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Mobile home parks: Time to scrap outdated rules, policies and ads

In our experience, it is important for owners and operators of manufactured housing communities to carefully review their rules, policies and advertisements (especially when considering an acquisition of an established manufactured housing community) to avoid inadvertent violations of the Fair Housing Act that may give rise to substantial penalties and potential liability for the parks' owners and operators.

Although the Fair Housing Act has prohibited discrimination based on "family status" since 1988, a few mobile home parks still hold onto outdated rules that limit the number of children allowed in their parks or prohibit children altogether. As recently as last month, a mobile home park in northern Indiana was named in a lawsuit filed by the U.S. Department of Justice for violating the Fair Housing Act by telling prospective residents that no one under 40 years old could live at the mobile home park. In a similar 2011 lawsuit involving a mobile home park in Michigan, the Shamrock Village Mobile Home Park settled its case, agreeing to pay a \$7,500 civil penalty and to set up a \$20,000 pool to compensate other prospective residents turned away by its alleged policy. Shamrock, which also settled privately with a woman who had previously been rejected by the park while pregnant with her second child, had been



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accused in the DOJ lawsuit of rejecting rental applications from families with more than one child.

It's not only clearly defined policies that violate the Fair Housing Act. One federal district court in California has found violations of the Fair Housing Act in the broad "preambles" to the rules of mobile home parks. According to the court, phrases indicating that a mobile home park was "designed and built as an adult facility" violate the Fair Housing Act. These types of illegal "steering," which evidence a preference for adults and families without children, are prohibited from advertising as well. In one case, an advertisement placed in a local newspaper seeking "a mature person" to rent an apartment was a violation of the Fair Housing Act.

Even rules designed to protect the health and safety of adults and children alike may violate the Fair Housing Act if a court can identify a less restrictive means of achieving the purported health and safety goal. For example, restrictions on the locations within a mobile home park where chil-



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dren are permitted (e.g., "no one under the age of 18 years old is permitted in the billiard room"), restrictions on when children are permitted in certain areas (e.g., "at 2 p.m.

children are to be out of the pool area") and rules requiring adult supervision in certain areas or during certain times have all been deemed to violate the Fair Housing Act. In each of those cases, the California district court deciding the case determined that imposing an adult supervision requirement where none was required or a proficiency requirement would have both been less restrictive means of addressing the park's health and safety concerns.

The Fair Housing Act generally defines "familial status" as one or more individuals under 18 years of age living with either a legal custodian, such as a parent, or designee. The definition expressly includes any person who is pregnant or who is in the process of securing legal custody of someone younger than 18 years old, but provides a limited exception for housing that meets certain strict requirements for "housing for older persons." This

narrow exception means that a mobile home park that can prove that 80 percent of its residents are 55 and older and also publishes and adheres to policies and procedures demonstrating its intent to provide housing for older persons may not violate the Fair Housing Act, but even a regulation that expressly requires compliance with "the 'housing for older persons' provisions" of the Fair Housing Act may not meet this strict exception.

In addition to familial status, the Fair Housing Act also prohibits discrimination based on race or color, religion, sex, national origin and disability, and applies to businesses and facilities other than mobile home parks, such as landlords, real estate companies, municipalities, banks and other lending institutions and homeowners' insurance companies, whose discriminatory practices affect the availability of housing, the provision of services or facilities in connection with housing or the publication of housing-related materials. Owners and operators of any such businesses should be mindful of the Fair Housing Act and any potential violations, whether express, through articulated rules and regulations, or in more subtle forms such as advertising, both of which may give rise to potential liability under the Fair Housing Act.▲