almost as variable as situations themselves, injunctive relief must be in general terms. United States v Real Estate One, Inc. (1977, ED Mich) 433 F Supp 1140, 13 CCH EPD ¶ 11490.

7. —Damages for private parties

General monetary damages cannot be awarded to individual victims of discrimination in suit by Attorney General under 42 USCS § 3613; however, judge may consider awarding any items appropriately characterized as subject to equitable restitution such as discriminatory deposits or overcharges. United States v Long (1975, CA4 SC) 537 F2d 1151, cert den 429 US 871, 50 L Ed 2d 151, 97 S Ct 185.

Attorney General may not recover damages for private parties under 42 USCS § 3613, since § 3613 empowers him to seek only equitable remedies. United States v Mitchell (1978, CA5 Tex) 580 F2d 789.

In suit brought by Attorney General under 42 USCS § 3613, general monetary damages may not be awarded to individual victims of discrimination. United States v Rent-A-Homes Systems, Inc. (1979, CA7 Ill) 602 F2d 795.

"Preventive" relief authorized by 42 USCS § 3613 does not include availability of compensatory damages. United States v Orlofsky (1981, SD NY) 538 F Supp 450, 34 FR Serv 2d 1201.

§ 3614. Expedition of proceedings

Any court in which a proceeding is instituted under section 812 or 813 of this title [42 USCS §§ 3612, 3613] shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.
(Apr. 11, 1968, P. L. 90-284, Title VIII, § 814, 82 Stat. 88.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

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Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Annotations:

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

§ 3615. Effect on State laws

Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 815, 82 Stat. 89.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

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Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Annotations:

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

INTERPRETIVE NOTES AND DECISIONS

Where there is no factual basis for city's assertion that its compelling governmental interests in either road and traffic control, prevention of overcrowding of schools, or prevention of devaluation of adjacent single-family homes are in fact furthered by zoning ordinance having discriminatory effect on blacks, and where other asserted interests including exclusion of apartments where there are already too many and where there is no need for them are clearly not substantial in relation to housing opportunities foreclosed by ordinance, enforcement of ordinance is enjoined. United States v Black Jack (1974, CA8 Mo) 508 F2d 1179, cert den 422 US 1042, 45 L Ed 2d 694, 95 S Ct 2656, reh den 423 US 884, 46 L Ed 2d 115, 96 S Ct 158.

State statute making it unlawful for any person not having bona fide intention to avail himself of rights under legislation to solicit offers, to buy or lease from property owners or lessees or their agents for sole purpose of securing evidence of discriminatory practice chills exercise of right to equal housing opportunity, conflicts with general scheme of Fair Housing Act (42 USCS §§ 3601 et seq.) and is invalid under Supremacy Clause of Art. VI of Constitution. United States v Wisconsin (1975, WD Wis) 395 F Supp 732.

§ 3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this title. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 816, 82 Stat. 89.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

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Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

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Annotations:

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

§ 3617. Interference, coercion, or intimidation; enforcement by civil action

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or

protected by section 803, 804, 805, or 806 [42 USCS §§ 3603, 3604, 3605, or 3606]. This section may be enforced by appropriate civil action.
(Apr. 11, 1968, P. L. 90-284, Title VIII, § 817, 82 Stat. 89.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

RESEARCH GUIDE

Federal Procedure L Ed:

Fed Proc, L Ed §§ 11:65, 11:280.

Am Jur:

15 Am Jur 2d, Civil Rights §§ 249, 477, 489.

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Forms:

11 Federal Procedural Forms L Ed, Housing and Urban Development § 39:33.

Annotations:

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Law Review Articles:

McGee, Illusion and Contradiction in the Quest for a Desegregated Metropolis. 1976 U Ill L F 948.

Ellickson, Suburban Growth Controls: An Economic and Legal Analysis. 86 Yale L J 385.

INTERPRETIVE NOTES AND DECISIONS

1. Generally

42 USCS § 3617 provides for actions against states and political subdivisions as well as actions against private transactions and practices; comprehensive purpose of Fair Housing Act (42 USCS §§ 3601 et seq.) would be diluted if it were to apply only to actions of private individuals and entities. United States v Parma (1981, CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

2. Relation to other laws

Validity of claim under 42 USCS § 3617 depends upon whether failure to rezone violated § 3604(a) where conduct that allegedly violated § 3617 is same conduct that allegedly violated § 3604(a) and was engaged in by same party. Metropolitan Housing Development Corp. v Arlington Heights (1977, CA7) 558 F2d 1283, cert den 434 US 1025, 54 L Ed 2d 772, 98 S Ct 752 and on remand (ND Ill) 469 F Supp 836, affd (CA7 Ill) 616 F2d 1006.

Conduct which violated 42 USCS § 3604 by discriminatorily failing or refusing to provide property insurance on dwellings also violated 42 USCS § 3617. Dunn v Midwestern Indem. Mid-American Fire & Casualty Co. (1979, SD Ohio) 472 F Supp 1106.

3. Violations, generally

Real estate brokers have cause of action against sellers of property under 42 USCS § 3617, based on allegation that sellers refused to pay real estate commission, as required by real estate sales contract, because brokers aided black buyers in exercise of their right to buy real estate. Crumble v Blumthal (1977 CA7 Ill) 549 F2d 462, 38 ALR Fed 152.

Home buyer who allegedly suffered racial discrimination in housing by actions of defendant savings and loan association in "redlining" loan applications so that plaintiffs were denied home-loan due to racial composition of neighborhood in which home was located stated cause of action within meaning of 42 USCS §§ 3604, 3605, and 3617. Laufman v Oakley Bldg. & Loan Co. (1976, SD Ohio) 408 F Supp 489, later proceeding (SD Ohio) 72 FRD 116, 23 FR Serv 2d 849.

Promulgation of standards which cause appraisers and lenders to treat race and national origin as negative factor in determining value of dwellings and evaluating soundness of home loans may "interfere" with person in exercise and enjoyment of rights guaranteed by Fair Housing Act. United States v American Institute of Real Estate Appraisers etc. (1977, ND Ill) 442 F Supp 1072, 24 FR Serv 2d 880, app dismd (CA7 Ill) 590 F2d 242, 48 ALR Fed 657.

Conduct which violated 42 USCS § 3604 by discriminatorily failing or refusing to provide property insurance on dwellings also violated 42 USCS § 3617. Dunn v Midwestern Indem. Mid-American Fire & Casualty Co. (1979, SD Ohio) 472 F Supp 1106.

4. —State and local government actions

Alleged wrongful termination of employment from local housing authority after attempt to secure equal police protection by city police for tenants of housing authority, majority of whom were black, by communicating with local organization formed primarily for protection of rights of blacks was not actionable under 42 USCS § 3617. Vercher v Harrisburg Housing Authority (1978, MD Pa) 454 F Supp 423.

Municipality interfered with ability of prospective developers to construct integrated housing in violation of 42 USCS § 3617, where it enacted ordinances designed to preclude construction of low-income housing. United States v Parma (1980, ND Ohio) 494 F Supp 1049, app dismd without op (CA6 Ohio) 633 F2d 218 and later op (ND Ohio) 504 F Supp 913, affd in part and revd in part on other grounds (CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

City's rejection of fair housing resolution, consistent refusal to sign cooperation agreement with local housing authority, adamant and long-standing opposition to any form of public or low-income housing, denial of building permit for low-income housing, passage of 35-foot height restriction ordinance, passage of ordinance requiring voter approval for low-income housing, and refusal to submit adequate housing assistance plan in Community Block Development Grant application violate Fair Housing Act (42 USCS § 3617). United States v Parma (1980, ND Ohio) 494 F Supp 1049, app dismd without op (CA6 Ohio) 633 F2d 218 and later op (ND Ohio) 504 F Supp 913, affd in part and revd in part on other grounds (CA6 Ohio) 661 F2d 562, reh den (CA6) 669 F2d 1100 and cert den (US) 72 L Ed 2d 441, 102 S Ct 1972, reh den (US) 73 L Ed 2d 1309, 102 S Ct 2308.

City is chargeable with racially discriminatory intent in its failure to carry forward with racially integrated low-income senior citizen and family housing project where city commissioners felt bound by results of advisory referendum not to proceed with housing project and commissioners were aware that significant number of opponents of housing project were motivated in part by desire to exclude black people from city. United States v Birmingham (1982, ED Mich) 538 F Supp 819.

County's veto of proposed low-income housing development which was to participate in federal Section 8 HAP program for rent subsidies for low-income families under 42 USCS § 1437f violated 42 USCS §§ 3604 and 3617 even without conclusion that race was motivating factor behind county's decision. Atkins v Robinson (1982, ED Va) 545 F Supp 852.

5. Practice and procedure, generally

Doctrine of federal abstention to state courts is inapplicable to action by United States under

Title VIII alleging violations of 42 USCS §§ 3604 and 3617. United States v Black Jack (1974, CA8 Mo) 508 F2d 1179, cert den 422 US 1042, 45 L Ed 2d 694, 95 S Ct 2656, reh den 23 US 884, 46 L Ed 2d 115, 96 S Ct 158.

In action seeking damages for, inter alia, interference with economic relations, libel, and nuisance brought by real estate company against persons who participated in organized program of auditing and checking real estate firms to test their compliance with Fair Housing Act (42 USCS §§ 3601 et seq.) which had been removed from state court to federal court on defendant's motion therefor, motion by plaintiffs to remand case to state court would be denied pending proof by defendants of correctness of their allegations that they were engaged in activity expressly protected by 42 USCS § 3617, that state court action had been brought against them for having aided and encouraged others in exercise and enjoyment of right to equal housing opportunity, and that such action had effect of coercing, intimidating and threatening interference with their rights under such statutory provision. Northside Realty Associates, Inc. v Chapman (1976, ND Ga) 411 F Supp 1195.

6. Standing

Language of 42 USCS § 3617 indicates that Congress intended to grant standing to persons who help others to exercise protected rights, even if those persons do not suffer injury to their own legal rights; developer had standing to assert rights of prospective minority tenants in public housing under Fair Housing Act (42 USCS §§ 3601 et seq.); motion to dismiss action brought under Act as barred by 180-day statute of limitations in 42 USCS § 3612 is denied since 180-day statute of limitations is not applicable to civil actions brought under 42 USCS § 3617. United States General, Inc. v Joliet (1977, ND Ill) 432 F Supp 346.

7. Limitations of actions

State's fair housing laws contain statute of limitation applicable to federal actions under 42 USCS § 3617; plaintiff's filing of claim with state civil rights commission does not toll period of time within which plaintiff must file his federal suit under 42 USCS § 3617. Warner v Perrino (1978, CA6 Ohio) 585 F2d 171, 11 Ohio Ops 3d 274.

Motion to dismiss action brought under Fair Housing Act of 1968 (42 USCS §§ 3601 et seq.) as barred by 180-day statute of limitations in 42 USCS § 3612 is denied since 180-day statute of limitations is not applicable to civil actions brought under 42 USCS § 3617. United States General, Inc. v Joliet (1977, ND Ill) 432 F Supp 346.

8. Evidence; burden of proof

42 USCS § 3617 provides remedy in situation where resident manager and maintenance technician are dismissed by their employers because of their aid or encouragement to tenants in asserting their right to fair housing; plaintiffs bear burden of proof by preponderance of evidence on each issue including that they actually aided or encouraged individual or group in exercise or enjoyment of rights under 42 USCS § 3604(b) to equal services and conditions of housing; action brought under 42 USCS § 3617 is dismissed where court finds as matter of law that plaintiff resident manager and technician failed to prove by preponderance of evidence that they aided or encouraged tenant in exercise or enjoyment of her rights under 42 USCS § 3604(b) within meaning of § 3617 and court found insufficient credible evidence to prove that plaintiffs were dismissed because they aided or encouraged tenant in assertion of any rights. Meadows v Edgewood Management Corp. (1977, WD Va) 432 F Supp 334.

§ 3618. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 818, 82 Stat. 89.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P.L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

RESEARCH GUIDE

Am Jur Proof of Facts:

Racial Discrimination in Rental or Leasing of Real Property, 15 Am Jur Proof of Facts 2d, p. 525.

Annotations:

Prohibition, under state civil rights laws, of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

§ 3619. Separability of provisions

If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of the title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 819, 82 Stat. 89.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title" and "the title", referred to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 Stat. 81, and appears generally as 42 USCS §§ 3601 et seq. For full classification of this Title, consult USCS Tables volumes.

Other provisions:

Federally protected activities; penalties. For the provision that penalties for violations respecting federally protected activities are not applicable to and do not affect activities under 42 USCS §§ 3601 et seq., see § 101(b) of Act Apr. 11, 1968, P. L. 90-284, Title I, 82 Stat. 75, which appears as 18 USCS § 245 note.

RESEARCH GUIDE

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Annotations:

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PREVENTION OF INTIMIDATION

§ 3631. Violations; bodily injury; death; penalties

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(a) any person because of his race, color, religion, sex, or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(1) participating, without discrimination on account of race, color, religion, sex, or national origin, in any of the activities, services, organizations or facilities described in subsection 901(a) [subsec. (a) of this section]; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, or national origin, in any of the activities, services, organizations or facilities described in subsection 901(a) [subsec. (a) of this section], or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

(Apr. 11, 1968, P. L. 90-284, Title IX, § 901, 82 Stat. 89; Aug. 22, 1974, P. L. 93-383, Title VIII, § 808(b)(4), 88 Stat. 729.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1974. Act Aug. 22, 1974, in subsecs. (a), (b)(1), and (c), inserted ", sex".

RESEARCH GUIDE

Am Jur Proof of Facts:

Racial Discrimination in Sale of Real Estate, 14 Am Jur Proof of Facts 2d, p. 511.

Annotations:

Prohibition, under state civil rights laws of racial discrimination in rental of privately owned residential property. 96 ALR3d 497.

Law Review Articles:

The Statute of Limitations in the Fair Housing Act. 5 Florida State Univ L Rev 128, Winter 1977.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Motive
3. Particular acts

1. Generally

42 USCS § 3631 protects one's right to occupy home regardless of race, and there is clear Congressional intent to impose criminal sanctions on those who engage in violation of law. United States v Johns (1980, CA5 Ala) 615 F2d 672, cert den 449 US 829, 66 L Ed 2d 33, 101 S Ct 95.

2. Motive

Given defendant's motive to discourage interracial living when shooting into residence, presence of other motives does not make conduct any less a violation of 42 USCS § 3631. United States v Johns (1980, CA5 Ala) 615 F2d 672, cert den 449 US 829, 66 L Ed 2d 33, 101 S Ct 95.

3. Particular acts

Shooting into residence to discourage interracial dating and living arrangements is violation of 42 USCS § 3631. United States v Johns (1980, CA5 Ala) 615 F2d 672, cert den 449 US 829, 66 L Ed 2d 33, 101 S Ct 95.

§§ 3632–3700. [Reserved]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

No laws are presently classified to these sections, which are designated as "Reserved" only to provide numerical continuity between this volume and the following volume of Title 42, USCS. For laws which may be classified to these sections in the future, see Supplement.