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CAN LANDLORDS DISCRIMINATE ON THE BASIS OF OCCUPATION? THERE IS NO PROHIBITION UNDER FEDERAL LAW [1]

Discrimination is an ugly word with ugly connotations. It is a word that causes persons of all ethnicities, religions, creeds and races to sit up and take notice. There has been a long and distinguished history of efforts to exterminate unfair treatment and discrimination in all areas of public life in the post-Civil War United States. The federal government took an active role toward that end. There was ratification of the Thirteenth Amendment to the Constitution of the United States (the elimination of slavery and indentured servitude), the ratification of the Fourteenth Amendment (the prohibition of State laws which abridge the privileges or immunities of citizens of the United States) and the ratification of the Fifteenth Amendment (the right to vote regardless of color or race). After 1920, the right to vote could no longer be denied to women on account of sex with the ratification of the Nineteenth Amendment. In 1971, the right to vote for those citizens eighteen years and older was secured with the ratification of the Twenty-Sixth Amendment.

Additionally, the Congress has passed and the president has signed into law numerous pieces of legislation intending to enforce the "civil rights" of persons who have felt disaffected or unrepresented. Such laws range from the civil rights laws of the 1950s through and including the Americans With Disabilities Act driven through the Congress by former Senator Robert Dole and signed into law by President George Bush.

The Congress has especially interjected itself in the area of housing. The Congress has passed several laws in an attempt to mold the behavior of landlords throughout the country who might otherwise choose not to rent to minorities, children, men, women or some other type of human classification. However, there is one classification for which the federal government has not proffered any protections. That area is occupation. Under federal law, a landlord is prohibited from

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refusing to rent to an individual based upon color. Under federal law, a landlord is prohibited from refusing to rent to an individual based upon gender. Under federal law, a landlord is prohibited from refusing to rent to a family with children.

Yet amazingly, the federal government allows a landlord to discriminate against an individual based upon his or her occupation. For instance, a landlord could decide to not rent to lawyers. A landlord could decide to not rent to politicians, doctors, bus drivers, tree surgeons or teachers.

In addition to all of the protections that the federal laws provide, each state and each locality can enact codes and statutes that are more stringent, and in New York City, although there seems to be little awareness of it, discrimination against persons based upon occupation has in fact been banned.

In 1957, New York City became America's first city to outlaw private discrimination in the private housing market. The New York City Human Rights Commission (previously the Commission on Intergroup Relations) has historically been charged with enforcing the laws outlawing discrimination. This was unusual because the law applied to persons who received neither tax abatements nor subsidies.

The New York State Legislature was under pressure at that time to also pass anti-discrimination legislation. When the law was finally enacted, it was in many ways more restrictive than the city's law. The state law exempted two family homes that were owner-occupied with boarders, but did include all other housing.

The City responded by expanding its coverage to all housing in New York City except for the same owner-occupied homes with boarders.

Many landlords felt very threatened by these new laws and sought to challenge them in court. Perhaps the most famous of these cases was Martin v. City of New York, 22 Misc.2d 389, 201 N.Y.S.2d 111 (Sup.Ct. N.Y.Co. 1960). In Martin, the court was called upon to determine the constitutionality of the city law. It found that the broad powers vested in the city to regulate the housing industry and market allowed for this type of legislation.

Subsequent challenges to the state law although ingenious, fell short as well. Where the owner of an eight-family dwelling which already had one [African-American] tenant refused to rent an apartment to another [African-American] solely on his belief that all of the white tenants would vacate and that he would then be able to rent only to [African-Americans] thereby resulting in segregation, the State Commission for Human Rights ordered that the landlord cease and desist from the discriminatory practices. In the Matter of Charles E. Looney, Jr. v. Bernard Katzen, Constituting the State Commission for Human Rights, 41 Misc.2d 236, 245 N.Y.S.2d 548 (Sup.Ct., Onondaga Co.1963).

In New York City, the Commission on Human Rights was given broad and substantial power. The Commission has the ability to investigate the allegations of discrimination, subpoena witnesses and obtain injunctive relief. The Commission has also seen the scope of the classes of persons it is to protect grow. In 1973, a law was passed which prohibited landlords from not renting to single persons. In 1977, age discrimination was banned. In 1981, the City Council furthered the protections for tenants to the extent that landlords cannot refuse to rent to drug addicts or alcoholics solely due to this impairment. In 1986, discrimination was outlawed when based solely on sexual orientation.

Also in 1986, the New York City Council banned discrimination in housing rentals based upon a prospective tenant's lawful and rightful occupation. The law reads as follows:

> §8-108.2 Unlawful discriminatory practices-occupations. Where a housing accommodation is sought exclusively for residential purposes, the prohibition against unlawful discriminatory practices in relation to the sale, rental, or leasing of a housing accommodation as set forth in section 8-107 shall be construed to prohibit discrimination on account of a person's occupation.

This law has had a profound effect on the lives of attorneys in New York City, for on every application for prospective housing, one of the questions undoubtedly concerns employment. With the thicket of Rent Stabilization laws governing every aspect of a landlord-tenant relationship in New York City, many landlords are quite obviously reluctant to rent apartments to lawyers.

The abysmal system currently in existence allows tenants to go months without paying rent while there is litigation pending between the landlord and tenant. A savvy tenant or a tenant represented by counsel can delay what is supposed to be a summary proceeding for several months or more. The thought of renting an apartment to an attorney who the landlord believes is prepossessed with such knowledge may be unjustly perceived as a problem tenant waiting to happen.

However, from the tenant/attorney perspective a housing market with few vacancies may seem daunting.

Essentially, this article should serve as advice to landlords in New York City that despite anecdotal evidence to the contrary and the failure of the federal or state laws to address this issue, discrimination against someone based upon their chosen occupation is indeed unlawful.